

BEYOND COLD WAR TO TRILATERAL COOPERATION IN THE ASIA-PACIFIC REGION

Scenarios for New Relationships
Between Japan, Russia,
and the United States

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HONOLULU



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APPENDICES F-N

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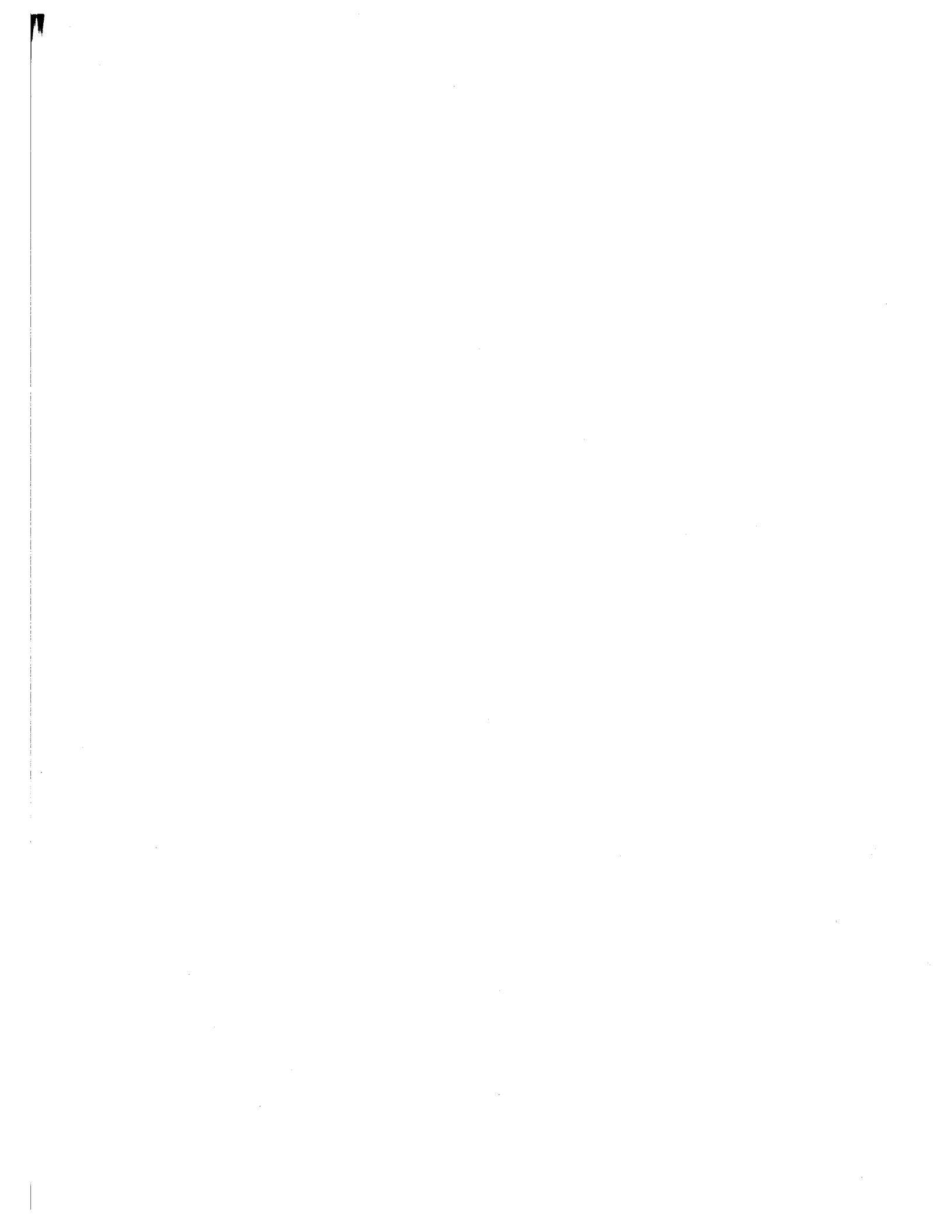


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APPENDIX F



APPENDIX F

THE EVOLUTION OF THE JAPANESE-RUSSIAN TERRITORIAL DILEMMA

by Professor Peter Berton
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The following is a compilation of *extracts* from a report to the Task Force by Professor Peter Berton. His entire report, which deals with the history of the dilemma in greater depth, is available upon request. It provides a comprehensive appraisal of the issues. For reasons of space, we could not reproduce the whole document here.

What is at Stake

The current Japanese-Russian territorial dispute revolves around four islands (or more precisely three islands and a group of small islands) off the coast of Hokkaido, the northernmost of the four main Japanese islands. More specifically, the territory in question involves the two southernmost islands in the Kuril Archipelago -- Kunashiri (known to the Russians as Kunashir) and Etorofu (Iturup) -- plus the island of Shikotan and the small Habomai chain of islands located east of Hokkaido and south of the Kuril chain. In terms of size, Etorofu's area is 3,139 square kilometers; Kunashiri, 1,1500 sq. km.; Shikotan, 255 sq. km.; and the Habomais, 102 sq. km. The total area is just short of 5,000 square kilometers, or more than double that of Okinawa Prefecture (2,249 sq. km.) which was under American occupation from 1945 to 1972. In terms of distance, Suisho Island in the Habomais is about three miles from the tip of Cape Nosappu, while Kunashiri Island is clearly visible from Shiretoko Peninsula.

A word about terminology. The Kuril Islands, stretching in an arc from the Kamchatka Peninsula to Hokkaido, were known to the Japanese as Chishima Retto (Thousand Islands Archipelago). Shikotan and the Habomai group were mostly considered part of Hokkaido, and were usually not included in the Kuril chain by the Japanese. The Russians, on the other hand, refer to the Kuril Islands as the Great Kurils (Bol'shaia Kuril'skaia griada), and to Shikotan and the Habomais as the Lesser Kurils (Malaia Kuril'skaia griada). The inclusion of Shikotan and the Habomais into a Kuril nomenclature was done by the Soviets after their occupation of the islands in 1945, so that these islands would be connected to "the Kuril Islands" awarded to the USSR at the Yalta Conference in February 1945 (see below).

All of this is very important because there is no definition of what constitutes the Kuril Islands acceptable to the two sides. Since the Japanese have renounced all claims to "the Kuril Islands" at the San Francisco Peace Conference (see below), they now exclude Kunashiri and Etorofu from the Kurils and claim that these two islands are separate from the Kuril chain. Secondly, the Russians can claim that not only Kunashiri and Etorofu, but also Shikotan and the Habomais, are part of the Kuril Islands.

Thus, the Japanese say that there are eighteen islands in the Kuril chain, starting from northwest to southeast: (1) Shimushu (Shumshu), (2) Araido (Alaid), (3) Paramushiru (Paramushir), (4) Makanrushi, (5) Onekotan, (6) Harumukotan (Harimkotan), (7) Ekaruma (Ekarma), (8) Shasukotan (Shiashkotan), (9) Mushiru (Mussir), (10) Raikoke, (11) Matsuwa (Matua), (12) Rashuwa (Rastua), (13)

the islets of Suride (Sredneva) and Ushishiru (Ushisir), (14) Ketoi, (15) Shimushiru (Simusir), (16) Buroton (Brotton or Broughton), (17) the islets of Cherupoi (Cherpoi) and Buratto Cherupoefu (Brat Cherpoi) [also known as Black Brothers], and (18) Uruppu (Urup).

The Russians count twenty islands, adding (19) Iturup (Etorofu) and (20) Kunashir (Kunashiri).

Exploration and Colonization of the Disputed Islands

Although the question of which country first discovered and colonized the disputed islands may not be the most important factor in determining the legitimacy of Japanese and Russian claims to the territory, we ought to begin our survey by briefly outlining the historical claims of the two protagonists. Yet before we review the Japanese and Russian positions, we ought to record the fact that the islands really belong to the Ainus, the islands' original inhabitants.

The Japanese penetration of the Kuril Islands and the Island of Sakhalin was the result of the natural process of Japanese northward push, displacing the Ainu inhabitants first in northern Honshu, then in Hokkaido (then known as Yezo), and finally in the Kurils and Sakhalin. Russia's advance into the Kurils was the result of moving to explore the islands south of the Kamchatka Peninsula.

Some Japanese secondary sources or chronologies begin with the year 1590 when Japan's de facto ruler Hideyoshi Toyotomi granted the Matsumae warrior clan a fiefdom covering Yezo (Hokkaido), Chishima (the Kurils), and Karafuto (Sakhalin). Others begin with the year 1635, when the Matsumae clan began to explore Yezo and complete first maps of Kunashiri, Etorofu and "other northern islands." In 1731, the Ainu inhabitants of Kunashiri and Etorofu for the first time sent tribute to the Matsumae authorities, and in 1754 the Matsumaes established a trading post on Kunashiri.

The first Europeans in the Kurils were not the Russians, but the Dutch who discovered the islands in 1643. Russian sources cite first Kozyrevski and then Martyn Shpanberg's mapping of the Kuril Islands in 1739 and somewhat later baptizing the Ainu inhabitants and making them swear allegiance to the Tsar.

The multi-volume *Bol'shaia Entsiklopediia (Large Encyclopedia)*, published in St. Petersburg at the turn of the century, credits Dutchman de Vries with discovering the islands. As for ownership, the encyclopedia article states that "later the northern islands were *captured* (zakhvacheny) by the Russians, and the southern islands by the Japanese" (emphasis added). So much for Soviet claims of Russian primacy in exploring and developing the Southern Kurils, including Shikotan.

In 1991, two Russian scholars have belatedly admitted that, contrary to Soviet propaganda, the Kurils were not "historically Russian":

. . .any person with even rudimentary knowledge of history and ethnography will tell you that the native population of the Kuril ridge were not Russians or Japanese but the Ainu.

Perhaps it is more correct to stress the colonial nature of both Russian and Japanese activities on the Kuril Islands and disregard both Russian and Japanese claims that the islands are "their own" ("koyu" in Japanese; "iskonnye" in Russian). In fact, we can properly speak of Russian and Japanese "imperialist" and colonial expansion into the Kuril Islands area. One of the most recent Russian works on the Kuril problem plainly states that the real owners of the Kuril islands are the Ainus, and that colonization of the area on the part of both Russia and Japan does not constitute a basis for any territorial claims.

Historical Stages in the Evolution of the Territorial Problem

The stages in the evolution of the territorial problem between Japan and Russia (the Soviet Union) are:

1. The boundary line agreed upon in the Russo-Japanese Treaty of Commerce, Navigation and Delimitation signed in Shimoda, Japan in 1855, according to which the boundary between the two countries runs between the islands of Urup (Uruppu) and Iturup (Etorofu), i.e., confirming that Kunashiri and Etorofu belonged to Japan, while the status of the island of Sakhalin was left unresolved pending future negotiations.
2. Major changes in the boundary following the Russo-Japanese Exchange Treaty of 1875 signed in St. Petersburg, essentially Japan trading its claims to the island of Sakhalin in exchange for all the Kuril islands north of Etorofu all the way to the Kamchatka Peninsula.
3. Further territorial changes forced upon Russia at the conclusion of the Russo-Japanese War at the Peace Conference held in Portsmouth, New Hampshire, in 1905, which in effect transferred the southern half of Sakhalin (south of the fiftieth parallel) from Russia to Japan.
4. Soviet government confirmation of the legality of the Portsmouth Treaty in Peking Convention of 1925.
5. Major Japanese loss of territory in the north, as a result of the Red Army occupation of southern Sakhalin and all disputed (and until then even undisputed) islands of the Kuril Archipelago and the adjoining islands of Shikotan and the Habomais in August and September 1945.
6. Japanese renunciation of "all right, title and claim" to the Kuril Islands at the San Francisco Peace Conference in 1951; but neither the definition of the Kuril Islands nor the recipient was clarified.
7. Soviet-Japanese Normalization Agreement, 1956; the Soviets offered two islands upon conclusion of a peace treaty and then withdrew the offer (1960).
8. The long "dialogue of the deaf" (1960-1985) where the Soviets denied the very existence of the problem.
9. Perestroika in the USSR; the gradual change in the attitude of the Soviets towards the territorial problem; Gorbachev's visit to Japan (1991); the Russian Federation's growing involvement in the dispute.
10. The disappearance of the USSR; Russia's emergence as its successor; new perspectives for the resolution of the problem emerge; resistance to the return of the islands; cancellation of Yeltsin's visit to Japan.

This paper will discuss these ten stages.

The Treaty of Shimoda of 1855

The first official contact between Japan and Russia that resulted in a treaty was between a special Russian mission to Japan and China headed by Admiral Count Yevfimii Putiatin and the representatives of the Tokugawa Shogunate in the mid-1850s.

According to Article II of the Treaty of Shimoda which culminated the negotiations and was signed on February 7, 1855, the boundary was successfully defined in the Kuril Archipelago area, but left undetermined in the area of the island of Sakhalin (Karafuto).

Article II

Henceforth the boundaries between Russia and Japan will pass between the islands Iturup (Etorofu) and Urup (Uruppu). The whole island of Iturup belongs to Japan and the whole island Urup and the other Kuril Islands to the north constitute possessions of Russia.

The Kuril Archipelago solution constituted a mutual admission that Japan had sovereignty over the two southernmost islands of Kunashiri (Kunashir) and Etorofu (Iturup), while Russian sovereignty extended from the island of Urup (Uruppu) north all the way to the Kamchatka peninsula.

Some Soviet scholars have claimed over the years that the Crimean War fought at that time against Britain and France forced the Tsarist Government to agree to this unfavorable territorial disposition.

In October 1991, two prominent Soviet scholars K. Sarkisov and K. Cherevko of the Institute of Oriental Studies in Moscow discovered an important document in the archives of the Tsarist Ministry of Foreign Affairs that sheds new light on Russian policy toward Japan in the 1850s, and that flatly contradicts the claims of orthodox Soviet scholars, cited above.

On February 27, 1853, the Foreign Ministry issued instructions to Admiral Putiatin (signed by Tsar Nicholas I) regarding his forthcoming negotiations with Japan. The instructions make it clear that establishing trade relations with Japan was considered an important goal of the Putiatin mission and that concessions were contemplated on the delineation of the border between the two countries.

On the subject of the borders, we should make concessions (without, however, damaging our interests), but considering that the attainment of the other goal, namely, trade benefits, is essential.

The instructions also leave no doubt that the Tsarist Government recognized the fact that Japanese territory extended to the two southernmost islands of the Kuril chain, namely Kunashir and Iturup, and that Russian territory began with the island of Urup.

The southernmost Kuril island, belonging to Russia is Urup island and therefore the southern tip of that island shall be our border with Japan, while the end of the Japanese territory shall be the northern tip of Iturup island.

The document also clearly proves that Russia never claimed rights to the southern Kuril Islands, and that it acknowledged Japan's rights voluntarily and without pressure.

The Sakhalin-Kurils Exchange Treaty of 1875

The Japanese-Russian boundary issue was finally settled in 1875 when the Tsarist Government, distracted by more important developments in the West, agreed to transfer all the rights in the entire chain of Kuril Islands, from north of Iturup (Etorofu) to the Kamchatka peninsula (from the island of Urup in the south to the northernmost island of Shumshu) in exchange for Japan's renunciation of all of its claims in Sakhalin. This was formalized in the Treaty of St. Petersburg in 1875 which was signed by the Japanese Ambassador Admiral Enomoto and Prince Gorchakov.

The Japanese were guaranteed certain rights in Sakhalin, such as exemption from customs duties, for a period of ten years. In a supplementary article to the Exchange Treaty, signed a few months later in Tokyo, the rights of both Japanese and Russian inhabitants in the territories to be exchanged were guaranteed, as was the freedom of religion and protection of temples and cemeteries. Japanese nationalist groups protested at that time the renunciation of Japan's claims to Karafuto (Sakhalin).

The Japanese government cites the 1875 Sakhalin-Kurils Exchange Treaty as proof that the two southernmost Kuril Islands belong to Japan. Furthermore, the fact that eighteen Kuril islands were enumerated in Article II of the Treaty is cited by the Japanese as proof that the Kuril Islands consist of only eighteen islands and that, therefore, Etorofu and Kunashiri do not belong to the Kuril chain. Thus, Toru Nakagawa, a former Japanese Ambassador to the Soviet Union writes:

Further note should be taken of the fact that the term *Kurils* in both treaties (the 1855 Shimoda Treaty and the 1875 St. Petersburg Treaty) is defined to mean the 18 islands from Shumushu in the north to Urup in the south. Neither Etorofu nor Kunashiri, not to mention Shikotan and the Habomais, was placed within the Kuril Islands as defined in these treaties.

A closer look at Article II will reveal that the wording does not speak of the cession of *the Kuril Islands*, but only of "the group of the Kuril Islands which he (the Emperor of all the Russias) possesses at present."

Article II

In exchange for the cession to Russia of all the rights on the island of Sakhalin, stipulated in the first article, His Majesty the Emperor of all the Russias (Great Russia, Little Russia, and White Russia), for Himself and all his descendants, cedes to His Majesty the Emperor of Japan *the group of the Kuril Islands which he possesses at present*, together with all the rights of sovereignty appertaining to this possession, so that henceforth *the said group of Kuril Islands* shall belong to the Empire of Japan. *This group* comprises the following eighteen islands: (1) Shimushu . . . (18) Uruppu; so that the boundary between the Empires of Russia and Japan in these areas shall pass through the Strait between Cape Lopatka of the peninsula of Kamchatka and the islands of Shimushu (emphasis added).

The authoritative *Kokushi Dai Jiten (Large Dictionary of Japanese History)* in 1988 defined Chishima Retto (the Kuril Archipelago) as follows:

Twenty-three islands stretching in one line from the Kamchatka Peninsula to the *Japanese Archipelago* (Nihon Retto) (emphasis added).

Thus, it is clear that both Kunashiri and Etorofu are included in the definition of the Kuril Archipelago.

Russian cession of the Kuril islands was years later portrayed by Soviet historians as an act of irresponsibility on the part of the Tsarist government and as opportunism on the part of Japan which took advantage of Russia's weakness.

They used the words "unfounded claims," and the preposterous statement that Japan threatened the integrity of the Russian Far East in .. 1875, only seven years after the Meiji Restoration. It was not until two decades later, after Japan's victory in the war against China, that Japan was in a position to threaten Russian interests in Korea.

The Treaty of Portsmouth 1905

At the conclusion of the Russo-Japanese War a Treaty was signed at the Peace Conference held in Portsmouth, New Hampshire in 1905. The Treaty stipulated that Russia would cede the southern half of Sakhalin, below the fiftieth parallel. But, as victors in the war against Russia, the Japanese were hopeful that they would be able to obtain from Russia the entire island of Sakhalin, in spite of the fact that in the past, Japanese claims had generally been limited to the southern half of the island.

Soviet historians look back at this treaty and claim that Jutaro Komura's statements at the Portsmouth Conference support their point that wars invalidate previous treaties and create a new territorial reality. Soviet historical writings contend that when the Japanese plenipotentiary Count Komura first broached the cession of Sakhalin, Witte in righteous indignation pointed to the existence of the Russo-Japanese Exchange Treaty of 1875 and Japan's renunciation of all claims to the island. Komura allegedly reminded Witte that the state of war between their countries had invalidated previous treaties. The Soviet position was that Japan's "treacherous" attack on Port Arthur in 1904 had in fact invalidated not only the Sakhalin-Kurils Exchange Treaty of 1875 but also the Shimoda Treaty of 1855.

It is this delimitation of the boundary in 1855 that is constantly cited by the Japanese government as proof that these two islands belong to Japan and have never belonged to any other country. In fact, in 1981, the Japanese National Diet designated February 7 as "Northern Territories Day," taking this date from the day in 1855 when Japan and Russia signed the Shimoda Treaty. The Soviet Government's position had been that Japan's unprovoked sneak attack on Port Arthur in 1904, the occupation of Sakhalin during the Russo-Japanese War, and the incorporation of Southern Sakhalin into the Japanese Empire by the terms of the 1905 Treaty of Portsmouth invalidated the 1855 Treaty of Shimoda.

However, international law does not stipulate that previous treaties become invalid as a result of war; the problem of previous treaties (particularly those concerning boundaries) should be solved by the subsequent peace treaty.

The Convention of 1925 (Peking Convention)

Japanese troops landed in Vladivostok in 1918, along with American and Canadian forces, ushering in the so-called Siberian Intervention. While the other allied forces soon withdrew, the Japanese continued to occupy parts of the Soviet Far East until 1922. In addition, in 1920, in response to an attack on and slaughter of their diplomats and residents in Nikolaevsk-on-the-Amur river by a Red partisan (guerrilla) band, Japanese forces proceeded to occupy all of Northern Sakhalin. Japanese occupation did

not end until the conclusion of the Peking Convention (mentioned above) and Japan's recognition of the Soviet Union.

The Siberian Intervention and the five-year Japanese occupation of Northern Sakhalin are not at issue at the present time, except as a reminder to the Russians of Japanese aggression. Those who oppose the transfer of any of the disputed islands to Japan have a powerful weapon in keeping the memory of Japan's aggressive past alive.

As for the Portsmouth Treaty, the Soviet Government confirmed its legality in "The Convention Embodying Basic Rules of the Relations Between Japan and the Union of Soviet Socialist Republics" concluded in Peking in January 1925.

Article II

The Union of Soviet Socialist Republics agrees that the Treaty of Portsmouth of September 5th, 1905, shall remain in full force.

Returning to the logic explained above, Soviet historians claim that Japan's aggressive action against the fledgling Bolshevik state right after the October Revolution invalidated the Portsmouth Treaty.

The Atlantic Charter, August 1941; the Cairo Declaration, December 1943; and the Yalta Agreement, February 1945

In the Atlantic Charter proclaimed by President Roosevelt and Prime Minister Churchill in August 1941, the United States and Great Britain pledged to uphold three principles:

1. Opposition to aggrandizement, territorial or otherwise.
2. Opposition to territorial changes without the freely expressed wishes of the people concerned.
3. Support of the right of all peoples to choose the form of government under which they will live.

The provisions of the Atlantic Charter were later incorporated into the United Nations Declaration which the United States, Great Britain, and over twenty nations, including the Soviet Union, signed in Washington on January 1, 1942.

Two years later in December 1943, Roosevelt and Churchill met with Generalissimo Chiang Kai-shek in Cairo and issued a joint statement, which became the Cairo Declaration. Of relevance to our study is the following excerpt:

The three great allies are conducting this war in order to halt and punish Japan's aggression. They covet no gain for themselves and have no thought of territorial expansion.

It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914, and that all the territories that Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.

Japan will also be expelled from all other territories which she has taken by *violence and greed* (emphasis added).

The Cairo Declaration was specifically referred to in the Potsdam declaration of July 1945 (see below), with which the Soviet Union associated itself when it declared war on Japan. The Kuril Islands were acquired by Japan from Russia by virtue of the Treaty of Exchange in 1875 and this territory was not seized by *violence and greed*, and thus did not qualify under terms of the Cairo Declaration.

In December, 1944, two months before the convening of the Yalta Conference, Stalin told Averell Harriman that the Kuril Islands should be returned to the Soviet Union "in order to protect Soviet outlets to the Pacific." Thus, strategic reasons were given rather than historical rights or the validity of international law.

The Division of Territorial Studies within the United States Department of State commissioned studies of both the island of Sakhalin and the Kuril Islands: the former by Dr. Hugh Borton of the Office of Far Eastern Affairs and the latter by Professor George H. Blakeslee of Clark University. Blakeslee began his report with the observation "the Kuril islands have strategic importance for Japan, the Soviet Union and the United States." He accepted the classification of the Kurils into three groups: the northern, central and southern and considered that Japan had "a strong claim" to the southern Kurils and the Soviet Union had a "substantial claim" to the northern Kurils. Blakeslee observed, however, that the Soviet Union might ask not only for the northern group but also for the central, "and possibly even for the southern group." He ended his report with three recommendations:

1. That the southern Kurils be retained by Japan subject to disarmament.
2. That the northern and central Kurils be administered by the Soviet Union under an international trusteeship.
3. That consideration be given to the retention of Japanese fishing rights in the northern group of the Kurils.

Much is made by historians of President Roosevelt's illness and, of course, he died a couple of months later. But the interesting point is that he apparently did not know that the Kurils did not become a part of Japan as a result of the Treaty of Portsmouth, let alone the distinction between the different groups of islands in the Kuril Archipelago. It is also known that for some reason the Blakeslee report was not included in the State Department's briefing books and that it was not brought to the attention of either President Roosevelt or the Undersecretary of State Edward Stettinius. In February 1945 at the Crimean resort of Yalta during the wartime summit meeting between President Franklin D. Roosevelt, Prime Minister Winston Churchill, and Generalissimo Joseph Stalin, it was agreed that the Soviet Union would get Southern Sakhalin and "the Kuril Islands."

The final secret agreement between the Big Three specified that in two or three months after Germany had surrendered and the war in Europe had terminated, the Soviet Union would enter into the war against Japan on the following three conditions:

1. The *status quo* in Outer Mongolia (The Mongolian People's Republic) shall be preserved.
2. The restoration of "the former rights of Russia violated by the treacherous attack of Japan in 1904," among them the commercial port of Dairen, the naval base of Port Arthur, the railroads in Manchuria, and the southern part of Sakhalin as well as all the islands adjacent to it shall be returned to the Soviet Union.
3. The Kuril islands shall be handed over to the Soviet Union.

The document made a distinction between matters dealing with the consequences of the Russo-Japanese War (which would fall under the category of territories taken by Japan from her neighbors "by violence and greed") and the Kuril islands which were treated as a separate condition.

It should also be pointed out that President Roosevelt repeatedly declared at Yalta that territorial cessions could only be made at a peace conference.

Thus, the Soviet Union acted on the basis of its perception of the Yalta agreement. On the 8th of August, 1945, the Soviet Government declared war on Japan - effective the next day. The islands were occupied by the Red Army in the final days of the Pacific War. It is clear from archive materials, that the occupation of the Southern Kurils took place from August 28 - September 5, 1945 - after Japan's official capitulation.

In February 1946, the Presidium of the Supreme Soviet of the USSR issued a decree to the effect that South Sakhalin and the Kuril Islands belonged to the Soviet state. In 1947 the Kuril Islands were incorporated into the South Sakhalin region of the Russian Soviet Federated Socialist Republic.

The San Francisco Peace Conference

In September 1950, John Foster Dulles, who was charged with handling Japanese peace negotiations, sent a memorandum to all nations that had participated in the war against Japan. This included the Soviet Union. Moscow responded with a number of questions including one dealing with territories to be taken away from Japan:

2) The Cairo Declaration of December 1, 1943 and the Potsdam Declaration of July 26, 1945 decided the question of the restoration of Formosa and the Pescadores to China. The Yalta Agreement of February 11, 1945, returned the southern part of Sakhalin, and gave the Kurils to the Soviet Union. What then is the meaning of the clause in the memorandum which would make the status of all these territories subject to a new decision?

This statement clearly shows that the Soviet Union considered wartime conferences among the Allies to be documents legally binding on Japan even though it was not a participant. The Soviets also wanted to assure that the peace process would include a format which would give them veto power. This is precisely what the United States, Great Britain, and of course Japan wanted to avoid.

Once a consensus on the wording of the treaty had been reached among the Western nations, all the countries at war with Japan, except Mainland China and Taiwan but including the Soviet Union, Poland, and Czechoslovakia, were invited to the "Japanese Peace Conference" to be held in San Francisco's Opera House beginning September 4, 1951.

The Soviet Union and its two allies (satellites would be a more precise term) -- Poland and Czechoslovakia -- sent delegations to San Francisco. The Soviet delegation was led by Andrei Gromyko, then Deputy Minister of Foreign Affairs. Gromyko eloquently protested and raised a host of amendments to the treaty which were all ruled out of order by the President of the Conference, Secretary of State Dean Acheson. The Conference in San Francisco was meant to be a "signing ceremony," thus amendments to the wording were prohibited. In the end, Gromyko led the three Communist delegations out of the Conference.

On September 8, 1951, the remaining participants signed "The Treaty of Peace with Japan." In his speech accepting the Treaty on behalf of Japan, Prime Minister Shigeru Yoshida stressed the territorial question, rebutting Gromyko's statement that the Kurils and Southern Sakhalin had been wrested from

Russia by force. Yoshida said that Japan's sovereignty over the Southern Kurils was a fact accepted even by Imperial Russia. Additionally, the Habomai and Shikotan Islands that formed an integral part of Hokkaido were still under the occupation of Soviet forces in violation of international law.

The San Francisco Peace Treaty consisted of 27 articles in seven chapters. Of particular interest is Article 2 in Chapter II "Territory." It consists of six parts, in each of which Japan renounces "all right, title and claim," to several territories including Korea, Formosa (Taiwan) and the Pescadores, the Mandated Pacific islands, the Antarctic, and the Spratly and Paracel islands. In section (c):

Japan renounces all right, title and claim to the Kuril Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905.

Of special importance are two points. First, the Kuril islands are not defined. This allowed the Japanese Government to claim later that Kunashiri and Etorofu are not part of the Kuril islands which were renounced in San Francisco. Second, Japan did not cede the Kuril islands to the Soviet Union. The Japanese government asserted at the Conference that the four islands were not part of the Kuril islands.

Very damaging to the Japanese case is the October 19, 1951 testimony of Kumaō Nishimura, Director of the Treaties Bureau of the Foreign Ministry, before the Special Committee on the Peace Treaty and the US-Japan Security Treaty of the National Diet that was conducting hearings for the ratification of the treaties. He admitted that both Northern and Southern Kurils were included in the scope of the "Chishima Retto" (Kuril Archipelago) named in the San Francisco Peace Treaty. However, he added that historically there was a big difference between the Northern and Southern Kurils, a fact that the Japanese Plenipotentiary (Prime Minister Yoshida) made clear in his speech at the San Francisco Peace Conference.

To this day, some Japanese scholars claim that the Soviet walkout from the San Francisco conference invalidates Japan's renunciation of the Kurils, all the more so since in the final version of the Peace Treaty the Soviet Union is not specifically named as the country to whom Japan renounces all right, title and claim to the Kurils.

The Soviet-Japanese Normalization Agreement, 1956: The Soviets Offer Two Islands and Then Withdraw the Offer

A new stage in the history of the northern territorial dispute took place in 1955/56 during the negotiations between Japan and the Soviet Union aimed at normalizing the relations between the two countries. After the conclusion of the San Francisco Peace Treaty, Japan wanted to conclude peace treaties with all the Allied countries that for whatever reason did not sign the document. Thus, separate peace treaties were negotiated with Burma, India, and the Republic of China on Taiwan. (At the insistence of the United States, Japan promised not to recognize Communist China). In the case of the Soviet Union there was additional incentive to negotiate a peace treaty or at least to normalize relations because as a permanent member of the United Nations Security Council, the Soviet Union continued to cast its veto, thereby preventing Japan from becoming a member of the United Nations.

As for the territories occupied by the Soviet Union, the National Diet continuously passed resolutions calling for the return of Shikotan and the Habomais to Japan. The resolutions mentioned the fact that Japanese sovereignty extended to these islands. No mention was made, however, of Kunashiri or Etorofu. It is safe to state that after San Francisco the Japanese Government was seriously concerned with the return of *only* the two smaller islands. In fact, one young Japanese scholar in a study of the

movement for the return of Northern Territories, clearly demonstrates that the Japanese Government's policy with regard to the disputed islands from September 1951 (San Francisco Peace Treaty Conference) to August 1955 was to seek the return of *only* Shikotan and Habomai.

In early June 1955, Soviet and Japanese negotiators met in London. At the second meeting, the Soviet side was given a document constituting Japan's negotiating position, or more correctly "wish list." The third article in this seven-article document dealt with the territorial issue:

The Habomai group of islands, the Island of Shikotan, the Kuril Archipelago, and South Sakhalin are historically Japanese territory. On the occasion of (negotiating for) the restoration of peace, Japan proposes to exchange frank opinions regarding the reversion of these territories (to Japan).

This was obviously an opening gambit, as the Japanese negotiator Ambassador Shun'ichi Matsumoto wrote in his memoirs. When the Soviets offered to return Shikotan and the Habomais, he felt that the negotiations were coming to a successful end. He was wrong. Tokyo sent a new set of instructions in August 1955 which called for efforts to obtain the return of Kunashiri and Etorofu and an unconditional return of Shikotan and Habomai. Additionally, the issue of the return to Japan of the Northern Kurils and South Sakhalin was to be decided at an international conference of relevant countries. Needless to say, the Soviets rejected the Japanese requests. Thus, the first phase of the negotiations came to an unsuccessful end on September 13, 1955.

The hardening of the Japanese position was due to domestic and international factors, one of them was undoubtedly American pressure.

Japanese-Soviet negotiations resumed again in London in January 1956 but recessed on March 20. The Soviets then began to play the fishery card, announcing on the following day restrictions on Japanese vessels. Later fishery talks in Moscow led to a temporary agreement, with the provision that future agreements would be tied to the conclusion of a peace treaty or at the very least the restoration of diplomatic relations.

Political negotiations resumed at the end of July 1956, this time in Moscow, with Shigemitsu joining Matsumoto as Japanese Plenipotentiary, who as Foreign Minister, was given broad discretionary powers to conclude an agreement with the Soviets. While he personally did not favor territorial concessions, when faced with a Soviet ultimatum, Shigemitsu came to the conclusion that there was no alternative but to accept the Soviet offer of the two smaller islands. But, he was overruled. The Cabinet rejected the Soviet terms, and the negotiations were again suspended.

It was at this juncture, on August 19, 1956, that the then Secretary of State John Foster Dulles threatened Foreign Minister Shigemitsu that Japan's renunciation of its claims to the two larger Kuril islands would clearly be in conflict with the San Francisco Peace Treaty. Citing Paragraph 26 of the Treaty, Dulles warned that the United States might reconsider returning Okinawa to Japan. Dulles later claimed that he made the threat to strengthen the hand of the Japanese diplomats.

During the negotiations, the Soviet Union offered to return Shikotan and the Habomais on condition that Japan sign a peace treaty and renounce its claim to the much larger two islands of Kunashiri and Etorofu. As we have seen, the Japanese Government did not accept this offer. In the end, the Japanese Cabinet decided to adopt the so-called Adenauer formula and sign an agreement with the Soviets. (The Adenauer formula negotiated by the German Chancellor in Moscow restored diplomatic relations between the two countries but postponed territorial questions.) Prime Minister Hatoyama travelled to Moscow and on October 19, 1956 and signed not a peace treaty but a joint declaration. The Soviet offer to return the two smaller islands, however, is part of the Joint-Declaration:

Article 9.

Japan and the Union of Soviet Socialist Republics agree to continue their negotiations for the conclusion of a peace treaty after normal diplomatic relations have been reestablished between the two countries.

The Union of Soviet Socialist Republics, in response to the desire of Japan and in consideration of her interests, agrees to transfer the Habomai Islands and the island of Shikotan to Japan, provided, however, that the actual transfer of these islands shall be effected after the peace treaty between Japan and the Union of Soviet Socialist Republics is concluded.

Originally, the Japanese wanted to include the phrase, "including territorial issues" following the phrase "negotiations for the conclusion of a peace treaty," but Nikita Khrushchev objected. The Japanese delegation then insisted that the correspondence between Deputy Foreign Minister Andrei Gromyko and the Japanese delegate Matsumoto be made public. This exchange of letters revealed that the Soviet Union was willing to leave *the territorial question* for later negotiations for a peace treaty (emphasis added). The Soviets agreed.

Yet even this offer of the two smaller islands was unilaterally withdrawn in 1960 upon the revision of the US-Japan Security Treaty. The Soviets declared that the return of Shikotan and Habomai to Japan would increase the territory being used by foreign troops to threaten the security of the USSR.

The Soviet offer of the two small islands was referred to time and again in Japan as the first step in the solution of the territorial issue.

The Dialogue of the Deaf, 1960-1985

In the 1960s, the Soviets began to deny completely the existence of a territorial problem with Japan, although many joint communiqués issued during the 1970s and 1980s declared that the two countries would continue negotiations "to conclude a peace treaty by resolving the as yet unresolved problems remaining since World War II." The Japanese Government's policy was to get the Soviet Union to admit that Japan's territorial claims were included in the "unresolved problems," whereas the Soviet Government stuck to its position that the "territorial issue did not exist."

In a recent interview, one former high-ranking Soviet diplomat revealed that on the visit to Japan in 1972 during a meeting with Prime Minister Eisaku Sato, Gromyko broached the idea of returning to Japan Shikotan and the Habomais which had been promised in the 1956 Soviet-Japanese Joint Declaration. This was certainly a dramatic departure from the previous Soviet position that the territorial issue did not exist. Prime Minister Sato, however, remained silent and nothing came of the Soviet offer.

The next episode in the Japanese-Soviet territorial shadow boxing took place during the Japanese Prime Minister Kakuei Tanaka's visit to Moscow in October 1973 and his negotiations with the then General Secretary of the CPSU and top Soviet leader Leonid Brezhnev. The Japanese claim that when Tanaka asked Brezhnev whether the territorial issue was included in the unresolved problems, the latter answered in Russian "Da" (Yes). The Soviet response was that Brezhnev said "Da, znayu" (Yes, I know), implying that he knew of the existence of the Japanese claims, but that he did not acknowledge them.

The Japanese Government interpreted these "unresolved problems" to mean *the territorial issue*, which from their point of view was *the stumbling block* preventing the two countries from finally settling

the World war II accounts, whereas the Soviet Government and all of its official spokesmen have until recently refused to accept this interpretation. Furthermore, the Japanese Government's aim was first to get the Soviet Union to acknowledge the *existence* of Japan's territorial claims, and secondly to have these claims spelled out, i.e., to have all the islands listed in the acknowledgement. Of course, convincing the Soviet Union to admit the existence of the territorial issue and even having the disputed islands listed is not tantamount to an acknowledgment of the legality of Japan's claims.

Cautious Overtures: Gorbachev's Policy and Japan's Response

Mikhail Gorbachev attempted to improve the Soviet Union's relations with Japan. And just as in the case of domestic policy, I suspect that Gorbachev had no intention of seriously tackling the territorial issue.

Generally speaking, during the six-and-a-half years between Gorbachev's assumption of power in March 1985 and the August 1991 aborted coup, negotiations between Japan and the Soviet Union went nowhere. Foreign Minister Shevardnadze targeted Japan as one of his first Western countries to visit in January 1986. At that meeting, he hinted at the territorial issue, which was at least an improvement over his predecessor, Foreign Minister Andrei Gromyko, who did not even acknowledge the existence of the territorial dispute. But that was as far as it went. Gorbachev's projected visit to Japan in 1987 was postponed and Shevardnadze did not visit Tokyo again until almost three years later despite an agreement to hold annual foreign ministerial talks. In retrospect, we can say that Gorbachev could have made a significant move on the territorial issue by conceding Japan's right to Shikotan and Habomai, i.e., reaffirming the 1956 Joint Declaration. At that time, glasnost had not yet created a strong public opinion in the Soviet Union, and Gorbachev could have made the necessary concessions without much political harm. But, the opportunity was missed.

During Shevardnadze's second visit to Tokyo in December 1988, he and Foreign Minister Uno agreed to create a working group at the vice-ministerial level to settle the problems associated with the conclusion of a peace treaty. The Japanese side would have preferred to charge the working group specifically with the solution of the territorial dispute since this issue alone had blocked the conclusion of a peace treaty for more than thirty years. But the Soviet side did not want to acknowledge this fact and insisted that the group be charged with a broader mandate.

Three years and nine meetings later, a real breakthrough on the territorial question is yet to occur although some issues were clarified and the disputed islands can now be visited without visas. The Japanese Government on the whole pursued a hardline policy toward the Soviet Union, insisting on some progress on the territorial issue before they would commit themselves to increased economic cooperation, investments, technology transfer, and the like. This is known in Japan as "Iriguchi Ron" or "Entrance Theory," in distinction from the "Deguchi Ron" or "Exit Theory" that posits improving relations with the Soviet Union as a means of solving the territorial issue.

In trying to break the deadlock, Foreign Minister Uno on a visit to Moscow in May 1989 advanced a new policy of "Balanced Expansion" (*kakudai kinko*), which on the surface looks like a policy somewhere between the Entrance and Exit theories. Uno proposed that pending the conclusion of a peace treaty which could successfully resolve the territorial dispute, Japan and the Soviet Union should nevertheless proceed with negotiations over other matters, such as fishing rights, environmental protection, and visits by former Japanese inhabitants of the disputed islands to their ancestors' graves. Although Japanese scholars like to describe "balanced expansion" as a policy between the Entrance and Exit theories, in reality it offers concessions on what, in the context of Sino-Soviet relations, I have called "low politics" relations, distinguishing them from "high politics" or *politically* important policies.

Japanese public opinion polls confirm the generally negative views of the Soviet Union held by

the Japanese (by contrast, the Russians seem to have a very positive view of Japan and the Japanese). Despite Gorbachev's reforms and the improvement in his relations with the United States, Japanese perceptions of the Soviet Union showed only modest improvement. Thus, there was no strong public interest in opposing the Japanese Government's hardline policy toward the Soviet Union nor the steady increase in the defense budget.

Foreign Minister Shevardnadze visited Tokyo again in September 1990 to help arrange President Gorbachev's visit to Japan. That visit, the first ever by a Russian or Soviet leader, took place as scheduled in mid-April. Kaifu and Gorbachev held an in-depth and thorough discussion of the "total range of issues relating to the drafting and conclusion of a peace treaty between Japan and the Union of Soviet Socialist Republics, including the issue of territorial demarcation with consideration to the two sides' positions on the ownership of the Habomai Islands, Shikotan, Kunashiri, and Etorofu". The existence of the territorial dispute was thus finally acknowledged by the Soviets in the joint communique.

However, the meetings did not result in any breakthrough on the territorial issue (the Japanese Prime Minister's priority). On the other hand Gorbachev did not get even a promise of any significant long-range economic cooperation and assistance (his priority). The consensus of political analysts seems to be that it was a mistake for Gorbachev to come to Japan without bringing the Japanese a small "gift," at least acknowledging the Soviet Union's obligations under the 1956 agreement to return Shikotan and the Habomais to Japan. But Soviet domestic politics militated against even this modest concession (only 7% of the disputed territory). Gorbachev also made a couple of major diplomatic blunders and the visit would have been a total failure if it were not for its symbolic value as an historic first.

Partly because of the failure of the Gorbachev visit and partly because it noticed the relative rise of Yeltsin and the Russian Federation, the Japanese Foreign Ministry began to institute a two-track diplomacy at the Union level (Gorbachev) and the Russian Republic level (Yeltsin). Interestingly, this decision was made *before* the August coup, and contacts on both levels intensified after the aborted coup. Between the time of the aborted coup in September 1991 and Gorbachev's resignation at the end of December, the Japanese Foreign Ministry continued the two-track diplomacy.

On September 9, 1991, the Acting Speaker of the Russian Parliament Ruslan Khasbulatov arrived in Tokyo for a five-day visit at the invitation of the Liberal Democratic Party. At a meeting with Prime Minister Kaifu, Khasbulatov said that, in relations between Japan and Russia, "an emphasis should be placed on fairness, and respect for the norms of international law," the first enunciation of "Law and Justice" that became the hallmark of Boris Yeltsin's policy toward Japan. Kaifu reaffirmed the new Japanese policy of "balanced expansion" of relations.

At the end of September, this approach was officially codified in Japan's five principles of its Soviet policy,

1. Japan will step up aid for Soviet reform.
2. Japan will strengthen cooperation with the *Russian Federation* (emphasis added).
3. Japan will assist the Soviet Union in its efforts to be accepted as a constructive partner in the Asia/Pacific region.
4. Japan will support the Soviet Union's campaign to integrate itself with the global economic system via special status in the International Monetary Fund and the World Bank.
5. Japan will seek an early resolution to its territorial dispute with the Soviet Union in order to conclude a peace treaty.

The visitors to Tokyo were predominately *Russian*, but the Japanese who visited Moscow made contacts with both the Soviet and Russian leaders. Prominent Soviet leaders did not or could not come to Japan. However, additional meetings with the Japanese were held at the United Nations Headquarters in New York as part of the annual meetings of the UN General Assembly.

Russian leaders have stressed to the Japanese the centrality of Russia in the solution of the territorial dispute, since the islands belonged administratively to the Russian Federation. They dropped hints that they would be more flexible than Gorbachev. The Soviet leaders were more interested in Japan's economic aid, although they too made vague references to the territorial issue.

By early October, Japan finally agreed to match the contributions of the United States and the European Community to the Soviet Union at \$2.5 billion. With the exception of some humanitarian aid, however, most of the Japanese "assistance" was earmarked for insurance for Japanese firms doing business with Russia.

Balancing Act: Yeltsin's Policy and Japan's Response

By the end of December 1991, the Soviet Union ceased to exist. After the resignation of President Gorbachev, Japan officially recognized Russia not only as a sovereign state but also as the successor state to the Union of Soviet Socialist Republics. Japanese diplomacy is thus back to the single track, but now with Russia instead of the Soviet Union and Yeltsin instead of Gorbachev. Yeltsin actually visited Japan in January 1990, prior to Gorbachev, and presented a five-stage plan for the solution of the Soviet-Japanese territorial dispute. The plan would take 15-20 years to complete. First, the Soviet Union would acknowledge the existence of the territorial dispute with Japan. (Gorbachev acknowledged it only in April 1991 during his visit to Japan.) Second, the Soviets would establish a free economic zone on the four islands and, third, would demilitarize the islands. Fourth, the two countries would then sign a peace treaty, while in the fifth and final stage, the question of the ownership of the islands would be left to the next generation. The fifth point, postponing the solution of the territorial issue, was probably taken from Deng Xiaoping's "Senkaku Island Formula." When China and Japan were negotiating a peace treaty in the late 1970s, Deng suggested that the final settlement of their territorial dispute over the Diaoyutai-Senkaku island be postponed until the next generation.

In one of his first acts as Foreign Minister of Russia without a Soviet Foreign Minister with authority above him, Andrei Kozyrev assured all the powers, including Japan, that Russia would honor all the treaties and agreements signed by the former Soviet Union. With respect to Japan, and in a significant departure from Gorbachev's position, Kozyrev specifically confirmed the legality of the 1956 Soviet-Japanese Joint Declaration. The Russian Foreign Minister is reported to have said that the declaration was "legally flawless," as it had been ratified by the parliaments of both countries. Needless to say, this was a signal that Russia was officially ready to concede the validity of documents that specifically mentioned the return to Japan of Shikotan and the Habomai islets upon the conclusion of a peace treaty. Kozyrev added, however, that this recognition of the legality of the declaration would not lead to an automatic and immediate hand-over of the islands, but was subject to negotiations. He said that negotiations with Japan on all bilateral issues, including the territorial dispute, would continue, but "there may be some distance between taking the decision and translating it into reality."

At the end of January 1992, there was a brief, one hour first summit meeting between Prime Minister Miyazawa and President Yeltsin in New York during a summit meeting of leaders of the fifteen member states of the United Nations Security Council. Miyazawa invited Yeltsin to come to Japan before the July 1992 G-7 Summit Meeting in Munich, but Yeltsin said that because of mounting domestic problems he could not visit Japan until mid-September. The Prime Minister accepted that date. Yeltsin also reiterated that Russia will accept all treaties and agreements concerned with the disputed islands

concluded by Japan with the former Soviet Union. He also said that before his visit to Japan he would begin to examine all possible preparations for the conclusion of a peace treaty between the two countries that would include the territorial problem.

At the end of February 1992, Boris Yeltsin sent a personal letter to Miyazawa: the first personal message to a Japanese Prime Minister from a Russian President. The letter was an extremely friendly document in which Yeltsin said that he considered Japan to be Russia's partner and potential ally that shared the same human values with Russia. He took a positive stance that the two countries could conclude a peace treaty (including the delineation of the boundary) on the basis of "law and justice." Looking forward toward his visit to Tokyo in September, Yeltsin expressed his strong determination to find a way to solve the territorial problem. In his response, Miyazawa did not directly pick up the notions of partner and potential ally, but he reiterated his hope that upon the settlement of the territorial problem and the conclusion of a peace treaty he would like to build a "New Age in Japan-Russia Relations."

With Yeltsin's visit to Japan set for mid-September 1992, preparations for the visit were being made by the peace treaty working groups and the two Foreign Ministers, Michio Watanabe and Andrei Kozyrev, and their staffs.

The first meeting of the peace treaty working group after the demise of the Soviet Union took place in Moscow on February 10, 1992. The Japanese delegation was headed by Deputy Foreign Minister Kunihiro Saito and the Russian delegation was headed by Vice-Minister of Foreign Affairs Georgy Kunadze. The two-day meeting was characterized by both sides as "constructive."

The most important point about this meeting was that the Russian delegation officially acknowledged the validity of the 1956 Soviet-Japanese Joint Declaration. A year earlier, in April 1991, the Japanese were very disappointed that Gorbachev did not bring this "gift" of the two smaller islands. Kunadze introduced this concession by noting that Russia (as the successor state to the Soviet Union) must shoulder the duties of the international treaties concluded by the Soviet Union. Kunadze told the Japanese delegations that the 1956 Soviet-Japanese Joint Declaration was no exception. He added, however, that Moscow must overcome the 1960 memorandum by the then Foreign Minister Andrei Gromyko which rescinded the 1956 agreement. I do not quite understand what he means by the need "to overcome." Since the 1960 memorandum was a one-sided declaration, it is not binding on Japan, and according to international law does not cancel Soviet obligations undertaken four years earlier. In fact, the Gromyko memorandum was a political statement punishing Japan for having signed a revised security treaty with the United States.

While the Peace treaty working group continues its work alternating between Tokyo and Moscow, the two Foreign Ministers are also exchanging visits. Kozyrev visited Tokyo for two days at the end of March and Watanabe travelled to Moscow in early May.

Kozyrev's visit to Tokyo was the first by a Russian Foreign Minister fully in charge of relations with Japan. The topics discussed ranged from the territorial issue and the peace treaty to economic matters to international security concerns. Watanabe began the meeting by asking that Japanese-Russian relations be based on "Law and Justice" and not on the relationship of a victor and loser in the war. He said that "Law and Justice" means correcting the results of Stalin's expansionism, an obvious reference to the Soviet occupation of the northern territories. The two Ministers also worked on a joint Japanese-Russian statement to be issued during President Yeltsin's visit and agreed to begin a joint compilation of documents relating to the territorial problem. Because of the importance of public opinion, it was agreed that this collection of documents would be published in both countries. The Russian Foreign Minister also paid a courtesy call on Prime Minister Miyazawa, where the chief topic of discussion was not surprisingly the territorial issue. At that time Prime Minister Miyazawa made a statement of "readiness to protect the interests of the Russian islanders after the islands are transferred to Japan," and asked the Minister of Justice to look into the matter.

During Watanabe's visit to Moscow in early May 1992, the working group was charged to "exert utmost efforts" to prepare an acceptable draft of a peace treaty by the time President Yeltsin visits Tokyo. For his part, Watanabe said that should Russia acknowledge Japan's residual sovereignty over the disputed islands, the Japanese Government would be quite flexible "about the time frame and the modality of their return." In other words, Japan was ready to give the administrative rights on the islands to Russia for a few years once Japan's sovereignty over the islands was acknowledged by Russia. This could be construed that the Japanese would be prepared to sign a peace treaty on the basis of a Russian pledge to return first Shikotan and the Habomais, and at a later date the two larger islands, which would continue for a certain period to remain under Russian administration. At the same time, however, Japan's demands of *residual sovereignty* for all four islands can be seen as pushing the Yeltsin Administration into a corner at a time when it is already under a good deal of domestic pressure not to compromise on the territorial issue (emphasis added).

The territorial issue is now routinely discussed. However, public opinion in Russia, a conservative Russian Parliament, and a Russian Federation law that prohibits any cession of territory without a public referendum, are formidable obstacles to an early settlement of the dispute. One almost looks nostalgically back at the dictatorial Soviet regime when such deals could have been made with the stroke of a pen without any regard for the democratic process.

The opposition to the return of the Kurils comes from many quarters. In addition to the conservative members of the Russian Parliament, opposition among the Russian public grows as we move east toward the Russian Far East. The Governor of the Sakhalin Region, who administers the Kuril Islands, is using the issue for his own political purposes, and is in the forefront of public opposition to the return of the territory. In the fall of 1991, he attacked a three-man delegation from the Russian Parliament (including the Russian Deputy Foreign Minister) that attempted to explain to the islanders the Soviet Union's (and Russia's) obligations under the 1956 Soviet-Japanese Joint Declaration to return the two smaller islands. The Governor welcomed two Russian parliamentarians who were dead set against the return of any territory to Japan. He organizes public rallies, he encourages the Cossack movement to undertake the defense of the Kurils, and he announced the inauguration of an annual "South Kurils Day." The sentiments of the residents of the South Kurils seem to be in flux. At one point, there was almost unanimous opposition to the transfer of the islands to Japan. But as economic conditions deteriorate, some settlers might not be averse to a better economic climate that would come with a Japanese administration.

Yet, in June 1992, while on a visit to Kamchatka, Foreign Minister Kozyrev was met with a pro-Kuril demonstration. In an attempt to calm the crowd, he stated that "nobody intends to give away the South Kurils" and that the islands could only be given to Japan or other countries "in the form of concessions." While this kind of rhetoric plays well in the Far East, it does nothing to promote flexibility on the part of the Japanese. To be fair, in March 1992, Kozyrev also reassured the Japanese that Russia would no longer target Japan.

Meetings of high-ranking Japanese and Russian officials continued through the summer of 1992, but no breakthrough occurred. Foreign Minister Watanabe's visit to Moscow in late August-early September was the last official meeting prior to President Yeltsin's scheduled trip to Japan in Mid-September, and it probably reinforced the perception in Moscow that the Japanese were pushing their agenda without regard for the political realities in Russia. On September 9, four days before his departure for Tokyo, Yeltsin abruptly canceled his visit to Japan and Korea. The Korean visit was rescheduled for December, but not the trip to Japan.

Looking at political developments in Russia in August and early September, it seems clear that Yeltsin was torn between his desire to go to Japan and move Japanese-Russian relations forward with all accompanying economic benefits and his political instincts that cautioned against the trip and against making even the smallest territorial concessions to Japan which could destabilize his position at home.

By refusing to budge on the residual sovereignty issue for all four islands, the Japanese tipped the scale in favor of cancellation. In retrospect, Yeltsin should have made his decision earlier so as not to insult his Japanese hosts. In fact, the abrupt cancellation was portrayed in the Japanese media as an insult to the Emperor, whose cooks must have already prepared everything for the banquet at the Imperial Palace. Public opinion polls taken in Japan a couple of weeks after Yeltsin's cancellation shot up unfavorable attitudes toward Russia fifty percent to the 1988 levels, erasing all the positive images arising from the end of the Cold War, the disintegration of the Soviet Union, and the emergence of a Russian neighbor.

In early October, Yeltsin began to talk about rescheduling his visit to Japan and brought up again the possible return of the two smaller islands to Japan. Gorbachev's April 1991 visit did nothing to considerably improve Japanese-Soviet relations. Yeltsin's September 1992 non-visit set Japanese-Russian relations back. If Yeltsin erred on the tactical issue of timing, the Japanese should shoulder the responsibility for lack of strategic considerations.

APPENDIX G



APPENDIX G

THE ROLE OF THE UNITED STATES: EXTRACTS FROM US STATE DEPARTMENT DOCUMENTS, 1943-1960

Edited by Pamela Jewett

The following collection of documents illustrates the significant role played by the United States in the creation and continuation of the territorial dispute between Japan and the Soviet Union. The selected extracts show the evolution of a US policy that was determined by political and military necessity rather than by a clear understanding of the historical claims.

The collection demonstrates that the territorial dispute cannot be analyzed solely from the standpoint of bilateral Japanese-Russian relations. The United States and the Soviet Union acted and reacted according to Cold War political and military realities. In reading the following extracts from United States Department of State documents, one must keep in mind that US officials were engrossed with the closing of the "iron curtain" on Eastern Europe, the creation of NATO and the Warsaw Pact, the Chinese Communist revolution, the Korean War and most importantly the Soviet nuclear threat.

Throughout the Cold War period, confronted by the expansion and consolidation of Soviet influence in Europe and Asia, State Department officials endorsed a policy of containing Communism and preventing the Communist infiltration of Japan. It was recognized that forcing the USSR to relinquish territory it had already occupied was impossible, but the US could ensure that the occupation would not be sanctioned by the international community. Viewed in this context, the dispute over the Kuril Islands was a pawn in the larger global struggle between the United States and the Soviet Union.

This collection aims to draw attention to this struggle rather than to provide a complete history of the United States' role. The extracts are glimpses into a much larger picture. Many of the official documents have not been published in the *Foreign Relations of the United States* and remain classified. Until all of these have been recovered, the picture remains incomplete.

1943

1. Cairo Conference Declaration, December 3, 1943.

Representatives of the United States, China and the United Kingdom issued a joint statement declaring that they are "conducting this war in order to halt and punish Japan's aggression. They do not seek any conquests for themselves and do not have any intentions of territorial expansion. Their goal is to deprive Japan of all the islands in the Pacific Ocean that it has seized or occupied since the beginning of the First War in 1914...Japan shall also be driven from other territories which it seized by force and as a result of its greed..."

1944

2. "Minutes of a Meeting of the US Pacific War Council," January 12, 1944.

The Council was composed of representatives of the countries which signed the United Nations Declaration and which were fighting in the Pacific. This particular meeting consisted of representatives from Australia, Canada, China, the Netherlands, New Zealand, the Philippine Commonwealth, the United Kingdom, and the United States of America. President Roosevelt reported to the Council that Stalin "wishes all of Sakhalin to be returned to Russia and to have the Kuril Islands turned over to Russia in order that they may exercise control of the straits leading to Siberia. [Roosevelt] stated that it was extremely gratifying to him to find that the Generalissimo [Chiang Kai-shek] and Marshal Stalin saw "eye to eye" with him on all major problems of the Pacific and that he felt that there would be no difficulty in reaching agreements about the control of the Pacific once Japan had been completely conquered..."

3. "The Commanding General, United States Military Mission in the Soviet Union (Deane), to the Joint Chiefs of Staff" Moscow. October 17, 1944.

The memorandum details the conversations of Major General John R. Deane, Commanding General of the United States Military Mission in the Soviet Union and Marshall Stalin regarding Soviet equipment needs. Stalin "thought it would be desirable if we [US] could control the Kuriles before the Soviet Government was at war with Japan..."

4. "Minutes of the Inter-Divisional Area Committee on the Far East," (US Department of State) October-December, 1944.

Over the course of several meetings, those present, including George H. Blakeslee, discuss the fate of the Kuril islands. The Committee differentiates between the southern, central and northern Kurils. Southern Kurils are defined as "those islands south of Uruppu." The central Kurils are "those north of Etorofu." The northern Kurils are "comprised of three

principal islands, Paramushir, Shimushu and Araitō" and "form a unit." Blakeslee submitted that the southern islands are "ethnically and historically Japanese." The Committee unanimously recommended that "the southern Kuriles should remain with Japan." The Committee was aware that the Soviet Union might lay claims to the central and northern islands. Thus, it was agreed that "if the Soviet Union presents claims, it is recommended they be under an international organization with Soviet administration; If the Soviet Union presents no claim, Japanese sovereignty should continue."

5. **"The Ambassador in the Soviet Union (Harriman) to the President," December 15, 1944.**

Ambassador Averell Harriman informs Roosevelt that when he asked Stalin which questions should be clarified in order to insure Russia's entry into the war against Japan, Stalin intimated that "the Kurile Islands and the lower Sakhalin should be returned to Russia."

6. **"Memorandum of the Division of Territorial Studies," December 28, 1944.**

Dr. George Blakeslee reports the conclusions of the Inter-Divisional Area Committee. He explains the Kuril's strategic importance to Japan, the United States and the Soviet Union. He contends that the Soviet Union "may ask not only for the northern islands, but also for the central and possibly even for the southern group." He submits that "there would seem to be few factors which would justify a Soviet claim to the southern islands; this transfer to the Soviet Union would create a situation which a future Japan would find difficult to accept as a permanent solution." As agreed by the Committee, he recommends that the southern Kurils be retained by Japan, the central and northern islands be placed under international trusteeship with the Soviet Union "as administering authority," and Japan should retain fishing rights in the waters of the northern islands. (A footnote to the memorandum states that this memo was not included in the briefing book which Roosevelt relied upon in Yalta and that no evidence has been found to indicate that Roosevelt ever saw it.)

7. **"Memorandum by Major General George V. Strong, Joint Post-War Committee of the Joint Chiefs of Staff, to the Under Secretary of State (Grew)," December 28, 1944.**

The provisions of this draft of Japanese surrender terms call for the evacuation of Japanese armed forces personnel and civilian auxiliaries from the Kurils and Karafuto (Sakhalin) in addition to other regions.

1945

8. **"Roosevelt-Stalin Meeting, Livadia Palace," February 8, 1945, 3:30 p.m.**

Charles E. Bohlen records that Roosevelt "felt that there would be no difficulty whatsoever in regard to the southern half of Sakhalin and the Kurile Islands going to Russia at the end of the war." No definition of the Kuril Islands is documented.

9. **"Agreement Regarding Entry of the Soviet Union Into the War Against Japan." (Released to press in February, 1946, but signed February 11, 1945.)**

Stalin, Roosevelt and Churchill agree that "two or three months after Germany has surrendered...the Soviet Union shall enter into the war against Japan...on condition that...the Kurile islands shall be handed over to the Soviet Union."

10. **"Secretary's Staff Committee," April 17, 1945.**

The Committee discusses the disposition of groups of islands controlled by or under sovereignty of Japan, including the Kurils and Sakhalin. "The southern Kuriles should be retained by Japan subject to the principles of disarmament to be applied to the entire Japanese Empire...The Department of State shall submit the above recommendations to the Joint Chiefs of Staff for their consideration prior to the final acceptance of these recommendations as the policy of this government." Although this meeting took place after the Yalta Conference, there is no mention of the fact that President Roosevelt agreed to transfer the islands to the USSR in return for its participation in the Pacific war.

11. **"Memorandum by the Office of the Chief of Naval Operations," regarding US initial Post-Defeat Policy for Japan, May 1, 1945.**

The memo suggests a change in the draft of the working policy paper. It now states: "The stripping from the Japanese Empire of all territory except the four main islands, Hokkaido, Honshu, Shikoku and Kyushu and such minor off-lying islands north of 30 degrees Latitude as may be agreed upon by the United Nations."

12. **"Secretary of War Stimson to Roosevelt," July 16, 1945.**

Henry L. Stimson writes that "if the Russians seek joint occupation after a creditable participation in the conquest of Japan, I do not see how we could refuse at least a token occupation. I feel, however, that no prolonged occupation by the Soviet Union should be approved...I would approve their occupation of the Kuriles or indeed their cession to Russia, but I do not relish Russian occupation further south. If the Kuriles are to be ceded to Russia, we should retain permanent landing rights therein..."

13. **"No. 606: Soviet Support of the Cairo Declaration." Briefing book material for the Potsdam Conference, (Undated).**

The State Department indicates that a Soviet agreement to adhere to the Cairo Declaration would strengthen US policy in the Far East. The consequences of the Soviets' acceptance and their possible interpretations of its various clauses were analyzed by the authors of this

memorandum. They assumed that the USSR would interpret the clause "other territories taken by violence and greed" to mean that Southern Sakhalin should be returned to the Soviet Union.

14. **Potsdam Declaration of July 26, 1945.**

"The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."

15. **"No. 1254 Department of State Memorandum: Comparison of the Proclamation of July 26, 1945 with the Policy of the Department of State," (Undated).**

State Department officials compare official policy with the Potsdam Declaration which President Roosevelt issued. "The proclamation states that Japan's sovereignty shall be limited to the four main islands of Japan and such minor islands as we determine. This statement does not indicate an intention to eliminate Japan's sovereignty over the Liu Chiu (Ryukyu) and Kurile islands as they are 'minor islands.' There is more grounds for supposing that it intends to eliminate Japan's sovereignty over Southern Sakhalin which is hardly a 'minor island.' The State Department has not favored the elimination of Japan's sovereignty in any of these three areas." The memorandum warns of future controversy regarding this issue.

16. **"Memorandum by the Joint Chiefs of Staff," August 14, 1945.**

This memo states: "On the Matter of the Kuriles, the US and Russian Chiefs of Staff have agreed to a boundary line between areas of operations which passes through the Onkotan Strait [in the northern Kurils]. On the basis of the situation as it appears at present, the Joint Chiefs of Staff propose to instruct Admiral Nimitz to plan on receiving the surrender of the Kurile Islands south of this line. They propose an appropriate time to inform the Russians of this procedure and that unless the Russians request assistance, the Joint Chiefs of Staff expect the Soviets to receive the surrender and disarm the Japanese in the islands of Paramushir and Shumushu." This memo is from McFarland to the Joint Chiefs of Staff to append General Order Number 1 which follows:

17. **"Annex 1, General Order No. 1," August 14, 1945.**

"The senior Japanese commanders and all ground, sea, air and auxiliary forces within Manchuria, Korea north of 38 degrees latitude and Karafuto shall surrender to the Commander in Chief of Soviet forces in the Far East."

18. **"Annex 2, Enclosure B. Draft." (same date).**

"While giving first priority to securing the Japanese homeland, the United States proposes to use its naval and air power to expedite the surrender of Japanese forces in the coastal areas of the Asiatic mainland in order to discourage continuation of local hostilities and to prevent malicious destruction and sabotage of harbor facilities...I am sending this message for the purpose of making clear that these operations are in order to exploit US military capabilities to expedite the surrender, are for military purposes only and will not prejudice the final peace settlement."

19. **"The Chairman of the Council of People's Commissars of the Soviet Union to President Truman," August 16, 1945.**

In this memorandum from Stalin, he requests permission to include in the region of surrender to the USSR "all the Kurile Islands... and the Northern part of the Island Hokkaido.... The Russian public opinion would be seriously offended if the Russian troops would not have an occupation region in some part of the Japanese proper territory."

20. **"Exchange of Messages between the Supreme Commander for the Allied Powers and Japanese General Headquarters," Received August 17, 1945.**

Japan sent a communique to the US complaining that while its forces had ceased hostilities, the Soviet forces "are still carrying on the offensive...It is urgently requested that the Supreme Commander would take proper steps to bring about immediate cessation of the Soviet offensive."

21. **"President Truman to the Chairman of the Council of People's Commissars of the Soviet Union," August 17, 1945.**

Truman agrees to modify General Order No. 1 to include all of the Kuril islands in the Soviet region of surrender but requests that the United States be granted a landing base on one of the Kurils. He denies Stalin's request to occupy Hokkaido.

22. **"Messages from Japanese General Headquarters to the Supreme Commander for Allied Forces," received August 18, 1945.**

Japan complains to the United States that "some of your forces landed on Shimushu Island... Now that hostilities between both parties have been prohibited it is earnestly to be desired that the hostile actions will soon be ceased." Japan's message is in reference to the continued Soviet assault on and occupation of the Kuril Islands. The occupation was completed on September 5, 1945.

23. **"The Chairman of the Council of People's Commissars of the Soviet Union to President Truman," August 22, 1945.**

In response to Truman's "refusal to satisfy the request of the Soviet Union" regarding Hokkaido, Stalin replies, "I have to say that I and my colleagues did not expect such an answer from you." Stalin also expresses concern over Truman's request for an air base on one of the Kurils. He argues that the Yalta agreement calls for the transfer of the Kurils to the USSR and made no mention of any United States' joint-occupation.

24. **"The Ambassador in the Soviet Union to the Secretary of State," August 23, 1945.**

Harriman expresses concern that the United States "may have some trouble with the Soviets." While the President wished to limit the Soviet forces' role in the occupation of Japan, the USSR had proposed a zone of independent occupation, similar to that of Germany. The Department of State wished to avoid a situation similar to that in Eastern Europe where the Soviet Union was actively expanding its influence and blocking US initiatives.

25. **"Suggested Message from President Truman To Generalissimo Stalin," (sent as drafted on August 27, 1945.)**

Truman explains to Stalin that in regard to the air base on the Kuriles, [see Document 23] "I was not speaking about any territory of the Soviet Republics. I was speaking of the Kurile Islands, Japanese territory, disposition of which must be made at a Peace settlement. I was advised that my predecessor agreed to support in the peace settlement the Soviet acquisition of those islands. I did not consider it offensive when you asked me to confirm that agreement. When you expect our support for your desire for permanent possession of all the Kurile Islands, I cannot see why you consider it offensive if I ask for consideration of a request for landing rights on only one of those Islands." [A document in which Truman confirmed the transfer of the Kuril Islands to the Soviet Union has not been located.]

26. In memos circulated between Harriman and the Secretary of State between August 25-27, 1945, Harriman indicates that the amended version of General Order Number 1, which permitted Soviet Forces to receive the Japanese surrender in the Kurils, may never have reached Stalin. Thus, General Antonov, Chief of the Soviet Army General Staff and his assistant Lt. General Nikolay Slavin did not know of US intentions and expectations regarding the Kuril islands. [For more information on this issue, see Appendix D, Document 28.]

27. **"The Ambassador in the Soviet Union to President Truman," August 27, 1945.**

Harriman reports that after an extended conversation, Stalin appeared amenable to the idea of US landing rights on one of the islands during occupation. He could not, however,

ascertain Stalin's reaction to a permanent US base there.

28. **"The Chairman of the Council of People's Commissars of the Soviet Union to President Truman," August 30, 1945.**

Stalin agrees to give the United States landing rights at a Soviet airfield on one of the Kuril Islands in "emergency cases" during the occupation. He offered to discuss the possibility of commercial planes using the airstrip in return for reciprocal rights for Soviet planes on an island in the Aleutian chain linking Alaska to Kamchatka.

29. **"Secretary of State to the Ambassador in the Soviet Union," and "The Ambassador in the Soviet Union (Harriman) to the Secretary of State," November 17-20, 1945.**

In these two memos, the Secretary and the Ambassador discuss the US desire to limit the number of Soviet troops involved in the occupation of Japan. While the US agreed that other Allied countries could send troops to be integrated into a single occupation force, Truman did not want to create zones controlled by individual countries, as had been the case in Germany.

30. **"Agreement establishing the Far Eastern Commission," December 27, 1945.**

The Commission members include representatives from Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippine Commonwealth, the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America. The function of the Committee was to formulate policies in order to facilitate Japan's fulfillment of its surrender obligations. According to its charter, the Commission did not have jurisdiction over military or territorial questions pertaining to the occupation of Japan.

1946

Major Events:

- * First Meeting of United Nations General Assembly
- * Winston Churchill delivers his "Iron Curtain" speech in Fulton, Missouri which warns of Soviet expansion.

31. **"SCAPIN 677 Order," January 29, 1946.**

Japan is directed to cease government or administrative authority over any region "outside of Japan." The Kurils, the Habomai Island Group and Shikotan Island as well as Karafuto [Sakhalin] were not included in the directive's definition of Japan. The term "Kuriles" was

not defined. Article 6 states that "Nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam declaration.

32. **"The Inter-Divisional Area Committee on the Far East," February 1, 1946.**

The Committee deliberates the disposition of the outlying and minor Japanese islands including South Sakhalin and the Kurils. On a map, they delineate between northern and southern islands. A suggestion is made that the definition of the Kurils might be made a "bargaining point." The Committee agrees that the southern Kurils were traditionally Japanese territory, but that the "Russians were on such islands and nothing would get them out." Dr. Blakeslee "suggested a study be made of maps that might show that Japan was entitled to Shikotan and the minor islands between Shikotan and Hokkaido [the Habomais]." The geographer assigned to assess the status of Shikotan, S. Boggs, "stated that while he could present no definitive case to prove that Shikotan was not part of the Kuriles, he could likewise present no definitive case to prove that it was part of the Kuriles."

33. **"Agreement at Yalta on the Kuriles and Sakhalin," February 19, 1946.**

The United States' public is informed of the provisions of the Yalta agreement.

34. **"The Acting Secretary of State to Mr. Herman H. Dinsmore of the *New York Times*," May 15, 1946.**

In response to the reporter's inquiry, Acheson responds that "No boundary has yet been established to demark Japanese and Soviet territory. Presumably such decision will await the drawing up of a peace treaty."

35. **"Policy and Procedures Concerning the Negotiation of Trusteeship Agreements," May 7, 1946.**

The Under Secretary "said he assumed the Russians would not advance claims regarding the non-mandated territories because of the Kuriles." When asked whether there was "any reference in the Yalta minutes which would bear out the assumption that the disposition of the Kurils in favor of the Soviet Union was all they were to get from Japan," the Secretary of State answered that "the Yalta agreement merely provided that the Kuriles 'shall be handed over' to the Soviet Union, and the only argument which can be derived from this is that no claim to anything additional was advanced by the Soviet Union at that time."

36. **"Memorandum by Mr. John Foster Dulles of the United States Delegation," November 30, 1946.**

In a meeting between Dulles, Andrei Gromyko, and Kirill V. Novikov, the Secretary General of the Soviet Delegation, Dulles expressed concern about the Soviets' "double standard" regarding the United States' right to maintain bases in the Pacific islands versus the USSR's own rights in the Kuriles. The Soviets asserted that the United States' actions in the Pacific islands should be subject to specific authorization and inspection by the Security Council (therefore the USSR). Dulles argued that, as the USSR was not subject to such a regime in the Kuriles, it should not be demanded of the US. Novikov remarked that the situation was "different" in that the US had agreed that the USSR could annex the Kuriles. Dulles reminded Gromyko that Yalta was an informal agreement which had not yet been ratified by a peace treaty. Until such ratification process was concluded, the transfer could not be construed as complete, i.e. the Soviet Union did not have title to or sovereignty over the Kuril Islands.

37. **"The Acting Secretary of State (Clayton) to Certain Diplomatic Officers," September 9, 1946.**

In a memorandum regarding a meeting between the USSR and the US, Clayton reported that the Soviet Government informally agreed to participate in a reparation conference. However, the message stipulated that Japanese assets in South Sakhalin and the Kurils should be exempted as those regions now constituted part of Soviet territory.

38. **"Memorandum by the Acting Chief of the Division of Japanese Affairs (Hugh Borton) to the Director of the Office of Far Eastern Affairs (Vincent)," October 1, 1946.**

The US "could not endorse unreservedly the Soviet point...but believed that exploratory discussions could advantageously be continued on this point."

39. **"The Ambassador in France to the Secretary of State," October 1, 1946.**

Cafferey comments on the Soviet request in Document 37. He writes, "technically we cannot now recognize that South Sakhalin and Kuriles have actually been ceded to USSR although we are committed to support this at Peace Conference." In addition, "we cannot accept the Soviet view that these Japanese assets are not to be considered as reparations."

40. **"Ambassador Edwin Pauley to President Truman," June 22, 1946.**

Pauley warns Truman that the USSR is a potential source of trouble in Korea. He also expresses concern that the Kuril islands "provide an encirclement or jaw of a pincer against Japan."

1947

Major Events:

- * Truman Doctrine proposed
- * Marshall Plan proposed
- * Cominform (Communist Information Bureau) founded

41. **"Memorandum by the Political Adviser in Japan (Acheson) to General of the Army MacArthur," March 20, 1947.**

Regarding the outline of the draft treaty, Acheson writes that he understands "discussion is still continuing between Joint Chiefs of Staff and SWNCC [State War Navy Coordinating Committee] in regard to the future of Okinawa and the most southern part of the Kuriles."

42. **"Memorandum by the Director of the Office of Far Eastern Affairs to the Secretary of State," May 12, 1947.**

State Department officials discuss the details of a preparatory conference for the Japanese peace treaty. "The majority of officers felt certain that USSR will not join in conference of eleven nations which did not provide for large power unanimity (for a Soviet veto.)" [their emphasis].

43. **Memorandum by the Chief of the Division of Northeast Asian Affairs (Borton) to the Assistant Secretary of State for Occupied Areas," May 20, 1947.**

Mr. Hugh Borton asks for special reports on the Ryukyu Islands and southern Kuriles so that the State Department may assess the situation before making recommendations for the territorial clauses of the peace treaty.

44. **"The Political Adviser in Japan to President Truman," June 19, 1947.**

Commenting on Japanese calls for the return of the Kuril islands, George Acheson Jr. writes, "Recent remarks of the new Foreign Minister (Ashida) indicating that the Japanese wish the return of the southern Kuriles and Okinawa have caused an easily understood resentment in some foreign quarters. We do not believe Ashida speaks in this matter for the Japanese masses or even the Japanese Government. It seems to us here that retention by the United States of Okinawa (under the aegis of the United Nations or otherwise) is essential to the maintenance of our future influence in this general area..."

45. **"Memorandum by the Counselor of the Department (Bohlen) to the Under Secretary of State," August 12, 1947.**

The belief that the Soviet Government would object to an eleven-member preparatory conference proved to be well founded. Rather than the eleven-member Far Eastern Commission, the Soviet Union preferred that the Council of Foreign Ministers created by the Potsdam protocol control the conference. Bohlen asserts that the Soviet's underlying concern is that the US will not fulfill the provisions of the Yalta agreement ceding the Kurils and Sakhalin to them. Moreover, without veto power, the Soviets would have no recourse. "Since I understand that it is our preference to have Russia attend this conference and we do not intend to go back on the Yalta Agreement, it would seem to me wise when you hand this note to the Soviet Charge to inform him *orally* [emphasis added] that the US of course intends to honor its commitments as set forth in the Cairo Declaration, the Yalta Agreement on the Far East and the Potsdam Declaration..."

46. **"The Secretary of State to the Soviet Charge (Tsarapkin): Aide-memoire," August 13, 1947.**

The Secretary informs the Soviet Government that its assertion that the "Council of Foreign Ministers must examine the idea of a conference to draw up a peace treaty is inappropriate." He adds that the other nine governments of the Far Eastern Commission have agreed to the US plans. The Aide Memoire does not indicate a US guarantee to transfer the Kurils and South Sakhalin and there is no mention of an oral commitment as suggested in Document 45.

47. **"Memorandum by the Legal Adviser (Gross) to the Under Secretary of State (Lovett)" August 25, 1947.**

Ernest A. Gross assessed the implications of a Soviet boycott in the "Legal Situation Resulting From A Separate Peace...In the case of a peace with Japan in which the USSR did not participate, the Soviet Government would not be bound by the settlement provisions regarding vital matters such as the territorial limits of Japan, an interim system of Allied controls over Japan, or reparations...The Soviet Union would be entitled to preserve the status quo *post bellum* vis-a-vis Japan, so far as consistent with existing inter-Allied agreements. For example, the USSR could retain possession of the Kurile Islands and of Karafuto...The Soviet Union would not, however, be entitled to any reparations from Japan apart from the limited class provided for in Article 3 of Hague Convention IV (1907) cf. Oppenheim, International Law (6th ed. 1944) pp. 462-463, 476-477."

48. **"The Ambassador in the Soviet Union (Smith) to the Secretary of State," September 5, 1947.**

Walter Bedell Smith discusses the implications of a Soviet boycott of the Japanese peace conference. He states, "having refused to participate in 11-power peace conference

[composed of members of the Far Eastern Commission], Kremlin must now contemplate the consequences of a treaty negotiated without them. Soviets might consider this dubious advantage since they would not be in position to dominate or effectively influence control organ....The continued legal state of war with Japan not only provides immediate convenient excuse to maintain the present regime in Dairen and it leaves USSR without obligations in post-treaty Japan. It is therefore free to exploit fully every difficulty and dissatisfaction which may develop."

49. **"Memorandum of Conversation, by the Secretary of State," September 14, 1947.**

After his interview with Dr. Herbert V. Evatt, Australian Minister for External Affairs, the Secretary reported, "whether or not the Soviets attended [the peace conference], he [Evatt] did not think at this time was of great importance because he felt that later they would feel compelled to attend in order to safeguard commitments which had already been made in their favor regarding the southern half of Sakhalin the Kuriles, et cetera.."

50. **"Memorandum of Conversation, by Mr. Hugh Borton, Special Assistant to the Director of the Office of Far Eastern Affairs (Butterworth)," October 9, 1947.**

Mr. Graves of the British Embassy and Mr. Borton discuss the importance of pursuing a peace treaty with or without Soviet participation. It was suggested that the Soviet Union would eventually participate in order to confirm the legality of their presence on Sakhalin and the Kurils. Mr. Borton disagreed, asserting that the US position regarding Korea would cause more impact. "In other words, if it were clear to the Soviets that we [US] intended to stay in Korea and prevent the Sovietization of Korea, they would be more likely to join the peace discussions."

51. **"Memorandum by the Director of the Policy Planning Staff (Kennan)," October 14, 1947.**

Addressing the Secretary of State, George Kennan writes, "The Staff sees great risks in an early relinquishment of Allied control over Japan...If Japan is not politically and economically stable when the peace treaty is signed, it will be difficult to prevent Communist penetration." Kennan suggests that the "southern-most islands of the Kurile archipelago be retained by Japan."

1948

Major Events:

- * Communists seize power in Czechoslovakia
- * Berlin blockade and airlift
- * Stalin and Tito break off relations
- * Independent Republic of Korea proclaimed

52. **"Analysis of the Japanese Peace Treaty Draft of January 8, 1948."**

Borton, Special Assistant to the Director of the Office of Far Eastern Affairs, (Butterworth) submits that the main outstanding problem in the territorial clauses concern the southern Kuril Islands and the Ryukyus. "In reference to the Kuriles, they are not defined in the Yalta agreement...If the US proposes a narrow interpretation of the Kurile Islands the southernmost islands of Kunashiri and Etorofu, the Habomai group and Shikotan would be retained by Japan..."

53. **"Memorandum by the Special Adviser on Geography of the Office of Intelligence Research, to Mr. Maxwell M. Hamilton, Special Assistant to the Secretary of State," March 23, 1948.**

The geographer provides a two page report indicating that having analyzed the available information, he believes that the Habomais and Shikotan are "geographically separate" from the Kuril islands. "They appear to constitute an extension of the eastern peninsula of Hokkaido. They are geologically older than the Kuriles proper and a distinction can properly be made on the basis of physiography and surface relief...I have been unable to find that any map was used at the Yalta Conference in connection with that part of the agreement relating to the Kuriles. From all that I have been able to learn...there appears to be no basis for believing or supposing that the Habomais and Shikotan were specifically in mind at the time."

54. **"Memorandum Prepared in the Canadian Department of External Affairs," June 3, 1948.**

Kennan warns that "there was now a serious problem of defending Japan against Russian domination. Soviet forces were stationed in the Kuril Islands and South Sakhalin, only a few miles away from Japan. They also had a powerful base at Vladivostok and it would probably not be many months before they had overrun the whole Korean peninsula. If a peace treaty were to be signed now and the Japanese cast adrift, Mr. Kennan felt it was obvious that the Russians would exercise a good deal of military pressure against demilitarized Japan...The most urgent need at present was for a coast guard to prevent the Russians from infiltrating agents into Japan..."

1949

Major Events:

- * North Atlantic Treaty Organization (NATO) created
- * German Federal Republic (West Germany) formed
- * German Democratic Republic (East Germany) formed
- * Truman announces that USSR detonated atomic bomb
- * Mao proclaims the People's Republic of China

55. **"The Acting Secretary of State to the Acting Political Adviser in Japan (W.J. Sebald)," June 1, 1949.**

"The Department remains of the opinion that there can be no final determination of Japan's territorial sovereignty in the absence of a peace settlement and that there are meanwhile good reasons for avoiding any expression, implied or direct, of United States views on this subject...The US will give careful study to the question of supporting any Japanese claims at the peace settlement to the Habomai Group, Shikotan, Kunashiri and Etorofu. The Department supports the intention of the Mission to avoid, in the course of Headquarters exchanges with the Office of the Soviet member for the Allied Council, any action which would tend to weaken Japanese claims to the islands in question."

56. **"The Charge in Japan to the Secretary of State," June 27, 1949.**

Cloyce K. Huston submits a detailed analysis of the historical claim to the disputed territory. He believes that Japan has "a sound claim to the Kurile and Habomai-Shikotan islands...Since the Habomai Islands and Shikotan Island have been traditionally regarded as an island group distinct from the Kurile archipelago, and under Japanese control had a local administration as a political subdivision of Hokkaido separate from the Kurile island local administration, there appears no valid basis, either in the Yalta Agreement or in any other international understanding justifying Soviet occupation of the Habomai-Shikotan area at the end of the war in addition to the Soviet occupation of the Kurile Islands...The present administrative boundary between Japan and Soviet-occupied islands off the eastern coast of Hokkaido is a tortuous line running through narrow, fog-bound channels which during the fishing season bear considerable traffic. If this line becomes a permanent boundary there will unquestionably occur continuous violations of Soviet waters by Japanese craft and violations of Japanese waters by Soviet shipping...It is believed that the most satisfactory and effective territorial adjustment could be made by restoring to Japan the two southernmost Kurile Islands of Etorofu and Kunashiri, the Habomai Islands and Shikotan Island."

57. **"The Acting Political Adviser in Japan to the Secretary of State," November 14, 1949.**

W. J. Sebald, Chief of the Diplomatic Section, General Headquarters and SCAP, and Acting Political Adviser after the death of George Atcheson, evaluates the Draft Peace Treaty. "Japan will unquestionably advance strong claim to Etorofu, Kunashiri, Habomai and Shikotan. I believe the US should support such claim and due allowance made in draft for peculiarities of this situation. Consider problem highly important in view questions permanent boundary and fisheries [sic]."

58. **"Memorandum by the Assistant Legal Adviser for Political Affairs, (Snow)," November 25, 1949.**

Snow writes to Maxwell M. Hamilton, "while there are numerous historical ethnographic, political, economic and strategic reasons for Japanese retention of all of the islands above named, the only legal question involved is the definition of the words 'Kurile Island' as used in the Yalta agreement." He believes there is a legal basis for allowing Japan to retain Habomai and Shikotan. He cites geographical, historical and political arguments to support the position. However, he concludes that "there seems to be no sound legal reason for claiming that Kunashiri and Etorofu are not part of the Kurile Islands. They have never been under Russian sovereignty since the Treaty of 1855, both that Treaty and the Treaty of 1875 indicate that they were considered to be part of the Kurile Islands. Mr. Fearey's memo of September 1947 [not published in FRUS] summarizes the reasons why the US might wish to support Japan's claim to these islands, but there seems to be no legal support for the wish."

59. ***The Soviet Position on a Japanese Peace Treaty*, Division Report No. DRE/EER-DR 57. By US Department of State: Division of Research for Europe, December 29, 1949.**

The report analyzes the reasons why the USSR would be unlikely to participate in negotiations for a peace treaty. "Without the right of veto, the USSR can be expected to boycott the conference." However, the report also demonstrates that the USSR may participate in order to prevent a prolonged American occupation of Japan, to legalize the territorial gains promised to the USSR at Yalta, to gain a post-treaty voice in Japan and to ensure "opportunities for propaganda" in Japan. "The USSR would answer a western-sponsored treaty with an exacerbated cold war in the Far East, increased anti-US propaganda in Japan, pressure on Japan from Communist China, and eventually proposals to Japan of a separate treaty from which the USSR and Communist China would try to gain the same advantages as from a multilateral pact."

1950

Major Events:

- * Truman orders the development of hydrogen bomb
- * War in Korea begins
- * Soviet Union and China sign treaty of "Friendship, Alliance and Mutual Assistance"

60. **"The Special Assistant to the Under Secretary of the Army (Reid) to the Assistant Secretary of State (Butterworth)," May 19, 1950.**

Ralph W. E. Reid summarizes his conversation with Mr. Ikeda Hayato, Finance Minister of Japan. Ikeda expressed concern that judging from Communist gains in Indochina and Korea, Japan "could perhaps easily be abandoned. . . The Japanese people are desperately looking for firm ground. There is the possibility that the Soviets may offer a peace treaty in advance of the United States and might include in that offer the return of Sakhalin and the Kuriles. The people were aware of the situation in Berlin and the apparent concessions and retreats by the United States Government in meeting the Soviet advances in Europe. They were skeptical on just what and when and where the United States would stand firm, and particularly with respect to Japan."

61. **"Memorandum by the Consultant to the Secretary (Dulles to the Secretary of State," June 7, 1950.**

"Broad Aspect of the Japanese Problem: ...Since Japan from a geographical standpoint is closely encircled (North, West and South) by areas controlled by Communists of dynamic and aggressive tendencies, can Japan be saved from Communism if the Free World merely adopts, in this area, a defensive policy and does not undertake there some counter-offensives of a propaganda and covert character designed to prevent the easy and quick consolidation by Soviet-inspired Communists of these recently won areas and which will require Communist efforts to be expended more in the task of consolidation rather than in the task of further expansion and aggression? If defense can only succeed as supplemented by offense, what are the practical offensive possibilities?"

62. **"Memorandum by the Consultant to the Secretary (Dulles) to the Assistant Secretary of State for Economic Affairs (Thorpe)," August 9, 1950.**

Attached to the memo is the Draft Peace Treaty of August 7, 1950. "Japan accepts whatever decision may hereafter be agreed upon by the United States, the United Kingdom, the Soviet Union and China with reference to the future status of Formosa, the Pescadores, Sakhalin south of 50 degrees north latitude and the Kurile Islands. In the event of failure in any case to agree within one year, the parties of this treaty will accept the decision of the United Nations General Assembly."

63. **"The Secretary of State (Dean Acheson) to the Embassy in China," August 14, 1950.**

The Secretary expresses his concern about Communist encirclement and expansion. "From a military point of view, the western strategic frontier for the essential defense of areas vital to the US rests generally along islands extending from Aleutians through Japan to Philippine archipelago. With Kuriles already in hostile hands, Formosa's location is such that, in hands of power hostile to the US it would constitute dangerous enemy salient in the center of that part of our position now keyed to Japan, Okinawa and the Philippines. In the event Formosa came into hands of Chi Commies [sic] and the latter made it available for hostile purposes to Sov [sic] forces at time US forces are heavily engaged in Korea, grave danger would result for entire US position in the western Pacific."

64. **"Memorandum by the Counselor of the Department (Kennan) to the Consultant to the Secretary (Dulles)," August 21, 1950.**

Kennan disagrees with the Draft Treaty's treatment of the territorial issue. "As drafted, this paragraph seems to make it inevitable that within a year after entry into effect of the treaty, the disposal of these territories must become a bone of contention in the Assembly of the United Nations...It seems to me that it would be better to restrict ourselves here to a formula under which Japan would simply reiterate, as part of the peace treaty, her agreement that 'Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.' This would leave the Japanese with no responsibility for the disposal of these territories farther afield; and that would probably be desirable in more than one respect."

65. **"Memorandum for the Secretary of Defense (Louis A. Johnson)," August 22, 1950.**

The Joint Chiefs of Staff discuss aspects of the proposed Japanese Peace Treaty. "...The Joint Chiefs of Staff recognize the present potentially dangerous security situation of Japan, owing primarily to the reduction in occupation forces below safe limits. Recent events in Korea have caused concern among the Japanese people over their security. The people are aware of the threat of communism; nevertheless, they apparently desire an early peace treaty..."

1951

Major Events:

* Korean War Continues

66. **"Memorandum of Conversation by the Special Assistant to the Consultant (Allison)," January 12, 1951.**

British Ambassador Sir Oliver Franks and his assistant met with Secretary of State Dulles and his assistants to discuss the Peace Treaty. Dulles explained that the US intends to omit "mention of Sakhalin and the Kuriles although it is recognized that if Russia should be a party to the treaty, provision would be made for turning over these territories to it."

67. **"Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs," January 30, 1951.**

Dulles recounted his meeting with the British Ambassador, Sir Alvary, who read aloud an informal statement of the current position of the United Kingdom regarding the treaty. The Ambassador suggested that Southern Sakhalin and the Kurils be turned over to the USSR in the treaty. "Ambassador Dulles had asked why we should go out of our way to clear the Soviets' title to these territories if they were not parties to the treaty, a view with which Sir Alvary indicated personal sympathy."

68. **"Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs," February 17, 1951.**

During a meeting between Dulles and the Ministers for External Affairs of Australia and New Zealand, Mr. Dulles was asked "why it had not been provided that Japan should turn over the Kuriles and Southern Sakhalin to the USSR. Dulles replied that he had informed Mr. Yakov Malik, Soviet Foreign Minister, that we would be prepared to support the Soviet claim to these territories if the USSR were a party to the treaty. The US did not, however, see any point in helping the Soviets to clear their title if the USSR did not participate. Mr. Spender inquired whether this might not lead to irredentist sentiment in Japan. Ambassador Dulles said that he assumed that Mr. Spender had in mind the possible undesirability of increasing friction between the USSR and Japan, friction which might become a source of danger to us all. The US position, however was essentially a bargaining one. Ambassador Dulles also noted that there is a legitimate dispute as to what constitutes the Kuriles."

69. **"The Acting Secretary of State (Dulles) to the Acting United States Political Adviser to SCAP (Bond)," March 12, 1951.**

With regard to territory, Dulles suggests that the US should operate on the assumption that the USSR will participate in the peace conference. Thus, the treaty should provide for the "return by Japan of South Sakhalin and the handing over to Soviets of Kurile Islands as they may be defined by bilateral agreement or by judicial decision under treaty disputes procedure." However, if the Soviets did not sign and ratify the treaty, the provision would be removed.

70. **"The British Embassy to the Department of State," March 12, 1951.**

The British Government offers its official comment on the draft Peace Treaty. Regarding the territorial clauses, the Aide Memoire states "As provided in the Livadia Agreement signed on the 11th February, 1945, South Sakhalin and the Kurile Islands should be ceded by Japan to the USSR."

71. **"The British Embassy to the Department of State," handed to Mr. Dulles on March 12, 1951.**

The British Government expresses its opinion on "post-treaty security and the rearmament of Japan...In Peace - Japan is a major East Asian objective of Russian imperialism. The most effective medium which Russia can use to achieve her aim is that of international Communism, the formidable exponent of which in the Far East is Communist China. There is already a Communist Party of some strength in Japan; an Allied withdrawal would greatly facilitate Communist infiltration into Japanese life."

72. **"The Department of State to the British Embassy," March 13, 1951.**

In response to the British memorandum cited above, the State Department responds that the "United States agrees that Japan should be prepared to cede the South Sakhalin and the Kurils to the Union of Soviet Socialist Republics, provided it becomes a party to the peace treaty, but believes that the precise definition of the extent of the Kuril Islands should be a matter for a bilateral agreement between the Japanese and Soviet Governments or for judicial determination by the International Court of Justice.

73. **"The Acting United States Political Adviser to SCAP to the Secretary of State," March 16, 1951.**

Bond in Tokyo reports that the Mr. Iguchi sent him comments by the Japanese Government on the proposed peace treaty. Regarding the territorial aspects, Bond reported: "Proposed provision for return of South Sakhalin and handing over of Kuriles to Soviet Union under

assumption it will participate in peace treaty is agreeable. However, it is desired to have the passage in question read: As they may be defined by the powers concerned, including Japan."

74. **"Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs," March 19, 1951.**

Dulles met with US Senate Foreign Relations Sub-Committee on the Far East. "Senator Smith inquired whether any concessions we might hope to get from the Soviets justified our giving them title to South Sakhalin and the Kuriles in the treaty. Ambassador Dulles pointed out that Article 19 would deny the USSR any benefits under this provision if it were not a party to the treaty. He said that the Defense Department wanted the Soviets to make peace with Japan and thereby terminate their belligerent rights. It had therefore been thought worthwhile to hang out a certain amount of bait, though it did not amount to much in view of the fact that the Soviets now occupy South Sakhalin and the Kuriles. The issue of exactly what constitutes the Kuriles was a further detracting factor."

75. **"The Secretary of State to the United States Political Adviser to SCAP (Sebald)," March 20, 1951.**

The Japanese Peace Treaty will omit any reference to definition of Kurils "leaving this automatically to World court decision if there is disagreement... We would provide that USSR gets no benefit unless it accepts treaty and if it is apparent in advance that Soviet Union is definitely out of the picture, we would be prepared to reconsider whether reference to Sakhalin and Kuriles should be totally eliminated from treaty."

76. **"Joint US-UK Draft Peace Treaty," May 3, 1951.**

The US and UK Draft treaty states in Article 4: "Japan cedes to the USSR the Kurile Islands, and that portion of South Sakhalin and the islands adjacent to it over which Japan formerly exercised sovereignty."

77. **"Japanese Peace Treaty: Working Draft and Commentary Prepared in the Department of State," June 7, 1951.**

US receives comment on the draft treaty from nations participating in the upcoming peace conference. China expresses concern that while the USSR is the recipient of Japan's renunciation of South Sakhalin and the Kurils, China is not awarded Formosa and the Pescadores. The delegation argues that equal status should be applied. Thus, either China should be cited as the recipient of Formosa and the Pescadores, or "the provisions contained in that article should be substituted with a simple renunciation on the part of Japan of south Sakhalin and the Kurile Islands."

New Zealand comments that it is important to make a "precise delineation by latitude and longitude" of the territory which Japan should retain. By adopting this device it would be clear "that the Habomai Islands and Shikotan at present under Russian occupation will remain with Japan." The US response to New Zealand's suggestion: "As regards the Habomais and Shikotan, it has seemed more realistic with the USSR in occupation of the islands, not specifically to stipulate their return to Japan."

The representatives of India "feel that the southern part of Sakhalin as well as the islands adjacent to it and the Kurile Islands which are already in the possession of the USSR should go to the USSR as agreed upon at Yalta, even if the USSR fails to sign or adhere to the same type of treaty as may be signed or adhered to by the United States and other nations. Any technical denial of these islands to the USSR will only provoke that country without any compensating advantage. In any case, these islands will continue to be under the domination of the USSR whether she signs the treaty with the other Allies or not."

78. **"Memorandum of Conversations, by the Consultant to the Secretary (Dulles) and the Second Secretary of the Embassy in France (Utter)," Paris, June 11, 1951.**

In regard to the territorial clauses, "It was suggested that the treaty might actually define Japan's future territory. Mr. Dulles stated that the British had suggested this and had presented a map which showed that the Habomai Islands belonged to Japan. Mr. Dulles said that the US believed that these were not historically a part of the Kurile Islands but that we felt it better to leave the issue of what was a correct definition of the Kurile Islands to subsequent arbitration or World Court decision rather than to precipitate the issue in the Japanese peace treaty itself, particularly since the Russians were already in occupation of the Habomai Islands. At this point the French produced a copy of the British map and after scrutiny of it there seemed to be acquiescence in the US point of view."

79. **"Revised US-UK Draft of a Japanese Peace Treaty," June 14, 1951.**

"Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905."

80. **"The Secretary of State (Acheson) to the United States Political Adviser to SCAP (Sebald)" August 2, 1951.**

"There are some provisions which the Japanese do not like, principally territorial. however, they were accepted when Japan accepted the surrender terms and except for Ryukyu and Bonin situation are beyond realm of practical discussion. There is no Japanese renunciation of Habomai if in fact Habomai is not part of Kuriles."

81. **"The Consultant to the Secretary (Dulles) to Senator Alexander Wiley," August 6, 1951.**

The Senator asked about the population pressure Japan would suffer in the event it lost territory due to the peace treaty. Dulles replied: "In Sakhalin and the Kuriles, the total Japanese population in 1940 was about 400,000 or one-half of one percent of the total. These areas, as parts of Japan, never sustained any substantial part of Japan's population. The respective population figures were Sakhalin, 398,000; Kuriles, 11,500."

82. **"The Ambassador in India (Henderson) to the Secretary of State," August 12, 1951.**

In his memorandum to Acheson, Henderson recounts his meeting with Indian officials. Birendra Narayan Chakravarty (expert of Ministry of External Affairs and Commonwealth Relations) foresaw the problem Japan would later face with Article 26 of the peace treaty. He said, "if Japan should renounce all title to Kuriles, Sakhalin and Formosa, it would not have the right to cede such territories to USSR and China in a later treaty because Article 26 precludes Japan from making subsequent peace settlement with any state granting greater advantages than are accorded in present treaty." The Ambassador to India replied "I am unaware of US interpretation of Article 26." He reported that "I am inclined to agree that Japan could not cede territory to which it had already renounced title. I thought however it might be able despite Art 26 to recognize in subsequent treaties Kuriles and Sakhalin as USSR territory and Formosa as China." He asked for State Department views regarding this matter. Chakravarty also argued that since the United States would probably never contest USSR title to Kurils and Sakhalin "why not frankly recognize them in treaty." The Ambassador replied "since USSR had already made clear it would not sign treaty, nor reason for treaty provide cession territory to country not party.[sic]"

(See Appendix D for extracts from the statements by U. S. Delegate John Foster Dulles, USSR Deputy Minister of Foreign Affairs, Andrei Gromyko, and Japanese Prime Minister and Minister of Foreign Affairs, Shigeru Yoshida at the San Francisco Peace Conference.)

83. **Yoshida Memoirs on San Francisco Peace Conference. Published 1961.**

In Yoshida's description of his discussions with Dulles, Yoshida writes that he "requested him to make clear in the treaty that the Southern Kuriles, which had always been a part of our possessions, were not included in the Kuriles which were to be handed over. Mr. Dulles appreciated our point, but indicated that if this were done it would involve going afresh into the wording of the document with the other countries concerned, which would delay the peace conference and so the signing of the treaty. He therefore asked us to waive the point, suggesting instead that we express our own view on the matter in our speech accepting the terms of the treaty, which we did."

In his discussion of the San Francisco Conference, Yoshida writes: "In the course of my remarks I laid particular stress on the territorial question, rebutting the Soviet delegate's statement that the Kuriles and Southern Sakhalin had been wrested from Russia by force and

showing that Japanese sovereignty over the Southern Kuriles was a facet accepted even by Imperial Russia, while the Habomai and Shikotan Islands that formed an integral part of Hokkaido, Japan's northernmost home island, were still under the occupation of Soviet forces in violation of international law. Needless to add, my emphasis on these points was intended to serve for future reference."

84. San Francisco Peace Treaty, September 8, 1951.

"Japan renounces all right, title and claim to the Kurile Islands and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905."

1955

Major Events:

- * Stalin died in 1953
- * Korean War ended in 1953
- * Soviets announce explosion of hydrogen bomb in 1953
- * West Germany is admitted to NATO in 1954
- * Warsaw Pact formed in 1955
- * Khrushchev repairs relations with Yugoslavia in 1955
- * Soviet troops withdraw from Austria in 1955

85. "Editorial Note," National Security Council meeting, March 10, 1955.

"Secretary Dulles observed that if it ever transpired that the Soviets gave up any significant part of the Kurile Island archipelago, the US would at once experience heavy Japanese pressure for the return of the Ryukyu Islands to Japanese control. While it would be contrary to experience to expect the Soviets to return any of their present possessions to Japan, they might conceivably be induced to do so precisely in order to increase tension between the United States and Japan."

86. "Memorandum of Discussion at the 244th Meeting of National Security Council," April 7, 1955.

In discussions regarding US policy toward Japan, it is reported that Dulles states that he is willing to support Japan's claim against the Soviet Union to sovereignty over Habomai Islands and Shikotan but that he does not agree that the US should treat the Soviet Union's claim to sovereignty over the Kuril Islands and South Sakhalin as legally invalid. "If we carried out this course of action he warned that we would be marching onto very treacherous ground. The Soviet claim to Kuriles and Southern Sakhalin was substantially the same as our claim to be in the Ryukyus and the Bonin Islands. Accordingly, in our efforts to force the

Soviets out of the Kuriles and Sakhalin, we might find ourselves forced out of the Ryukyus and the Bonins...Obviously, we should not imperil our position in the Ryukyus..."

87. **"Telegram from the Department of State to the Embassy in Japan," July 1, 1955.**

Dulles writes, "(1) Habomais and Shikotan are geographically, historically and legally integral part of Hokkaido and not part of Kuriles. (2) Yalta Agreement was statement common purpose arrived at by heads three Great Powers. It was not meant be self-executing or final determination of purposes expressed therein. Japan in any case is not bound by terms Yalta Agreement since they were not party thereto and Yalta Agreement is not mentioned in the Potsdam Proclamation which Japan accepted...Potsdam clearly leaves the question of Japanese territorial determination for subsequent consideration Parties Proclamation. USSR cannot unilaterally make this determination....SCAP General Order No 1. merely states Japanese troops on Karafuto and Kuriles should surrender to Commander Soviet Forces Far East and does not and was not intended touch upon final disposition these islands...Ultimate disposition South Sakhalin and Kuriles has not been determined and is matter to be resolved by future international agreement."

88. **"Memorandum From the Assistant Secretary of State for Far Eastern Affairs (Robertson) to the Secretary of State," September 18, 1955. Subject: Japan-USSR Negotiations.**

Robertson writes: "The Soviets have expressed a willingness to return the Habomais and Shikotan as part of a total agreement. Malik said this would be conditional on Japan's not militarizing these islands...The major issues outstanding are: (a) The Soviet Union wants Japan to recognize its sovereignty over the Kuriles and South Sakhalin, while Japan is still claiming sovereignty over the southernmost Kuriles and wants disposition of the remaining disputed territories to be decided later by the Allied Powers involved. (b) the Soviet Union wants Japan to prohibit passage through all straits connecting with the Sea of Japan by non-riparian powers, while Japan objects to this provision; and (c) the Soviet condition that the Habomais and Shikotan be demilitarized...Our policy has been to avoid any appearance of interfering with the talks..."

...Tab A is a telegram for your signature recommending to Ambassador Allison that he discreetly advise high Japanese officials of our views that (a) we hope Japan will do nothing implying recognition of Soviet sovereignty over the Kuriles and South Sakhalin and we believe disposition of these territories should be left for future *international decision* [emphasis added and modified by Dulles to say: Hope Japan will do nothing implying recognition of Soviet sovereignty over Kuriles and South Sakhalin although of course accepting Japan's renunciation under Article 2(c) of 1951 Peace Treaty. Believe final disposition these territories should be left for future international decision.] (b) the Soviet proposal to prohibit entry into the Japan Sea by warships of non-riparian powers violates international law and *would virtually nullify the naval aspects of the US-Japan Security Treaty*, [modified by Dulles to say: would nullify and violate sea-force aspects US-Japan

Security Treaty.] and (c) the Soviet proposal for demilitarization of the Habomais and Shikotan would appear to be an unjustifiable derogation of Japanese sovereignty over these islands...

...I believe, however, that it is advisable to make perfectly clear to the Japanese our view that Japan should do nothing implying recognition of the Soviet claim and that the future disposition of these areas, like Formosa, should await future international decision. I also believe that it is in the United States' interest to do what we can to prevent the Soviets from strengthening their color of title to the Kuriles and Sakhalin." Note: The draft telegram was sent to Tokyo on September 18, modified as noted above.

1956

Major Events:

- * Khrushchev's Secret Speech
- * Workers' uprising against Communist rule in Poland is crushed
- * Anti-Communist rebellion in Hungary ends when Soviet troops invade

89. "Memorandum of a Conversation Between Secretary of State Dulles and Foreign Minister Shigemitsu," August 19, 1956.

"Shigemitsu said the only remaining point at issue with the USSR was the territorial question. The Soviets wanted to draw the boundary to the north of Shikotan and Habomais. He inquired whether such a boundary would be legal according to the San Francisco Peace Treaty... Dulles reminded Mr. Shigemitsu that... according to Article 26, if Japan gave better terms to Russia [ie. sovereignty to the Kuriles] the US could demand the same terms, [ie sovereignty over the Ryukyus.]...If Japan agrees to give Soviet Union sovereignty over the Kuriles, then the United States will insist on sovereignty over the Ryukyus... The Secretary suggested Japan might tell the Soviet Union of the tough line the United States was taking - that if the Soviet Union were to take all the Kuriles, the United States might remain forever in Okinawa, and no Japanese Government could survive..." Dulles "stated emphatically that...the wartime decisions were only recommendations for consideration at a Peace Treaty. He could assure Mr. Shigemitsu that no statements of President Truman ever confirmed Soviet title to the islands and he would confirm this position if the Japanese formally ask him."

90. "Telegram From the Secretary of State to the Department of State," August 22, 1956.

Dulles reports that Shigemitsu is distraught due to the collapse of talks with the Soviets on the peace treaty and that he "referred vaguely" to the idea that the US, UK, Japan and USSR should meet to discuss the final territorial dispositions. "It would presumably be predicated

upon residual and inchoate right of victors to dispose finally of territories over which Japan had renounced sovereignty but where no new sovereignty internationally agreed upon." Shigemitsu told Dulles that such a conference would assist Japan in "working out a better deal for Japan on Kuriles than would otherwise be possible...When Japan talks to Russia alone, Russia is very hard and does not even listen." Dulles wanted a thorough study on the question of the territory lest it open up disagreeable questions regarding the Ryukyus and Taiwan.

91. **"Memorandum of a Conversation, Ambassador Aldrich's Residence, London," August 24, 1956.**

Mr. Shigemitsu asked Dulles and Ambassador Bohlen if Japan is entitled to give USSR title to the Kuril Islands in order to normalize relations. The Soviet Union "wishes to draw a boundary south of Etorofu and Kunashiri." Japan wants to call an international conference to settle the issue. Dulles responds negatively to the suggestion of a conference and nebulously to Japan's question about ceding the title. He remarks that "at the time of ratification of the San Francisco Peace Treaty, the Senate understood that the title to the Kuriles did not pass to the USSR. Habomai and Shikotan were not considered part of the Kuriles. But, it is difficult to contend that Etorofu and Kunashiri are not part of the Kuriles. At the time of the San Francisco Treaty, Yoshida asked US to take position that Habomai and Shikotan were not part of the Kuriles. They did not make a similar request in respect to Etorofu and Kunashiri." In a footnote, Dulles says, "I suggest we have the historical division make a study to see whether there is any plausible basis for considering the islands of Kunashiri and Etorofu as not necessarily part of the Kuriles as that word has been used in the various war conferences and Japanese peace treaty."

92. **"Notes Prepared in the Office of Northeast Asian Affairs: Weekly notes to Tokyo," August 24, 1956.**

In regard to the Dulles-Shigemitsu conversation in Document 89: "Rarely have we been so baffled as by the developments on this subject over the past week. The Secretary's statement to Foreign Minister Shigemitsu that US would reserve its rights under Article 26 of the Peace Treaty should Japan recognize Soviet sovereignty over Sakhalin and the Kuriles was not a staffed position but rather one which the Secretary himself enunciated prior to his departure for London. The Legal Adviser's office has dug up a theory in Hyde's International Law which would support the Secretary's view that Japan has residential sovereignty (a different concept we think than residual sovereignty in the Ryukyus but possibly the inspiration for the latter) in the Kuriles and Sakhalin until the sovereignty which she has renounced is transferred to another country...The general purpose of the position is not to change what the Secretary has already said but to dilute it a little and permit the Japanese to make up their own minds as to what course they will take, rather than place on our shoulders the responsibility for a breaking off of the negotiations..."

93. **"Editorial Note," August 28, 1956.**

At news conference, Dulles responded to a reporter's question about his meeting with Shigemitsu: "You were quoted in some reports as saying that, if Japan recognized the Soviet claims of sovereignty over the Kuriles, it might open the way for United States demands for sovereignty over other islands, particularly Okinawa." Dulles explained "...I wrote the treaty very largely, as you may remember - for the very purpose of trying to prevent the Soviet Union from getting more favorable treatment than the United States got. I did not attempt to indicate what its (Article 26) operation would be or that in fact it would be invoked. I merely pointed out that there was such a clause."

94. **"Letter from the Chairman of the Joint Chiefs of Staff (Radford) to the Assistant Secretary of State for Far Eastern Affairs to Robertson," August 29, 1956.**

Radford writes that Etorofu and Kunashiri are strategically important to the Soviet Union.

95. **"Telegram From the Embassy in Japan to the Department of State," August 31, 1956.**

Allison asserts that the United States policy of non-interference in the USSR-Japan peace negotiations can no longer be maintained. It would be in the best interest of the US to support Shigemitsu, lest he be ousted from office. He asks the State Department to consider making a statement in which the US supports Japan's interpretation of "Kuril Islands" in Article 2 of the Peace Treaty as excluding Etorofu and Kunashiri, and that the United States thus believes they should be returned promptly to Japan. Any questions on the dispute should be referred to the International Court of Justice.

96. **"Memorandum From the Assistant Secretary of State for Far Eastern Affairs to the Secretary of State," September 3, 1956.**

Robertson reports on the Soviet-Japanese negotiations. "Soviets are willing to return Habomai and Shikotan to Japan and accept treaty language defining the international boundary between the two countries. Japan is holding out for recognition of sovereignty over Etorofu and Kunashiri....Disunity and factional politics have prevented the Japanese from taking a firm stand in dealing with the Soviets...USSR has important military installations on Etorofu and Kunashiri...Japan has "an excellent case that these two islands have historically always been Japanese, were never taken by Japan by force and should in fairness be regarded as Japanese in the peace settlement. The islands have been described in Japanese and international usage as part of the Kurile chain, however, and it would be difficult to prove that they are not part of the Kurile Islands as the term is used in the San Francisco Treaty... Japanese were told in Moscow that without a territorial cession the Soviet Union would not release Japanese prisoners or allow Japanese admission to the United Nations..."

As far as the US position in helping Japan, "any demonstration of moral support would be

of some value...such as a declaration that we believe Japanese claims to Etorofu and Kunashiri are just. Similar statements could well be obtained from other powers..." Regarding Article 26, the author thought it best to avoid explicit statements, but Japan "does not have the right to determine the question, *which is of concern to the community of nations, not to Japan and the USSR alone.*" [emphasis added].

97. **"Editorial Note," Aide Memoire handed to Ambassador Tani on September 7, 1956.**

"...the United States regards the so-called Yalta agreement as simply a statement of common purposes by the then heads of the participating powers, and not as a final determination by those powers or of any legal effect in transferring the territories. The San Francisco Peace Treaty (which conferred no rights upon the Soviet Union because it refused to sign) did not determine the sovereignty of the territories renounced by Japan, leaving that question, as was stated by the Delegate of the United States at San Francisco, to international solvents other than this treaty.

It is the considered opinion of the United States that by virtue of the San Francisco Peace Treaty, Japan does not have the right to transfer sovereignty over the territories renounced by it therein. In the opinion of the United States, the signatories of the San Francisco Treaty would not be bound to accept any action of this character and they would, presumably, reserve all their rights thereunder.

The United States has reached the conclusion after careful examination of the historical facts that the islands of Etorofu and Kunashiri (along with the Habomai Islands and Shikotan which are part of Hokkaido) have always been part of Japan proper and should in justice be acknowledged as under Japanese sovereignty. The United States would regard Soviet agreement to this effect as a positive contribution to the reduction of tension in the Far East."

The two governments, after consultations, made the aide-memoire public on September 12.

98. **"Joint Declaration by the Union of Soviet Socialist Republics and Japan," signed October 19, 1956.**

Paragraph 9: "The USSR and Japan agree to continue after the restoration of normal diplomatic relations between the USSR and Japan, negotiations for the conclusion of a Peace Treaty.

In this connection, the USSR, desiring to meet the wishes of Japan and taking into consideration the interests of the Japanese State, agrees to transfer to Japan the Habomai Islands and the island of Shikotan, the actual transfer of these islands to Japan to take place after the conclusion of a Peace Treaty between the USSR and Japan..."

1957

99. **"United States' Note to the Soviet Government," May 23, 1957.**

The United States reiterates its position that Yalta, General Order No. 1, and SCAPIN 677 did not represent final territorial dispositions. In addition, the Treaty of Peace with Japan signed in San Francisco did not "convey any title in the Habomai Islands to the Soviet Union or diminish the title of Japan in those islands, and the phrase 'Kurile Islands' in those documents does not and was not intended to include the Habomai Islands or Shikotan, or the islands of Kunashiri and Etorofu which have always been part of Japan proper and should therefore in justice be acknowledged as under Japanese sovereignty..."

1960

100. **"Memorandum from the Soviet Government to the Japanese Government," January 29, 1960.**

Gromyko writes that in light of the fact that Japan has signed the "Treaty of Mutual Cooperation and Security" with the United States, the USSR will return Habomai and Shikotan Islands only if all foreign troops are withdrawn from Japan and a peace treaty is signed.

101. **"Secretary of State Herter's News Conference," February 8, 1960.**

The Secretary commented on the Soviet announcement in Document 100. He said, "The Soviet note attempts to call into question the right of the Japanese people to provide for their own defense. I think the Japanese Government has correctly characterized this note as unwarranted interference by the USSR in the affairs of another country. Such interference is all the more striking in a note which emphasizes the Soviet Union's capacity for the destruction of Japan. Threats of this sort underline the necessity which compels the nations of the free world to take steps to assure their self-defense. I also find distressing the unilateral repudiation by the Soviet Union of its previous commitment to the Japanese Government to return the islands of Habomai and Shikotan at the conclusion of a future peace treaty with Japan. I consider the Soviet attitude to Japan to be out of keeping with their protestations of non-interference in the affairs of other nations and their professed desire for a relaxation of international tension."

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 100. *Pravda*, January 29, 1960, p. 2. Also "An Unwise Step and Grave Responsibility," *Izvestia*, January 29, 1960, p. 4.
 101. *Department of State Bulletin*, February 29, 1960, p. 325.

APPENDIX H



APPENDIX H [PAPER 1]

INTERNATIONAL LEGAL ISSUES PRESENTED BY THE KURILS DISPUTE

Keith Highet

The following threshold legal issues appear to be presented in the long history of the Kurils dispute between Japan and Russia.

1. The Treaty of Shimoda (1855)

This treaty established that the boundary between Japan and Russia should pass between Iturup (Etorofu) and Urup (Uruppu). The treaty clearly implied that the four bottom Kuril Islands - Shikotan, Habomai, Kunashir and Iturup - were Japanese and that the northern eighteen Kuril islands were Russian. The islands to the north, the "Northern Kurils," were acknowledged as being Russian. The islands to the south of the boundary, the "Southern Kurils" were acknowledged as Japanese. These latter islands, four in number, are termed the "Northern Territories" by Japan. The bottom two islands, Habomai and Shikotan, are in fact considered by Japan to be an "integral part" of the northern Japanese island of Hokkaido. The top two, Kunashir and Iturup, are also included within the designation "Northern Territories" by Japan. For the purposes of this discussion, all four are considered together as the "Southern Kurils/Northern Territories."

No legal issue appears to be raised by the Treaty of Shimoda.

It seems clear that Japan acquired good title and sovereignty to the Southern Kurils/Northern Territories by virtue of this treaty.

2. The Treaty of St. Petersburg (1875)

By this treaty, Japan acquired from Russia all eighteen of the Northern Kurils. In consequence, Japan had valid international title to all of the 22 Kuril Islands in 1875.

No legal issue appears to be raised by the Treaty of St. Petersburg.

This treaty had no effect on title and sovereignty to the Southern Kurils/Northern Territories.

3. The Treaty of Tokyo (Supplementary Article) (1875)

By this treaty the parties agreed to protect the property and civil rights of the residents of Sakhalin and the Kurils, made provision for citizenship of the Ainu residents, and guaranteed freedom of religion on the Kurils.

No legal issue appears to be raised by the Treaty of Tokyo.

This treaty had no effect on title and sovereignty to the Southern Kurils/Northern Territories.

4. The Treaty of Portsmouth (1905)

This treaty, concluding the Russo-Japanese War, made territorial dispositions concerning Northern and Southern Sakhalin but made no reference to the Kurils (since they had all been transferred to Japan by the Treaties of Shimoda and St. Petersburg).

No legal issue appears to be raised by the Treaty of Portsmouth.

This treaty had no effect on title and sovereignty to the Southern Kurils/Northern Territories.

5. The Soviet-Japanese Neutrality Pact (13 April 1941)

Article I provided that:

Both contracting parties undertake to maintain peaceful and friendly relations between themselves and mutually to respect the territorial integrity and inviolability of the other contracting party.

Article II provided that:

Should one of the contracting parties become the object of hostilities on the part of one or several third Powers, the other contracting party will observe neutrality throughout the entire duration of the conflict.

Article III provided that:

The present pact ... shall remain valid for five years. Should neither of the contracting parties denounce the pact one year before expiration of the term, it will be considered automatically prolonged for the following five years.

At the time of the Soviet invasion of the Kurils (August 1945), the pact had already been denounced by the Soviet government on April 3, 1945 one year before the expiration of its term.

This being the case, can the Soviet occupation of (at least) the Southern Kurils/Northern Territories be viewed as being in violation of a treaty obligation?

6. The Cairo Declaration (27 November 1943)

This provided that:

The three great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all islands in the Pacific which she has seized and occupied since the beginning of the first World War in 1914, and that

all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed.

Was the Cairo Declaration a treaty?

It was probably not a treaty and, even if it were, it would be impossible to enforce. Its use remains interpretative.

Was it applicable to the Kurils?

The Kurils did not constitute territories which Japan "has taken by violence and greed" within the meaning of the Cairo Declaration.

What was its effect on the Kurils?

The Cairo Declaration had no effect on title and sovereignty to the Southern Kurils/Northern Territories.

7. The Yalta Agreement (11 February 1945)

The Yalta Agreement states that:

The leaders of three Great Powers - the Soviet Union, United States of America and Great Britain - have agreed that in two or three months after Germany has surrendered and the war in Europe has terminated the Soviet Union shall enter into the war against Japan on the side of the Allies on condition that:

2. The former rights of Russia violated by the treacherous attack of Japan in 1904 shall be restored, viz:

A. the southern part of Sakhalin as well as all islands adjacent to it shall be returned to the Soviet Union.

3. The Kuril Islands shall be handed over to the Soviet Union.

Was the Yalta Agreement a treaty?

It was probably not a treaty, but was in fact an international agreement of considerable weight.

What was its nature?

It was non self-executing; it was a statement of intent.

Was it applicable to the Kurils?

The Kurils did not constitute territories relevant to the "former rights of Russia violated by the treacherous attack of Japan in 1904."

The wording in subparagraph 3 is prefaced by the word "viz," meaning "for example."

This provision of the Yalta Agreement appears to be vitiated by an important error of fact or application.

Such a mistake in fact lessens the residual influence that the Yalta Agreement may have, even

as a question of interpretation.

What was its effect on the Kurils?

The Yalta Agreement had no effect on title and sovereignty to the Southern Kurils/Northern Territories.

It could only have effect on the interpretation of the actions of the three great Powers, and possibly on obligations of any of those Powers to any or both of the other Powers.

It did not bind Japan, which was not a party to it.

Was the Soviet-Japanese Neutrality Pact of 13 April 1941 in effect at the time that the Soviet Union signed the Yalta Agreement?

If so, is there any effect on the interpretation to be given to the effects of the Yalta Agreement?

Since the Soviet Union must have known, at the time it executed the Yalta Agreement, that the Kurils did not constitute territories relevant to the "former rights of Russia violated by the treacherous attack of Japan in 1904," and since the Soviet Union did not clarify this matter at the time to the other two signatories, can provision "3" introduced by the word "viz," remain as any form of international obligation?

7. The Potsdam Declaration (26 July 1945)

Provided that:

8. The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.

Was the Potsdam Declaration a treaty?

It was probably not a treaty and, even if it were, it would be impossible to enforce. Its use remains interpretative.

Was it applicable to the Kurils?

Since the Kurils did not constitute territories which Japan "has taken by violence and greed" within the meaning of the Cairo Declaration, the Potsdam Declaration (reaffirming the Cairo Declaration) could do no more than the Cairo Declaration, or at least should be interpreted in the same light.

Even if it were applicable to the Kurils, the legal basis for "enforcement" of the Potsdam Declaration is highly tenuous. At most it can be used - as between the respective signatories - as an aid to interpretation of other international undertakings.

8. The end of the War: the Soviet Occupation of the Kurils

A. 8/9 August 1945: the Soviet Union declared war on Japan

B. 14 August 1945: Japanese announce their unconditional surrender (the official document is signed on September 2)

- C. 15 August 1945: the Japanese Emperor accepts the Potsdam Declaration
- D. 19 August: Soviets invade Southern Sakhalin and the Kurils
- E. 4 September 1945: all Kurils occupied by Soviets

This chronology must be studied carefully.

Was the Soviet invasion of the Kurils timely?

Was it legitimately connected with the conduct of belligerent activities in the war?

What effect does it have on Japan's right and title to the Kurils that the Soviet intervention and attack on the Kurils appears to have been beyond the scope of the military action authorized in World War II?

A substantial question arises concerning the initial manner and timing with which the Soviets occupied the Kurils in 1945.

In no way can that evidence be adduced to improve the Soviet position: it can only render it weaker.

9. Treaty of Peace with Japan: the San Francisco Treaty (8 September 1951)

This contained article II:

- c. Japan renounces all right, title and claim to the Kuril Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 3 September 1905.

The Soviet Union did not sign the 1951 Peace Treaty.

What is the status of the Kurils in view of the provisions of Article II.c?

The Kurils were of indeterminate territorial status, with title surrendered or renounced by Japan but vested in no other State.

Moreover, the Soviet Union, by not executing the Peace Treaty, cannot "benefit" from any of its provisions.

In addition, contemporaneous evidence indicates that Japan held the view that the Southern Kurils/Northern Territories were not intended to be included within the meaning of the word "Kurils" in Article II.

What is the status of the Southern Kurils/Northern Territories in view of the Japanese interpretation of the meaning of "Kurils" in Article II.c?

If evidence can be forthcoming as to the validity of this understanding, it can be persuasively established that Japan did not in effect renounce or surrender any right or title to the Southern Kurils/Northern Territories.

10. The Soviet-Japanese Joint Declaration (19 October 1956)

Contains a provision whereby the Soviet Union states that, "desiring to meet the wishes of Japan and taking into consideration the interests of the Japanese State, agrees to transfer to Japan the Habomai Islands and the island of Shikoton [sic], the actual transfer of these islands to Japan to take place after the conclusion of a Peace treaty between the Union of Soviet Socialist Republics and Japan."

What is the legal effect of this Joint Declaration on the claim of Japan on the specified islands in particular and the Southern Kurils/Northern Territories in general?

What is the legal effect of this Joint Declaration on the claim of Russia on the specified islands in particular and the Southern Kurils/Northern Territories in general?

Probably indeterminate.

11. Whatever the situation, it will be important to look carefully at whether, in normalizing relations, Japan and Russia want to contemplate a *new treaty* instead of a treaty acceding to the 1951 Treaty and invoking the provisions of its Article 26.

If Russia were to take the latter course, it would have less freedom of action since it would be signing on to the same treaty arrangement in which, in its Article 2, Japan renounced the "Kurils" in 1951. Since there remains an active question of interpretation as to what the word "Kurils" is to mean, within the meaning of that article, it would in that instance be necessary that Japan and Russia execute a special understanding (in the scenario of accession to the old treaty) that the word "Kurils" did not extend to Shikotan, the Habomais, Kunashir, and Iturup. Otherwise, the logical circle between cession and acquisition might appear to have been closed: Russia would now be "in the loop" or in the "chain of title," and more difficulties of interpretation would be created. It would also raise the question of whether Russia would not then have acquired perfected title, only to relinquish it a moment later with the transfer to Japan of Shikotan and the Habomais in accordance with the 1956 Declaration.

If, however, a new and minimal peace treaty were to be executed, it would not necessarily put Russia into the "Article 2 loop" of the 1951 Treaty. Thus it would be necessary to accept or reject the Japanese assertion that the "Kurils" renounced by that Article did not include the four southernmost islands.

Following transfer of possession of Shikotan and the Habomais to Japan by administrative means, Japan should seek to establish clearly its position that the *other two* Southern Kurils had not been amongst those as to which Article 2 constituted a renunciation of sovereignty in 1951. A letter could be sent by Japan to each of the other signatories clarifying that Kunashir and Iturup were the Northern Territories of Japan, not "Kurils," and that they were thus not within the scope of the word "Kurils" as employed in Article 2. Silence would be considered to be assent after a reasonable period had elapsed: to make the matter as watertight as possible, informal or simple agreement should however be sought from each other signatory as to the Japanese position.

In I OPPENHEIM'S INTERNATIONAL LAW, Vol. 2, Jennings and Watts ed. (9th ed. 1992), para. 628 at 1262-63 there is an interesting discussion of third-state rights to treaties, including to following note (footnote 14 on p. 1262):

. . . Art[icle] 26 of the Japanese Peace Treaty 1951 (by which Japan agreed to conclude with any state which had signed or adhered to the

UN Declaration of 1 January 1942 (TS No 5 (1942)), but which was not a signatory to the 1951 Treaty, a bilateral Treaty of Peace on the same or substantially the same basis as the 1951 Treaty; *quaere*, did that Art[icle] confer a legal right upon any of those States?)

APPENDIX H [PAPER 2]

ANALOGIES FROM INTERNATIONAL LAW AND PRACTICE

Keith Highet

The following section contains thumbnail sketches of a number of territorial disputes roughly analogous to the situation of the Kuril Islands. Cases that have been successfully resolved offer clues into possible routes to peaceful settlement, while cases that remained unsettled or ended in conflict illustrate pitfalls to be avoided in the process of seeking resolution.¹

Selected Analogous Disputes: Resolved Cases

1. Negotiated Solutions

Okinawa

The Ryukyu Islands, best known as Okinawa, were occupied by US forces in 1945 after battles with the Japanese Imperial Army. The Allied powers ended their occupation of the Japanese home islands in April 1952, but the US military continued to occupy Okinawa. The inhabitants of Okinawa campaigned for reunion with Japan, and the Japanese government argued that Japan retained residual sovereignty over the islands despite US occupation. The US government acknowledged this claim.

In 1961 President Kennedy renewed efforts to resolve the issue of the islands' status, affirming Japan's "residual sovereignty." In 1969, President Richard Nixon and Prime Minister Eisaku Sato formally agreed that Okinawa would be returned, but, pending the outcome of the Vietnam War, the actual date of reversion was to be determined two years later. In 1971 the two governments agreed that the reversion would take place in May 1972.

The Okinawa dispute offers an interesting example of lengthy post-war occupation of foreign territory and successful negotiation of a gradual reversion. The occupying country controlled the islands for a long period, but titular or residual sovereignty over the islands was nevertheless retained by the defeated nation. The mutual understanding concerning sovereignty and willingness to engage in constructive, good-faith negotiations facilitated a resolution. Flexibility on both sides about the timing of the reversion also helped defuse the political tensions surrounding the dispute and the potential compromise.

¹ Much of the material presented in this appendix has been summarized from the University of Durham Report described in footnote 2 to page 15 below, and grateful acknowledgement is made to the authors of that report.

Three elements essential for a successful resolution of a dispute were present in this case: good will and good sense; a shared common perception that a compromise solution would be in the interest of both parties; and a willingness on each side to compromise a historic political position in the interest of a joint solution.

Hong Kong

Hong Kong is another case in which sovereignty over a territory was peacefully transferred from one state to another. In a series of 19th century treaties, the Chinese ceded Hong Kong and Kowloon to the British. In 1898 the British acquired a 99-year lease on the New Territories. The Chinese subsequently claimed that the first two treaties had not granted Britain sovereignty, and argued that British occupation was illegal and based on the imposition of unequal treaties.

As the end of the lease in 1997 approached, Great Britain began negotiations with the People's Republic of China concerning the pending transfer of control to the PRC. Negotiations culminated in the 1984 Sino-British Joint Declaration on the question of Hong Kong. They agreed that not only should Hong Kong itself be returned, but that China should possess sovereignty and control over all three areas (Hong Kong, Kowloon, and the New Territories) because they had become an integral whole. Thus, the Declaration stipulated that within the PRC, a special Administrative Region of Hong Kong will be established that includes all three territories. Hong Kong will retain its own currency, capitalist economic system and a high degree of political autonomy. It will make its own financial and trade policies, and retain its common law and legal systems. The agreement also included extensive provisions to deal with complicated questions surrounding citizenship of the Hong Kong population. This arrangement is to remain unchanged for 50 years.

The case of Hong Kong is particularly interesting since it involves a compromise over territorial sovereignty in the context of a substantial transformation in the political identity of one of the actors. Just as the PRC became a new, transformed state in 1949, Russia has emerged as an independent state following the collapse of the Soviet Union. Hong Kong is also instructive because it offers an example of a territorial dispute where the legality of each side's claim to sovereignty was unclear. Each party contested the other's claim to sovereignty, and the delicacy and difficulty of this matter was significant in the negotiations. The two parties' ability to set aside this complicated historical and legal dispute and reach a practical and mutually beneficial solution is encouraging. Similarly, the provisions concerning citizenship, property rights, and distribution of authority between the disputed territory and the state inheriting sovereignty are suggestive for a potential settlement in the Kuril Islands.

Again, it was essential to the success of the negotiations that the parties manifested good sense and good will; that they appeared to share the perception that a compromise would serve everyone's interest; and that serious political and historical positions could be adjusted to reflect the contemporary reality.

The Panama Canal

The United States built the Panama Canal. The canal zone fell under the unilateral control of the United States in 1903 according to the provisions of the US-Panama Canal Treaty. When the

Panamanians asserted nationalistic claims in the 1970's, the US government negotiated a new treaty, which was signed in 1977 and entered into force in 1979. This decision to return the land to Panama was hotly contested. As one opponent of the Treaty argued on the Senate floor: the US should never return the canal, because, in his words, "We stole it fair and square." Nonetheless, the new Panama Canal Treaty, the US formally transferred the sovereignty of the canal zone with the naval base to Panama, although the US will continue to control the zone until the year 2000. At that time, Panama's military is to become responsible for the defense and management of the canal.

This is a case in which sovereignty over a strategically important area has been peacefully transferred from one country to another using a phased transfer of operational control. It is also an instance where both parties notably demonstrated considerable sense and good will; where there clearly existed a shared perception that a change in the status quo was mandatory for the interests of each; and where both were prepared to compromise strongly-felt political objections and historical positions in order to achieve a harmonious outcome.

Aaland Islands

The Aaland islands, located near the Gulf of Bothnia off the Swedish coast, have been claimed by Sweden, Russia, and, since its independence in 1917, Finland. Sweden had *de facto* control of the islands beginning in the 12th century, but in an 1809 peace treaty the islands were included in Finnish territory ceded to Russia. Russia retained the islands under its sovereignty until 1917, when Finland declared its independence and the legal status of the islands became unclear. Finland claimed sovereignty over them as part of the new Finnish state, but the Aalanders expressed their desire to rejoin Sweden, their cultural motherland.

In 1920, responding to a call by the island's council and the British government, Finland and Sweden brought the Aaland dispute before the League of Nations. The League recommended that the islands remain part of Finland, but that they be granted extensive autonomy. The League also guaranteed the demilitarization and neutrality of the islands. This agreement was stipulated in the London Convention of October 20, 1921, to which Finland, Sweden, Britain, Denmark, France, Germany, Italy, Latvia, Estonia and Poland were signatories.

At the conclusion of World War II, the Aaland Islands again demanded reunion with Sweden. The peace treaty between the Allies and Finland of February 10, 1947, rejected the demand, but offered the islands expanded autonomy under Finnish sovereignty. Today the islands remain a demilitarized part of Finland, with extensive political and cultural autonomy.

Sweden, Finland, and the Aaland Islands are today all on friendly terms. The resolution of their historical dispute has benefitted all parties. As in the Saarland (see discussion below), the Aaland Islands case suggests that a third party, in this case the League of Nations or the Allied High Commission, can play an important constructive role. It also suggests that compromise is possible whereby formal sovereignty may be offered to one disputing external power, while extensive autonomy is granted to the territory in question. Guarantees of neutrality and demilitarization also contributed to each party's willingness to compromise in this case.

In the Aaland Island dispute, both Finland and Sweden demonstrated a substantial degree of good sense and good will. They shared the perception that a solution was in their common interest (as well as in the interests of the islanders). Each was to a certain extent prepared to compromise its long-held historical position. The result was a satisfactory modification of the situation and a

successful joint compromise.

Saarland

In the past 200 years, sovereignty over the Saarland has shifted between France and Germany five times. Dispute over the territory has been one of the sources of the multi-century enmity between France and Germany, including repeated wars. Following World War I, the Treaty of Versailles granted the Saar region autonomy under League of Nations jurisdiction. France was given the right to exploit the valuable coal fields in the region without permanently transferring the Saar from German to French sovereignty. Under the treaty, France was granted "control" over the region's economic resources, infrastructure, and trade relations for a 15-year period, though Germany officially retained sovereignty. A League-appointed commission assumed virtually unlimited governing powers, excluding any German or administrative control and leaving local representative bodies with only an advisory role. After 15 years a plebiscite was to be held, offering the Saar population three choices: the status quo arrangement, union with Germany, or union with France. As agreed, in 1935 the plebiscite was held. Ninety percent of the Saar population voted for union with Germany. Full German sovereignty was confirmed and governing power returned to Germany.

After World War II, the Potsdam Agreement placed the Saarland in the French zone of occupation. In 1947 the French appointed a constitutional commission of 20 Saarlanders, which proceeded to draft a constitution calling for total independence from Germany. The constitution was subsequently ratified by the regional parliament. France's economic and political hold over the Saarland grew stronger, and in 1951 Germany lodged a complaint with the Allied High Commission about the Saarland's legal status. The Commission replied that the final legal status of the Saar remained unsettled. France and the Federal Republic of Germany went on to conclude an agreement in 1954, offering autonomy to the Saarland under the authority of a European Commissioner. In the subsequent referendum, however, 68 percent of the voters rejected the statute. The French finally agreed to return the Saarland to the Federal Republic in 1957. The Germans were recognized as holding formal sovereignty over the region, and full administrative control was returned during a three-year transition period which followed.

The Saar example is useful as an illustration of a territory beset by competing interests and claims, as well as the complexities of post-war settlements, occupation, and reoccupation. The Versailles settlement illustrates the possibility of divorcing formal sovereignty from effective control of a territory, particularly in a period following occupation. Negotiations following both World Wars demonstrated once again that international bodies such as the League of Nations can play a key role in promoting a fair resolution of disputes. The Saarland case also suggests that a referendum can serve as a useful instrument for settling the legal status of a disputed territory.

The Saarland case is consistent with our other cases insofar as the parties concerned were prepared to compromise, both by referendum and by reference to third-party decision-makers. Further, it manifests a shared expectation that good sense and good will can be applied and will be reciprocated, and that long-held historical positions can be adjusted in order to achieve a rational compromise in the interests of all.

Svalbard (Spitzbergen)

Svalbard is an archipelago of islands, the largest of which is Spitzbergen, which is located 700 km off the coast of Norway. There was no permanent population and no claim to sovereignty over the islands until the late nineteenth century when foreign companies began coal mining on the islands. The political status of the islands remained unresolved until the Paris Peace Treaty was signed in 1920. The treaty allows all eight signatories mining and commercial rights, and guarantees their nationals equal rights and access to Svalbard. At the same time, the treaty grants "full and absolute sovereignty" to Norway.

The case of Svalbard represents a unique institutional solution. The granting of full sovereignty to Norway subject to the rights of the other treaty-partners under the Treaty is a form of institutional servitude or cooperative enterprise that is an innovative and positive solution to a difficult problem. As always, however, the mere lapse of time since the Treaty was signed in 1920 has created unavoidable ambiguities in interpretation of its provisions in relation to the modern law of the sea, including extended territorial sea rights, exclusive economic zone, and continental shelf jurisdiction.

Therefore it can be said that one dispute was resolved by common purpose amongst nine different sovereigns. All parties demonstrated good will and a collective readiness to compromise their positions and execute a treaty. It can also be said, however, that a fresh dispute is in the course of arising. It remains to be seen whether this will rise to the level of a disabling conflict, doubtful under present circumstances, or whether it will simply be resolved by permitting the issue to remain on a low level of importance.

Other examples of instances where agreement has been reached or imposed are included in the *University of Durham Report* and its *Addendum*, found in Appendix I of this report.

2. Cases Assigned to Arbitration

The examples above are all cases where the parties came to an agreement, or an agreement has been assisted by the intervention of international institutions. This review would be incomplete without a brief review of instances where the dispute has been resolved by assignment (in whole or in part) to a third-party decision-maker: a court or arbitration tribunal. In these instances the willingness of the parties to compromise has been manifested in their agreement to assign the matter to a tribunal. The actual terms of disposition of the case by the tribunal is of lesser importance than the agreement that sent the dispute to it.

Eastern Greenland

A classic instance was the dispute between Denmark and Norway in the 1930's concerning the status of Eastern Greenland. Although the states concerned proceeded by application, their acceptance of the Court's jurisdiction presaged their willingness to have territorial matters resolved by it. In the case of the Legal Status of Eastern Greenland, the Permanent Court of International Justice awarded the contested territory to Denmark over Norwegian claims, on the basis of continuous assertion of sovereignty and control by Denmark (within the context of inhospitable and difficult territory).

Hotly contested between the two countries, the Greenland issue was resolved judicially where it had proven impossible to negotiate or handle otherwise.

Minquiers and Ecrehos

Another classic instance of third-party resolution by the International Court was that of Minquiers and Ecrehos. The dispute between France and Great Britain over these islands was settled by adjudication in the International Court of Justice. France based her arguments on historical facts and treaties with Great Britain that dated back to the Middle Ages. Great Britain argued that she was the long-term and effective owner and governor of the islands. In 1953 the Court decided in favor of Great Britain based on its effective exercise of administration and control.

Here the parties can be viewed as showing - at least informally - both good sense and good will, in assigning the matter to the Court. Obviously, they shared a perception that a solution was in the interest of each. By resorting to judicial resolution, they were likewise prepared to retreat from their historical positions.

Cases Where No Settlement Has Occurred

Finally, it should be noted that in a number of important territorial disputes, no settlement has been reached by the parties. The most significant and relevant of these cases are described below.

Falklands/Malvinas

The most obvious example of a case where there has been no accommodation of long-standing historical and geographical conflict is that of the Falklands (Malvinas) dispute. This case is of particular importance for our purposes because it led to war and because the historical parallels are so close to the situation in the Kuril Islands. The full story of the dispute does not require repetition here. Suffice it to say that nowhere in the melancholy history of the Falklands (Malvinas) dispute has any of the three requisites been demonstrated, by either Great Britain or by Argentina. Neither has shown good sense or good will in their relations or discussion of the issues presented. Neither party reflected the perception that a solution is in the interest of both parties. Finally, neither was prepared to compromise its long-held historical position.

Spratly and Paracel Islands

Another current area where these elements are patently lacking is the long-standing South China Sea dispute between China and Vietnam. This dispute is also particularly relevant because it involves a number of other South East Asian States (Taiwan, Malaysia, the Philippines, and Brunei), and the resolution of the Kuril Islands dispute will be used by contesting parties to advance their interests.

This complex series of claims and counter-claims has produced only military occupation and

confrontation by those involved. In no way can it be said that the parties are showing any degree of good sense or good will; that they share a perception that a solution is in the interest of all; or that any is prepared to compromise its historical position.

Chagos Archipelago (Diego Garcia)

This situation bears particular analogy to the Kurils because it involved forced resettlement of inhabitants. The detachment of the islands from Mauritius, their investiture by the armed forces of the United States (subject to a long-term lease from the United Kingdom), and the issue of "returning" the islands to Mauritius, create a superficial resemblance to the Kurils situation.

There has not been opportunity in this case for a meaningful dialogue to occur between the respective actors, primarily because the strategic military importance of the islands has made compromise difficult.

Liancourt Rocks

This dispute has been a source of friction between Japan and South Korea since 1952. Modern developments since then in the law of the sea give these rocks obvious economic importance in seabed and fisheries claims. Currently occupied by South Korea, they do not present a hot issue, but they may at some future date. Joint development has been mentioned as one possible solution, but essentially there has been no negotiation and therefore no progress. Because of the lack of contact between the parties on the rocks, none of the curative elements have come into play.

Senkaku Islands

The Senkaku Islands are in issue among China, Japan, and Taiwan. Again as in the case of the Liancourt Rocks immediately above, these islands present economic benefits under the new law of the sea. Issues concerning the history and interpretation of treaty provisions render the Senkakus similar to the Kurils for certain reasons.

Extensive negotiations between China and Japan have led nowhere, and the matter is fraught with technicalities. It is evident that none of the parties can be viewed as showing a practical desire to reach a solution. Nor do they appear to agree that a solution is in the interest of each. In consequence, the matter remains unresolved.

Tromelin Island

A territory disputed between France and Mauritius, Tromelin Island is once again important for its law of the sea implications rather in its own right. In spite of the intervention of the U.K. in the matter, not much progress has been manifested. It could safely be said that in no degree is any of the three key elements of successful resolution of territorial disputes presented here: no good will; no shared understanding that a solution is desirable; and no give-up of historical positions.

Closing Observations

A clear lesson to be learned from the cases above is that territorial issues *can* be resolved peacefully to the benefit of both disputing parties. Willingness to negotiate and compromise a historic position clearly is a critical factor in reaching a successful resolution of territorial disputes. In four of the cases cited above - Hong Kong, the Saarland, Okinawa, and Panama - foreign occupation and control of a territory was relinquished, even after a long time period had elapsed and the occupying power had some legitimate claim to sovereignty. Phased periods of transition and flexibility in the timing of a transfer of sovereignty have often helped defuse political tensions and facilitated a settlement.

The preceding examples also illustrate the various shades of "sovereignty" in an international legal context, and how a flexible understanding of that elusive term may facilitate a mutually acceptable and peaceful settlement. The case of Hong Kong underscores the importance of negotiating a practical, mutually-beneficial solution while avoiding semantic disputes. A skillful combination of formal sovereignty and autonomy may offer a means of resolution, as it did in Hong Kong and the Aaland Islands. A third party may play a crucial role in some cases, as in the Saarland and the Aaland Islands. Recently, assignment of territorial disputes to adjudication in the International Court of Justice has become increasingly common. Although this route is often taken when the two parties fail to negotiate a mutually acceptable solution themselves, willingness to submit to arbitration is itself a manifestation of good will and a willingness to compromise.

The cases introduced above are analogous to the Japanese-Russian dispute in that all of them had long historical backgrounds, they involved peaceful transfers of sovereignty, and the territories in question were relatively small. Yet each case has its own unique character and its resemblance to the Japanese-Russian dispute could be challenged. In addition, all the "resolutions" have not necessarily cemented final settlements. For example, the wisdom of the Panama Canal Treaty has been questioned, since Panama's ability to guarantee the safety of the canal after 2000 is in doubt. Some observers also express concern about China honoring the Sino-British Joint Declaration on Hong Kong after 1997.

Nonetheless, formal resolution of these disputes has more or less stabilized each situation and the governmental relations of the parties involved. Resolution has brought about mutual benefits for both parties in terms of increased trade, greater security, and improved bilateral and international relations. This can be contrasted to the cases where disputes have failed to be contained by peaceful settlements. The Falklands War of 1982 and the current conflicts in the South China Sea are two of the many less fortunate cases. The damage suffered by all sides in these conflicts should encourage Japan and Russia to find sensible, imaginative solutions to their own longstanding territorial disputes.²

² Attached as Appendix I to this report is the International Boundaries Research Unit of the University of Durham report (*The Kuril Islands: Resolution of Analogous Disputes*), dated June 1992. This report and the addendum prepared by Professor Keith Highet provide a full account of previous territorial disputes, resolved and unresolved, which offer further insight into the complexities and various possible outcomes of such conflicts.

APPENDIX H [PAPER 3]

SOVEREIGNTY, TITLE, AND POSSESSION

Some Informal Observations on Difficult Subjects

Keith Highet

The concepts of "sovereignty" and "title" are both technical legal concepts that must be used with great care and also generally descriptive words that are frequently used in political discourse or, generally, in discussion of international relations. "By and large the term [sovereignty] denotes the legal competence which a state enjoys in respect of its territory. This competence is a consequence of title and by no means coterminous with it."¹

It is important to understand that these ideas do possess specific meaning and content and that their use, in actual fact, must be handled with great care. It goes beyond the scope of this note, however, to enter into a precise doctrinal discussion of the meaning and application of the words and their variants in contemporary international law and relations. It will suffice to show that there are certain misconceptions concerning the terms and their use that can clutter things up.

Misconceptions

1. The first misconception is that "sovereignty" is the same as the exercise of state power.

If this were true, it would then be the case that a state would be exercising its sovereignty wherever it exercised power. Activities of a state that would be illegitimate, as long as they are effective, would be exercises of sovereignty.

This is not true. The misconception stems from a confusion of the dual use of the word "sovereignty." In international law, and for our purposes here, it has a technical meaning and is circumscribed by the rules of international law that give it very validity.

In political discourse, the word "sovereignty" has a broad and general usage that goes far beyond its actual legal meaning. It has come to mean "state identity" or "state integrity" in the broadest sense. This development has been reflected in the language of multifarious United Nations resolutions and instruments since the mid-1960's, and has now passed into the common parlance.

Thus an act of aggression by State A against State B will be described as an "insult to the sovereignty" of State B, even if in respect to an area where State B can legitimately exercise none. In addition, the undefined term "sovereignty" was added to the list of elements as to which members of the United Nations may not use force. The original language of Article 2, paragraph 4 of the

¹ Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* (3d ed. 1979), p. 126.

Charter was that members agreed to refrain from "... the threat or use of force against the territorial integrity or political independence of any state," and this concept was expanded by the General Assembly in its several definitions of aggression in the late 1960's to "... the threat or use of force against the territorial integrity or political independence or sovereignty of any state. . ."

2. The second misconception (a corollary of the first) is that "sovereignty" is a natural attribute of states that is present or exercisable wherever a state conducts its activities.

In this formulation, the word "sovereignty" becomes a synonym for "state action." It is of course nothing of the sort. Sovereignty as a term defines the nature of state power that is exercised over territory and with respect to persons and actions as to which the state is otherwise entitled, by the accepted rules of international law, to exercise it.

If there is no right to exercise such power, it cannot be the exercise of sovereignty or even of a "sovereign right." It is, rather, the mere exercise of a state power.

Another qualification on sovereignty is the lesser included quantity of "sovereign rights." Sovereign rights are rights exercisable by states that do not include the total perfected powers implicit in sovereignty, but are selective and limited in nature; the most current example is of course the fact that under the modern law of the sea, states possess sovereign rights to exploit the resources of the continental shelf and exclusive economic zone, but do not have sovereignty as to either the continental shelf and exclusive economic zone. Thus shipwrecks and treasures found on the continental shelf of a state outside its territorial waters, not constituting shelf resources, are not within the rights of that state to appropriate or exploit. The contrast in the context of the law of the sea is of course that within its territorial waters a state has absolute sovereignty over the sea-bed, the water-column, and activities on the surface - subject always to conflicting and established rights of other states under international law, such as the exercise of the right of innocent passage.

3. The third misconception (a corollary of the second) is that anything a state does is therefore an exercise of sovereignty.

It is undeniable that a state may claim a possessory title to territory, by occupation or otherwise. Just because that claim is made (or even if that claim is not formally advanced as such), the state does not exercise sovereignty over that territory. The state may well exercise sovereignty over its subjects residing on that territory (as is the case in the Southern Kurils/Northern Territories), and sovereign rights in respect of state property located there, but still fall short of exercising sovereignty over the territory itself.

There is a false syllogism that is presented throughout international relations by the confusing of the political term "sovereignty" and its older, more legal, sister. Thus if Russia is occupying the Southern Kurils/Northern Territories, but does not possess completely valid (perfected) title to those islands, it is not "sovereign" over them. Yet, if Russia is present in the Southern Kurils/Northern Territories, and if any of its state actions can be deemed to be sovereign acts, does this give rise to title?

The false syllogism proceeds as follows:

- A. When a state acts within a territory, its acts are sovereign acts.

- B. The performance of sovereign acts within a territory means that a state is sovereign over that territory.
- C. If a state is sovereign over territory, it has title to it.
- D. Thus the performance of sovereign acts within a territory means that a state has title to that territory.

The concept that confuses everything here is of course the idea contained in (2), "that a state is sovereign over that territory." This is a *petitio principii* - a begging of the question. It assumes the truth of the proposition that the performance of sovereign acts in a place is the same as the exercise of sovereignty over that place.

Although normally this is true, it is of course not always so. Thus a state may exercise the right of self-defense under Article 51 of the Charter, and to that end may (consistent with international law) make a limited intervention within the territory of the aggressor state; yet its intervention, although a sovereign act, does not mean that it is exercising sovereignty over the territory of the aggressor state.

Similarly, a state may exercise sovereign rights to exploit petroleum resources underlying its continental shelf, and to that end may construct installations and pipelines and perform operations there which, if interfered with, would cause its sovereignty to be impugned. Yet no claim could be made that the state has sovereignty over its continental shelf.

Sovereignty and Title

Sovereignty is an attribute or characteristic of states that is itself a creature of international law. Without international law, the word "sovereignty" would only be a descriptive term. In international law, however, the concept of sovereignty is the corollary of the concept of the equality of states. To quote one of the leading authorities on the international law of boundaries and territory:

The sovereignty and equality of states represent the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having a uniform legal personality. ... [S]overeignty is in a major aspect a relation to other states (and to organizations of states) defined by law. . . . The principal corollaries of the sovereignty and equality of states are (i) jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there . . ."²

However, it is important to keep the limitations on sovereignty clearly in mind. Thus the leading modern treatise on international law states that:

² Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* (3d ed. 1979), p. 287 (emphasis added).

The concept of sovereignty was introduced and developed in political theory in the context of the power of the ruler of the state over everything within the state. Sovereignty was, in other words, primarily a matter of internal constitutional power and authority, conceived as the highest, underived power within the state with exclusive competence therein. . . Although states are often referred to as "sovereign" states, that is descriptive of their internal constitutional position rather than of their legal status on the international plane.³

But this jurisdiction can only be validly exercised, in accordance with the same international law that has created - and that maintains - the element of sovereignty, if its exercise is not inconsistent with the sovereignty of other states. This element of consistency must be taken into account in all cases of conflicting state claims to territory.

Thus, jurisdiction is not coextensive with state sovereignty, although the relationship between them is close: a state's "title to exercise jurisdiction rests in its sovereignty." That jurisdiction is based on sovereignty does not mean that each state has in international law a sovereign right to exercise jurisdiction in whatever circumstances it chooses. The exercise of jurisdiction may impinge upon the interests of other states. What one state may see as the exercise of its sovereign rights of jurisdiction, another state may see as an infringement of its won rights of territorial sovereignty.⁴

In instances - such as possibly the Southern Kurils/Northern Territories - where there may be a conflict of state claims - the exercise of "sovereign" jurisdiction over the inhabitants is subject to the possible conflict with another "sovereign" jurisdiction, over the territory itself (and, in a derivative sense, over the inhabitants).

The exercise of sovereignty over territory as to which the exercising state possesses clear and unequivocal title cannot be questioned. But the exercise of "sovereignty" over territory as to which the exercising state has only possessory title, or a claim of title by occupation or conquest, is more of a political description than a juridical act. Indeed, the true "sovereignty" will always go with the title.

In a case such as the Kurils the matter becomes complex. Thus:

. . . in a peace treaty Japan renounced all right to Formosa. However, Formosa has not been the subject of any act of disposition; it has not been transferred to any state. In the view of the British Government: 'Formosa and the Pescadores are ... territory the de jure sovereignty over which is uncertain or undetermined.' Of course, the Chinese claim may become consolidated by acquiescence on the part of other states.⁵

³ I OPPENHEIM'S INTERNATIONAL LAW (9th ed. 1992, Jennings and Watts, eds.), Vol. 1, Sec. 37, p. 125.

⁴ I OPPENHEIM'S INTERNATIONAL LAW (9th ed. 1992, Jennings and Watts, eds.), Vol. 1, Sec. 136, p. 457.

⁵ Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (3d ed. 1979), p. 113.

Yet it is undeniably true that statal acts are being performed on Formosa. These might even be classified as being acts of de facto sovereignty, that require confirmation by perfection of title to be enlarged into de jure sovereignty. A moment's reflection will yield instances where a state may be the de jure sovereign but where another state is de facto sovereign, although it would be preferable to eschew the appellation of de facto sovereign in favor of "administering [or occupying] power." In a pure sense, since sovereignty is a juridical concept and must be measured and evaluated by juridical tests, there can be no such thing as "de facto sovereignty." Stated otherwise, all sovereignty must by definition be de jure.

Contested territory in which a legitimate government has been ousted is the basic model for a division between administration and sovereignty. Other instances may be more subtle: i.e. where one state is administering territory on behalf of another, or to assist another in difficult circumstances. (The relationship of these ideas to the laws of war, belligerency, and recognition has of course been substantially modified by the law of the United Nations Charter that has been in effect for almost fifty years.)

Examples of the divorce between administration and sovereignty of course will include the occupation of Germany (and Japan) following World War II. This may also include instances where international organizations maintain administrative control or supervision over territory, as was the case in Namibia (formerly South West Africa) or as may be the case in respect of trust territories under the Charter.⁶ The concept of "terminable" or "reversionary" rights can also effect an inroad on the purity of "sovereignty." Japan is certainly familiar with the concept of "residual" sovereignty as advanced and recognized in respect of Okinawa and the Ryukyus.⁷

The literature of international law is replete with other variations on the concept of sovereignty: the traditional institution of "servitude" (not analogous to an easement in common law), the status of international concessions, and various other forms of possessory rights and uses granted in perpetuity or for a leasehold term of years.

Lengthy lists of examples of these institutional concepts could be compiled. The basic principle that emerges from a review of them is that there are as many forms as there are situations: each international situation being, by definition, specific and unique - attracts specific and unique variations of the same idea. What is consistent amongst them, however, are three basic rules:

1. Indeterminate title is not a reduction of state sovereignty.

If there is a conflict in title, and one state (A) purports to exercise administration and control while another state (B) maintains that it possesses sovereignty over a given territory, there is no reduction of state sovereignty involved. The administering state (A) may not in fact have sovereignty: its sovereignty cannot be reduced if it has none to begin with. It may indeed acquire sovereignty by an act of state (B) or by operation of law (as in prescription of "consolidation") from state (B). The fundamental point is that title will reside somewhere (unless the territory has become

⁶ Examples are the status of the Kingdom of Monaco (*id.*, p. 113) and of course the anomalous situation following the termination of the League of Nations and the mandates created thereunder.

⁷ See also the case of Lighthouses in Crete and Samos (1937), P.C.I.J., Ser. A/B, No. 71; Brownlie, *op. cit.*, pp. 114-15.

res nullius) and, if it does, that title may shift. But the fact that it may reside elsewhere than the administering power is not to impugn the sovereignty of that state. It is rather to define more carefully exactly who has territorial sovereignty over the place in question.

2. The granting of concessionary or other limitative rights is not inconsistent with sovereignty.

For a state to grant a concession, or to transfer rights in territory or with respect to property, is itself an exercise of sovereignty. An exercise of sovereignty may result in a diminution of sovereignty: a common example is the waiver of sovereign immunity by a state by reason of its execution of an arbitration clause in a contract.

An exercise of sovereignty may therefore result in a qualification on sovereign rights or the loss of elements of sovereignty or of territory subject to territorial sovereignty. In its ultimate form, of course, a state may cede its territory completely, in which instance it will become the territory of another state.

To the extent that a state has acquired territory or indeed (as in the case of secession or division of states) has itself attained sovereignty subject to a condition, reservation, or limitation (such as a servitude or other substantive qualification), this condition also does not result from actions inconsistent with state sovereignty.

It is merely a function of the original exercise of sovereignty: if there was a preexisting right or condition that was to be inherited or transferred, it was one imposed on a predecessor by reason of an act of sovereignty by the predecessor. A successor state can acquire no more than its transferor could give and, if its transferor has conveyed away rights or accepted conditions, those are the terms on which the territory is thus acquired.

As Professor Brownlie has aptly phrased it:

Of particular significance is the criterion of consent. State A may have considerable forces stationed within the frontiers of state B. State A may also have exclusive use of a certain area of state B, and exclusive jurisdiction over its own forces. If, however, these rights exist with the consent of the host state then state A has no sovereignty over any part of state B. In such a case there has been a derogation from the sovereignty of state B, but state A does not gain sovereignty as a consequence. It would be otherwise if state A had been able to claim that exclusive use of an area of state B was hers as sovereign, as of right by customary law and independently of the consent of any state.⁸

3. It is an exercise of sovereignty for sovereignty to be limited.

All of these institutions and ideas are, it may be seen, in reduction or diminution of the "sovereignty" of the state subject to the prevailing rules of modern international law. Yet the reduction and diminution are themselves reflections of the primacy of sovereignty in international

⁸ See the case of Lighthouses in Crete and Samos (1937), P.C.I.J., Ser. A/B, No. 71; Brownlie, *op. cit.*, p. 110.

law. A state may do what it wishes within the law, and the law must operate as it does to reflect it. The former is an exercise of sovereignty by that state, and the latter is the basic precondition of the creation and recognition of state sovereignty to begin with. A state's sovereignty, and its exercise, cannot be inconsistent with international law since they are, purely speaking, a creation of that law.

Conclusion

The conclusions applicable to the Kurils situation can be stated quite briefly. They are four in number:

1. It is a mistake to conclude that, because Russia has occupational control over all the Kurils, it has sovereignty over all of them.

The occupational sovereignty and control by Russia over the Kurils may well have matured into good title, as to the Northern Kurils, but its ownership of the Southern Kurils/Northern Territories is contested by Japan on the basis that these islands did not fall within the term "Kurils" in Article 2 of the Treaty of Peace. The fact that Russia has occupied the Southern Kurils/Northern Territories since 1945 cannot create good title in the face of opposition, particularly in connection with the use of armed force; nor does Article 107 of the Charter necessarily provide relief.

Yet the possible absence of title must also mean that there is (on those islands) an absence of sovereignty on the part of Russia. If this is true, Russia could not by any act convey title to, or "cede," those islands. It could acquire title, or sovereignty; but it cannot part with it, or cede it, unless it has first been acquired.

2. The acquisition of territorial sovereignty is a legal question, not a political one.

Whether Russia has sovereignty over the Southern Kurils/Northern Territories or not may well be a political question both internationally and domestically - both in Russia and in Japan. But it is at heart a legal question: a juridical issue to be determined by juridical tests, by application of international law. From the legal conclusion there will of course flow legal consequences - and many political ones. But this fact must not obscure the point that at bottom the question of the acquisition and retention of territory - and the sovereignty over that territory that cannot exist in the absence of good title - is a legal question.

3. The determination of the legal status of the Kurils is essential to resolve the dispute unless the parties are in full agreement.

In the absence of complete agreement between Japan and Russia concerning the disposition of all the Kurils, particularly concerning the Southern Kurils/Northern Territories, the question will remain open. Obviously it will be fraught with political considerations and will arouse much popular sentiment in both Japan and Russia, based on political perceptions and using the definition of the word "sovereignty" in its political sense.

For there then to be any long-term disposition of the matter that will be acceptable to both Japan and Russia, it must be clearly understood by both Japan and Russia that the legal elements in

the situation must be disposed of on a legal basis, and that the title of Russia (or Japan) to the Southern Kurils/Northern Territories must be examined and resolved on a legal basis and on the most authoritative and objective level.

4. This is the only way in which title - and thus "sovereignty" - can be determined once and for all.

No other disposition will go to the heart of the matter, which is to determine the title to those islands and the true sovereignty over them today. If it is true that Russia's sovereignty over the Kurils depends on Russia's title to the Kurils; and if it is also true that, as a matter of international law, Russia's title to the Kurils can only be juridically determined by the application of legal rules; then it follows that Russia's sovereignty over the Kurils is to be determined in accordance with international law and by the application of legal rules.

As indicated elsewhere in this Report, unless the parties come to an agreement that will have the force of legal rules between themselves, the only satisfactory manner by which the title - and the sovereignty - can be juridically determined is by an international court or tribunal examining the question in accordance with those rules.

APPENDIX H [PAPER 4]

JUDICIAL AND QUASI-JUDICIAL OPTIONS

Keith Highet

In referring the Kuril matter to the International Court of Justice, disputing parties have a number of options:

Jurisdictional Options

1. By "optional clause declaration"

This is a general acceptance of the Court's jurisdiction under Article 36(2) of the Statute. The likelihood of this solution is extremely low. It is cumbersome, and, even though its complexity could be explained over time, it would surround the Kurils issue with too much other baggage. In view of the general history of the relationship of the former Soviet Union to the Court, this seems to be an unlikely solution.

It has no tactical or positional advantages.

However, the disadvantages are that - in general - parties proceeding by application under a general optional clause declaration cannot restrict the issues brought into litigation under the clause (in the absence of reservations). In addition, the filing of such a declaration may obviously invite other litigation (by other states) and frustrate the purpose of this reference to the Court.

In addition, action under an optional clause almost inevitably presents a "plaintiff/defendant" mode: one party has to initiate the action. This may be avoided (as it was in the Permanent Court in the South-Eastern Greenland Case), but in general it is a hard dilemma to escape.

In addition, the written pleadings in cases brought this way are normally consecutive (again stressing quality of "adversariness"), and in general it is more difficult to control time-limits and procedural issues. In addition, proceeding under the optional clause (as in any matter brought to the Court) will always result in a formal Court judgment (decision) binding on the parties under Article 59 of the Statute and Article 94 of the Charter.

2. By "compromissory clause" jurisdiction (under a treaty clause similar to Article 22 of the 1951 Peace Treaty)

The likelihood of this occurring is also low, as it depends on executing a treaty clause similar to that in the 1951 Treaty of Peace. Joint agreement on a framework treaty would be required, considerably more difficult and extensive in these circumstances than joint agreement on one or two questions to be put to the Court (as in section C below).

The disadvantages are substantially the same as those of the optional clause route discussed

in A above. The parties cannot really restrict the issues brought to the Court, or the scope of the litigation. Again, this manner of proceeding involves a "plaintiff/defendant" model: one party has to initiate action. And, yet again, the written pleadings are normally consecutive (again stressing quality of "adversariness"). It is difficult to control time-limits and procedural issues generally, and this manner of proceeding will once again result in a formal Court judgment (decision) binding on the parties under Article 59 of the Statute and Article 94 of the Charter.

3. By "special agreement" [compromis]

This is a bilateral treaty requesting the Court to answer particular questions: a specific agreement addressing questions to the Court under Article 36(1) of the Statute. The likelihood of this course is greater than A or B above, but still presents difficulties.

By its very nature, a special agreement or compromis requires the parties to formulate the questions in advance. It thus requires an anticipatory resolution of issues, something that might be difficult in the Kurils situation. It may be too much to swallow at this stage.

The procedural advantage in using a special agreement or compromis to obtain the jurisdiction of the Court under Article 36(1) of the Statute is that it gives, unequivocally, the overall appearance of solid progress toward a solution.

In addition, it can be viewed as a way of obtaining "instant relief" for both Governments. Once the language of the special agreement or compromis has been worked out in the overall context of a settlement of the Kurils dispute, the matter may be referred to the Court in a friendly manner and ceases to be within the responsibility of the parties.

Although quite naturally there is attention to be paid to the litigation of the case in the Court, the political burden is to a considerable extent removed at the outset, and the buck passed to the Court. A fine example of this is the proceedings in the Gulf of Maine case between the United States and Canada in 1985.

Other advantages are that the parties can formulate the issues put to the Court, and retain much greater control over the litigation than in the instances described in A and B above. The scope of the litigation can be limited.

In addition, the proceedings do not present a "plaintiff/defendant" model. Simultaneous written pleadings minimize the appearance of "adversariness." The parties can acquire and retain substantial control over the procedure; time-limits; number of pleadings; witnesses, etc.

Moreover, the parties can readily request the Court to apply equity and resolve the matter on practical grounds: proceeding *ex aequo et bono* under Article 38(2) of the Statute - a proceeding similar to conciliation (2 below), but with binding legal effect.

The result of a decision rendered in a case brought this way has the same weight as one received under A or B above. Thus it will possess the dignity of a Court judgment, for domestic political purposes in either Japan or Russia. However, a related disadvantage, perhaps, is that this judgment will be a decision binding on the parties under Article 59 of the Statute and Article 94 of the Charter.

Finally, any proceeding under A, B, or C above is public. The written proceedings will inevitably become open to the public after the commencement of the oral hearings. The decision is, of course, again public.

Forum Options

Within the context of reference to the International Court of Justice, by any of the methods envisaged in A, B, or C of section 1 above, there is (if the parties agree) the possibility of seeking an adjudication by a chamber of the Court rather than by the full Court. In only one instance (the ELSI case in 1988, between the United States and Italy) has there been reference to a Chamber of the Court of a case brought under B [compromissory clause in a treaty] and in no instance has this occurred under (a) [optional clause].

1. Reference to the full Court

Advantages of this include the fact that it is not necessary to seek further agreement on the identity of the judges composing the Chamber. In addition, the parties, can rely on a larger group for the decision: in some ways the matter is made easier. Going before the full Court is the norm under optional or compromissory clause jurisdiction (see 1 and 2 above).

On the other hand, even though such considerations may be wholly conjectural, the parties may feel more comfortable with a smaller panel of judges than that of the full Court of fifteen members. They might thus prefer the ability to "select" their own bench by opting for a chamber of the Court, as discussed immediately below.

In general it is more cumbersome to frame and develop arguments in litigation before the full Court than it is before a chamber.

2. Reference to a Chamber of the Court

The principal advantage here is that this is a modern trend. It is becoming increasingly the norm for cases brought by special agreement (see 3 above). In addition, it helps further to dispel implications of adversariness.

It must be said that in all likelihood the outcome will be more predictable, since in using chambers the identity of judges can be determined by the parties. In general, moreover, chambers present a more flexible and effective forum for the conduct of litigation, and in particular oral argument, than does the full Court. Chambers can give the appearance of almost being an arbitral forum.

The disadvantages are, principally, that it may sometimes be very difficult to select or agree on the identity of the judges comprising the chamber. In addition, a chamber may tend to take longer to render its judgment than the full Court, in spite of its smaller size, since chamber work tends to be displaced by the work of the full Court and thus the time of the judges is preempted by cases assigned to the full Court.

For political reasons, a chamber must in effect include the President of Court as a member of the Chamber (at this time: Sir Robert Jennings of the United Kingdom, an expert on international territorial questions). It will also be difficult to avoid selecting Vice President Oda and Judge Tarassov, as they are national judges of the parties. One is therefore left with only two judges to choose to make up a five-judge chamber. There is of course nothing that would prevent the selection of a seven-judge chamber, although this has never happened.

3. Reference To Other Bodies

A. Non-International Court of Justice Arbitration Tribunal

There are almost unlimited jurisdictional options presented here. The tribunal can be structured by the will of the parties, and the issues presented can be framed and controlled.

Most important: the proceedings can be secret. This extends to the written pleadings, the oral arguments, and even the award. In certain circumstances (as in the BP/Libya Nationalization Dispute, or the Dubai/Sharjah Arbitration) this has proved to be useful. In certain instances secrecy is a sine qua non of the attractiveness of the arbitration to the parties.

In addition to the possibility that the decision can be secret, it is also true that the arbitral award will not be a binding judgment of the International Court, with all its severe implications. This may be bad - if the parties desire an authoritative pronouncement that is binding within the U.N. context. It may however also be good, if there is the desire to have flexibility for subsequent movement and negotiation that a binding ICJ judgment might not present (and, as was the case in Tunisia in 1986, that might not be permitted by internal political forces).

There is no question but that an arbitration will substantially eliminate "plaintiff/defendant" atmosphere. It will permit a much greater control over the procedures by the parties than would a proceeding under the statute of the International Court,

The parties can also build in some form of appeals procedure to or appellate jurisdiction in International Court (a form of safety net).

An arbitration can utilize sitting or former judges of the ICJ as arbitrators. Examples are: UK/France Channel Arbitration, 1976; Guinea/Guinea-Bissau, 1984; Guinea-Bissau/Senegal, 1989; France/New Zealand (Rainbow Warrior), 1990; and Canada/France (St. Pierre - Miquelon), 1992.

A principal disadvantage of arbitration is that it does not possess the effect of a judicial decision by the International Court, for domestic political purposes. It is not within the United Nations system, the Court being "the principal judicial organ of the United Nations" under Article 92 of the Charter. An arbitral award is therefore not enforceable under Article 94 of the Charter, and very simply does not carry the same weight as a Court decision.

Arbitrations are also considerably more expensive than Court proceedings. The expenses of preparing briefs and retaining Counsel are substantially equivalent, but the expenses of the tribunal itself, and its registrar, must be borne by the parties. The costs and expenses of the International Court, including the hearings in the Peace Palace, are all paid for: they are part of the price of UN dues.

In addition, the parties must be certain of the abilities of the arbitrators. The questions put

to the panel must be framed with great care. The parties must keep in mind that as to matters of procedure it is nowhere near the same as proceeding under the Court's Statute and Rules, where there exist substantial precedents and traditions in interpretation and application.

B. Reference to a Non-ICJ Conciliation Commission

Again, jurisdictional options in this kind of dispute-resolution mechanism and the forms that it can take are practically limitless. A conciliation body can be completely structured by the will of the parties, and the issues presented to it can be framed consensually and with nearly unlimited flexibility.

A conciliation panel does not reflect the notional rigidity that the International Court proceeding (and to some extent a proceeding before an arbitration tribunal) would have. The most apposite example is the 1980 recommendations made by the Jan Mayen Conciliation Commission (Iceland/Norway), that resulted in a harmonious disposition of the dispute.

Obviously, the proceedings before (and the recommendations of) a conciliation commission panel can be completely confidential. The parties retain a broad discretion and ability to frame the issues, and the recommendations can be built in to a larger process of reaching a mutually satisfactory settlement.

This kind of body can constitute a major element in avoiding embarrassment on either side; to some extent it resembles *ex aequo et bono* resolution by the Court, discussed above.

Disadvantages of the conciliation commission approach is that such a body is not a proper judicial forum capable of rendering a proper judicial determination of the legal issues. In many cases - and that of the Kurils would to some extent seem to be such a case - it might be important to receive such a determination. However, by the same token it might equally well be argued that a flexible, informal, and conciliatory approach might also be of great usefulness in a case such as the Kurils.

Perhaps the answer lies between the two extremes. Possibly the issues presented in the Kurils case can be viewed as falling into two general areas: one where a specific, authoritative, legal determination is essential, and the other where a more flexible, informal, and dynamic approach would be useful.

A final observation concerning the utility of a conciliation commission approach is, of course, that it may not result in a final settlement of the dispute if its recommendations are rejected or ignored by one side or the other for political reasons. This is less likely to happen in the case of a formal Court judgment, or even a formal arbitral award.

C. Reference to a Non-ICJ "Committee of Wise Men"

Finally, a word must be added concerning a possibility that is even short of a conciliation commission: reference to a special committee of "wise men" for a non-binding, non-judicial, recommendation or opinion that does not even possess the semi-formality of the

recommendations of a conciliation panel.

There is obviously infinite flexibility here in framing the issues and the procedures, for this is more a political remedy than a judicial one.

This in fact is its disadvantage, as it does not even appear in the slightest degree to be a judicial or quasi-judicial remedy, thus possibly postponing actually dealing with the issues relating the Kurils and in effect constituting yet another manner in which indirect negotiation can occur.

Nonetheless, reference to an informal panel of trusted advisers, on a wholly confidential basis, could serve to bring reality to domestic political factions in both Japan and Russia. This method has been used traditionally in Japan, it is believed, for rendering opinions on complex issues of interpretation. By arriving at an objective evaluation of the legal position, before honor and interest is committed to a judicial process, such a panel may serve a useful catalytic function.

Complete confidentiality can of course be achieved, and the work of a panel of experts could very much be built into a dynamic scenario for overall resolution of the dispute.

Again, the primary disadvantage of such a scenario is that no final judicial determination can be reached. There is no enforceability: indeed there is nothing really to "enforce." Thus recourse to this technique might possibly result in a continuation of the problem, if one party decides not to accept or agree with findings or recommendations.

Conclusions

1. Reference to the International Court of Justice by a special agreement or compromis is the preferred way by which the legal issues in the Kurils case could be resolved. This means that Japan and Russia should negotiate and conclude a special agreement referring certain questions to the Court. Consideration could be given to a Chamber of the Court, but in all likelihood the number of judges used would be seven.
2. The preparation and filing of an optional clause or the use of a compromissory clause is not recommended since the parties lose control over the issues and a distinct plaintiff/defendant relationship is created that would not be consonant with the other elements under discussion leading to a negotiated and agreed solution.
3. Almost as attractive as reference to the Court by special agreement as stated in the first section above would be the conclusion of an arbitration agreement for arbitration of the legal issues outside the Court. Advantages include flexibility and privacy. Disadvantages include being outside the United Nations system, and greater expense.
4. It may be desirable to separate some legal issues to be dealt with as stated above; yet at the same time retaining other issues for presentation to a conciliation commission or panel of

experts for a less rigid and non-judicial solution.

5. If the Kurils question cannot be satisfactorily resolved by negotiation between the parties, perhaps recourse to third-party decision-making can be of assistance, with the Court or an arbitration tribunal handling the legal issues and a conciliation commission or advisory panel assisting in determining the issues that are not strictly legal.
6. There would be nothing to prevent agreement in principle between the parties that would involve one or more of these steps in sequence. In fact they could become part of a larger package by which compromise is advanced and a positive solution is sought by both sides.
7. On balance, reference to the International Court of Justice on an agreed basis is considered to be the most effective and institutionally correct cause for a matter of such immense international importance. The Court, rather than a separate panel of arbitrators or mediators, will be able to stamp the settlement of the dispute with its impartiality or thoroughness. Finally, it would be particularly apt that the Court, which is "the principal judicial organ of the United Nations" (Charter, Article 92), is called upon by these two former combatants from World War II to resolve a question that they have themselves been able to resolve and that is as old as the United Nations organization itself.

APPENDIX F [PAPER 5]

LEGAL ASPECTS OF THE RESOLUTION OF THE TERRITORIAL DISPUTE BETWEEN JAPAN AND RUSSIA

Sergei Punzhin

There is no doubt that the resolution of the Kurils dispute between Japan and Russia should be based on law. It is most likely, however, that we will not be able to achieve complete legality here and there is no acute need to do so. There are three main scenarios from the point of view of balance between politics and law: 1. legal; 2. political; 3. political-legal.

Scenario 1: Legal

This scenario is based on the idea that the resolution is reached on the basis of evaluating legal arguments of the sides, that justify their claims to Iturup, Kunashir, Shikotan and Habomai, and of defining their accordance with international law. After the legal right to sovereignty is identified, both sides automatically adjust the situation according to the norms of international law.

This scenario seems to be too idealistic, and it is unlikely to be implemented in reality. The territorial problem is much larger than a simple legal dispute. This is why its resolution requires a consideration of many factors, among which the international-legal factor might be decisive but is not the only one. Ignoring other factors, such as public opinion and internal law can lead to the failure of any resolution made on the basis of international law.

Scenario 2: Political

According to this scenario, the decision is made only through political means, according to political necessity. In this case international-legal arguments are not considered and are not identified as conditions for a resolution. This option makes it possible to achieve a result, but the resolution will not be stable. The absence of a solid legal basis, to which one can always refer if any disagreements arise in the future, leaves an element of uncertainty in the situation and may lead to arbitrary rule. Even if there is an official agreement on a resolution, but the principles of this agreement are not based on international law (i.e. the border is drawn arbitrarily), there will probably be attempts to reconsider the agreement if it ceases to satisfy one of the parties.

Thus, scenario 2 does not seem to be effective enough.

Scenario 3: Political-Legal

Scenario 3 synthesizes the strong points of the two previous scenarios and does not have their weak points. In this scenario the legal element is the basis for the process of establishing the legality of Russia' and Japan's claims on sovereignty over Iturup, Kunashir, Shikotan and Habomai. After the dispute is legally resolved and sovereignty over the islands and the border are established, it is time to include the political element. The order of implementing the agreement, reached by legal means, is defined politically and may include different options which take into account national psychology of the two peoples, the emotional mood of the population, the internal political situation, and other non-legal factors. A solid legal basis and flexible political means of implementation may ensure an effective and stable resolution of the territorial problem.

Precedents of Resolutions of Territorial Problems

Usually territorial problems are unique, they differ from one another by the circumstances and the arguments of the sides. They only have their main substance in common - a connection to a certain territory - and often the means of resolution, such as negotiations, arbitration, court procedures, etc. Specific models for the resolution of territorial problems are quite diverse, they take into account the members of the parties, the conditions behind the problem's emergence, the demands of the parties, and the level of an achievable compromise. We can offer a few examples. A comprehensive study of these and other precedents is offered in the report by the University of Durham: "The Kuril Islands: Resolution of Analogous Disputes," 1992.

The Aaland Islands

Before 1809, the Aaland islands, which are part of Finland, were part of Sweden, like the whole country of Finland was. After the Russo-Swedish war, according to the Firdrikhgam peace treaty, Sweden gave up Finland, including the Aaland Islands, to Russia. After Finland became independent in 1917, the Aaland islands became one of the regions of Finland. The population of the Aaland Islands expressed their desire to join Sweden many times. The issue of the Aaland Islands was considered in the League of Nations with regard to sovereignty over them, their demilitarization and neutrality. The final result of the settlement was the recognition of the Aaland Islands as part of Finland with certain rights of autonomy and as subject to demilitarization.

The Dispute Between England and France Over the Islands of Minquiers and Ecrehos

France based her arguments on historical facts and treaties with England that dated back to the Middle Ages. England argued that she was the long-term and effective owner and governor of the islands. The case was taken to International Court. In its 1953 resolution, the Court recognized England's arguments as more justified and attributed sovereignty over the islands to England.

The Islands of Ryukyu (Okinawa)

According to the 1951 peace treaty, Japan agreed that the US would have the rights to government and legislation over these islands. Declarations of American politicians and resolutions of American Courts noted the de facto US sovereignty over them, although these islands were considered as foreign territory, and Japan's "residual sovereignty" was recognized. Reestablishment of full Japanese sovereignty over these islands was the subject of the bilateral agreements in 1968, 1969, and 1970.

The Panama Canal

According to the 1903 agreement, Panama gave the US the rights to "ever-lasting use, occupation and control of a 10-mile piece of land" for the building of the Panama canal. Panama still held sovereignty over this part of the canal, and the US had the right to exercise certain rights, stated in the 1903 treaty. The 1977 treaty on the Panama canal confirmed Panama's sovereignty over the canal. However, the US has the right to manage, exploit and service the canal until the year 2000.

Spitsbergen

Before 1920, Spitsbergen was not a part of any state. In 1910 and 1912, Russia, Norway, and Sweden agreed that Spitsbergen could not become part of any country, and that no country could have sovereignty over it. In 1925, according to the 1920 Paris treaty, the parties officially declared Spitsbergen to be part of Norway. The Soviet Union joined the Paris treaty in 1935. According to the Paris treaty, its signatories have the right to certain economic activities on the island, although Norway enjoys sovereignty over it.

It is unlikely that any of the existing precedents for the resolution of territorial problems can be a model for the resolution of the Japanese-Russian dispute. This is determined by the conditions and reasons for the emergence of the dispute (the contradictory acts of the post-War settlement), as well as by the positions of the parties (extreme irreconcilability, the strong influence of public opinion in both countries). As a result of the internal attitude to the territorial dispute, Japan and Russia cannot be satisfied by interim arrangements with regard to the sovereignty and ownership of Iturup, Kunashir, Shikotan and Habomai. This is above all true for Russia, where any partial recognition of Japanese rights will irritate public opinion and complicate a possible compromise. A well-principled decision should be single and final. If Japanese sovereignty over the Kurils is accepted, Russia should certainly have special rights to them, although this will not lessen the sharp negative reaction to such a resolution within the country.

As for a precedent with regard to the Kurils dispute, we can only talk about methods of resolution. In this case the most acceptable precedent would be a settlement in the International Court, since it has authority and a great deal of experience in resolving similar disputes and passing obligatory resolutions.

Internal Law in Russia and the Resolution of the Territorial Issue

According to the Declaration of State Sovereignty, the territory of Russia cannot be altered without an expression of the people's will by means of a referendum.

Currently, this rule can be canceled or changed only in a new Constitution. The draft of it, however, also indicates that a territorial concession can be made only after the people's will has been expressed in a referendum. A more precise definition of the border, however, takes place according to the rules established for ratifying international agreements.

Thus, it is clear that Russian internal law can exert serious influence on the forms and process of the resolution of the territorial dispute between Japan and Russia.

Depending on the legal norms which regulate the alteration of Russian territory, we can identify the following scenarios for the resolution of the territorial dispute from the point of view of appropriate Russian legislation.

1. The existing rule of the Declaration of Sovereignty remains the same.

In this case the situation almost reaches an impasse. A referendum is highly unlikely to say "yes" to any territorial changes in the visible future. This may lead to a loss of the existing Russian territory.

2. The rule, which exists in the draft Constitution, is adopted.

The consequences of this are almost identical to the first scenario, since it will be impossible to present any options for resolving the territorial dispute by transferring the islands through the more precise definition of borders, since the islands themselves are quite large.

3. The rule which states that territory can be altered only through a referendum is left out.

This scenario would eliminate extra obstacles for resolving the issue through a compromise.

The third scenario appears to be unrealistic, since no legislative organ can change the law on the referendum in the near future.

So a referendum is one of the conditions of the resolution of the dispute, if the resolution involves a territorial concession.

Thus, if we define the dispute in terms of the need for a transfer of the islands from Russia to Japan, we will find ourselves in an impasse, since there will have to be a referendum.

The way to avoid it is to reformulate the essence of the dispute in terms which would make it possible to resolve the problem in an acceptable way, from the point of view of Russia's internal law, without a referendum and without changing the principle positions of the states.

The following scenario is possible in this case.

The Kurils issue is not an issue of giving up Russian territory, since Russia does not have valid legal rights to these islands, and thus, there is no internationally recognized border between Japan and Russia in this area.

So we should talk not about a territorial concession and a transfer of the islands, but about the establishment of borders between Japan and Russia that should be confirmed in a treaty. A treaty, which establishes borders, does not need to be approved in a referendum.

Since such an interpretation of the problem is acceptable to Russia and does not require a fundamental change in the Japanese position, it is also a reasonable compromise.

This scenario, being absolutely correct legally, can run into serious difficulties in its practical implementation. Russia's territorial treaty will have to be ratified in any case. We can be quite sure that in the next 5 to 10 years of economic stabilization, and at a time of extreme national sensitivity, no parliamentary structure will ratify a treaty which in any way implies a change in Russia's current territory, even if it does it in a veiled and absolutely legal form. This could be true even for Shikotan and Habomai, although to a smaller degree, since there already exists an obligation ratified by the Supreme Soviet, according to which the transfer of Shikotan and Habomai would not be a territorial concession legally.

Thus, scenarios which include the establishment of the border through an agreement reached at direct negotiations between Japan and Russia, with Japan gaining territories, cannot be realized either because of the position of Russia's population (in a referendum) or the parliament (since it has to ratify territorial agreements).

Resolution of the Japanese-Russian Territorial Dispute Through the International Court

One of the scenarios includes the transfer of the Kurils issue to the International Court.

The essence of the territorial dispute between Japan and Russia is that two states claim the same territory (Russia owns Iturup, Kunashir, Shikotan and Habomai, and Japan thinks that these islands should belong to her). Thus, it is necessary to define clearly who has the ownership rights, i.e. the legal title.

In international legal terms such a situation is traditionally called a territorial dispute. Usually the substance of these disputes has a legal character. The dispute between Japan and Russia on the Kurils issue is not an exception.

One of the means of resolving territorial disputes is to transfer them to the International Court and arbitration organs. According to Article 36, page 3 of the UN Charter, in peaceful resolution of disputes, "the Security Council takes into account that legal disputes should generally be transferred to the International Court according to the regulations of the Court Statute."

The transfer of the case to the International Court must be achieved through a special agreement between Japan and Russia, in which all the necessary conditions of the transfer would be agreed upon (a specifically defined issue in dispute, the demands of the parties, and the applicable law), since a one-sided appeal is not possible: Russia will not recognize the obligatory jurisdiction of the Court on all legal issues without a special agreement; Japan's declaration of September 15, 1958, on the recognition of the Court jurisdiction, is valid only with regard to states which have

made similar announcements. In defining whether it is possible to transfer the Japanese-Russian territorial dispute to the International Court, it is necessary to take into account that, as we mentioned above, the Declaration on Russia's State Sovereignty says that it is impossible to alter Russia's territory without the will of the people expressed in a referendum. The same rule exists in the draft Constitution of the Russian Federation.

An appeal to the International Court offers certain options of getting out of an impasse. The agreement of the sides to transfer the case to the International Court (no matter what its decision may be) will make it possible to resolve the dispute with both sides saving face.

A decision of the International Court is respected internationally and is obligatory for both sides. There is no way the states can ignore it, even if public opinion is against it. A decision of the International Court should be implemented notwithstanding internal law, political interests and national emotions. So in this case we do not have to deal with the problem of a referendum in Russia and with the negative attitude of the Parliament towards any compromises with Japan. Japan will also be obliged to accept any ruling of the Court, even if it is a compromise and if it does not satisfy its initially firm position.

A decision of the International Court is final and puts an end to the problem by establishing the sovereignty of one state over appropriate territories or by defining the border.

As to the substance of the possible ruling of the Court, both sides have a chance to win. Russia's arguments can be based on the Yalta agreement, which implied the transfer of Iturup, Kunashir, Shikotan and Habomai to the USSR (currently, to its successor-state - Russia). Japan is most likely to use historical arguments, which prove that the islands have always been Japanese territory and that until 1945 they have never belonged to anyone else. A serious obstacle for Japan in this dispute, however, is the San Francisco Peace Treaty. Attempts to present Iturup and Kunashir as non-Kuril islands will probably be unsuccessful. This is more likely with regard to Shikotan and Habomai.

Since the problem is very uncertain legally and there is a balance between the arguments of the sides, the Court will probably try to achieve a maximally possible compromise. And since in 1956 the USSR agreed to transfer Shikotan and Habomai to Japan, I think that the most likely resolution will be the following: 1. Russia's sovereignty over Iturup and Kunashir is recognized. 2. Japan's sovereignty over Shikotan and Habomai is recognized.

The Internationalization of the Problem

The internationalization of the resolution of the territorial dispute between Japan and Russia is possible according to two scenarios:

1. Involving third states
2. Involving an international organization

The first scenario may include either a) traditional forms of favors and mediation or b) participation of the signatories to the San Francisco Treaty in the resolution of the problem, since this Treaty left sovereignty over the Kurils undefined.

The second scenario provides for the participation of the UN in some form, since no other international organization has the same authority and powers for settling such a dispute.

Scenario 1(a) is unlikely in the case of the territorial dispute between Japan and Russia

because of its low efficacy.

The positions of the parties are so different, being diametrically opposite, that the usual diplomatic initiatives and mediation will not lead to a desirable result. Moreover, both sides are so sensitive about the problem, that involvement by a third state is not possible. Diplomatic initiatives such as organizing negotiations are not necessary since the parties do not refuse to negotiate. As to mediation in the form of active participation in the dispute, neither Russia, nor Japan will agree to entrust a mediator-state with resolving such an important issue.

Scenario 1(b) in fact provides for organizing a conference identical to the 1951 San Francisco conference in terms of participation, in order to define the composition of the Kurils and sovereignty over them. This scenario is not beneficial for either Japan or Russia, since it is difficult to predict the results of it. Russia does not have a 100% guarantee that her sovereignty over all the Kuril islands, including the Southern Kurils, as well as over Southern Sakhalin, will be confirmed. Thus, it can raise doubts about territories over which there is no current dispute (Southern Sakhalin, Central and Northern Kurils). Similarly, Japan cannot be sure that Iturup, Kunashir, Shikotan and Habomai will not be included in the Kurils, which would threaten the main Japanese argument in the dispute: the Northern Territories are not part of the Kurils, although Japan rejected this in 1951.

Organizing an international conference on the territorial dispute between Japan and Russia does not seem very likely, since such a forum (and the countries will probably understand this) will lead to an aggravation of the situation rather than to its resolution, or it will be simply fruitless.

Scenario 2 provides for the participation of the UN in the resolution. This participation can occur in three forms: (a) through the Security Council, (b) through a surveillance system, and (c) in forms unidentified in the Charter, but according to the implied UN authority.

Scenario 2(a). According to Chapter 6 of the UN Charter, the Security Council enjoys a number of powers in peaceful dispute resolution. But they mostly concern conflicts, the aggravation of which would endanger international peace and security. Article 34 of the UN Charter says that the Security Council is authorized to investigate any dispute or any situation which might lead to international conflicts or cause a conflict, in order to define whether the development of this conflict or situation would threaten international peace and security. All this, however, is not applicable to the Japanese-Russian dispute, which has been going on for 40 years and which cannot be perceived as a danger to international peace and security, although it certainly is a destabilizing factor in international relations. But in any case, especially now, use of force is unlikely to occur in the resolution of this dispute.

Thus, the only applicable article of Chapter 6 is Article 38, according to which the Security Council has the right to make recommendations on the resolution of any dispute, if all the parties in one dispute are interested in these recommendations. It is unlikely, however, that Japan and Russia would agree to this option simply because Russia is a permanent member of the Security Council and Japan is not, and any decision of the Security Council can be blocked by Russia.

Even if we imagine that Russia does not participate in the vote on this issue, because it is one of the parties involved, the Security Council is still not the suitable body to resolve the problem. Since the Security Council is mostly oriented towards political qualification and the preservation of peace and security, it is not the right organization for resolving territorial disputes where many legal issues are in question. Besides, according to Article 38, the Security Council makes recommendations aimed at the peaceful resolution of disputes. In our case this recommendation, according to page 3, Article 36, will most likely be to transfer the dispute to the International Court, since it is primarily a legal dispute, and it needs legal qualification.

Scenario 2(b). The implementation of an international surveillance system according to the

UN Charter. This scenario seems unrealistic, since in the case of the Japanese-Russian dispute there is no sufficient legal basis in the UN Charter. According to the UN Charter, the surveillance system is applicable to territories and peoples who do not have a statehood of their own. Moreover, according to page 1b, Article 77, territories which were estranged from enemy nations as a result of WWII could be included in the surveillance system. Thus, this scenario was legally possible after WWII, before the inclusion of the disputed islands into the USSR. Currently Iturup, Kunashir, Shikotan and Habomai do not fall under any of the categories identified in Article 77 of the Charter, thus the UN surveillance system is not legally applicable in this case.

Scenario 2(c). Use of forms unidentified in the UN charter, according to the implied UN powers. One of these forms could be a UN government of the Kurils. In order for this to happen, Russia needs to agree to it, which is practically excluded. It is unlikely that Russia will find it acceptable and useful to transfer territories perceived as Russian to an international UN government. It will be impossible to justify such a decision inside the country. Moreover, it is unlikely that Japan will agree to this option, if it does not imply the future transfer of the disputed islands to Japan. And since Russia is a permanent member of the Security Council and has veto rights, this could be rather difficult.

The Territorial Dispute and Sovereignty

The essence of any territorial dispute is the question of who has sovereignty over the disputed territories. The need to find a way out of complicated situations, which are always typical in such disputes, frequently generates different versions of sovereignty: residual sovereignty, partial sovereignty, potential sovereignty, etc. All these versions are incorrect from a legal point of view and their appearance can be explained by opportunistic political considerations. In any case, they do not make the resolution more likely and only bring certain moral satisfaction.

In Japanese-Russian relations the situation on the issue of sovereignty is the following: Russia enjoys sovereignty over the islands of Kunashir, Iturup, Shikotan and Habomai, and thus Japan does not enjoy such sovereignty. This comes from the principle of indivisibility of sovereignty, since sovereignty is actual and not potential. Sovereignty can only be full, it can not be partial for the same reasons mentioned above.

The situation will only be complicated if we imagine that Japanese sovereignty over Iturup, Kunashir, Shikotan and Habomai is recognized, while Russia maintains ownership rights independent of the time-frame of the actual transfer. Without a substantial resolution of the issue, such a development makes the status of the disputed islands even less certain. Recognized sovereignty of one state over a territory actually owned by another state is an unnatural phenomenon. This situation cannot last for long and should result in the transfer of the islands. A time gap between the recognition of sovereignty and the actual transfer of the islands can only aggravate the situation in Russia and make the transfer of the islands absolutely impossible.

Recognition of residual, partial or potential Japanese sovereignty over the islands will lead to almost the same consequences, with more serious complications and lower chances for Japan, since it will have the same effect on the internal situation in Russia, but it will not give Japan any real rights. In this case Russia will still enjoy actual and full sovereignty as well as ownership of the islands.

Legal Consequences of the Resolution of the Territorial Dispute for Other Territories

Any resolution of the territorial dispute between Japan and Russia, which implies the transfer of all or some of the disputed islands to Japan and the recognition of Japanese sovereignty over them, can provoke certain serious consequences with regard to Russian territories in the Far East as well as in the West of Russia, and cause a chain reaction.

1. The Far East

Recognition of Japan's rights to Iturup and/or Kunashir (Shikotan and Habomai can be transferred to Japan according to the 1956 Declaration without causing doubts on sovereignty over the other islands) can bring up the question of the status of the Northern and Central Kurils, since from a legal point of view their status is no different than the status of the Southern Kurils. This will not depend on how the resolution has been achieved - whether it was through negotiations, the International Court, or some other procedure.

In principle, this is unlikely to affect the issue of Southern Sakhalin. Southern Sakhalin is one of the territories which were forcefully seized by Japan, and it is a separate issue in the 1945 Yalta Agreement.

This development of events is unfavorable first of all for Russia, and consequently for Japan, since it may complicate the process of reaching a compromise. The following scenarios could make it possible to avoid negative consequences of a resolution, which implies the transfer of the islands to Japan.

A. Japan's guarantees

Japan confirms that the Kurils belong to Russia. This confirmation, however, can only be a political declaration, reflecting the Japanese position. Japan cannot offer legal guarantees which would be accepted by the world community because of the San Francisco treaty.

B. International guarantees, provided by the signatories to the San Francisco treaty.

Such guarantees would be legally sufficient for finalizing Russia's rights to the Kurils. International guarantees finalizing the resolution of the territorial dispute between Japan and Russia, confirming the legality of Russia's sovereignty over the Central and Northern Kurils, can be provided by the signatories to the San Francisco treaty, first of all by the US. Japan should make sure these guarantees are provided, since Russia was not a signatory to the San Francisco treaty.

Such international guarantees should be Russia's indispensable condition in the resolution of the territorial dispute with Japan.

2. Russia's Western borders.

Russia may have territorial conflicts in this area only with the former Soviet republics, since the border system in Europe is established in international-legal and international acts and is quite

stable. Conflicts with the former Soviet states may occur because these states used to have internal federal borders, which need to be confirmed on an international-legal basis.

Thus, the resolution of the territorial issue between Japan and Russia can influence the situation in the West of Russia only indirectly. This resolution can be used to serve political interests, but it cannot be used as a legal argument.

Translated by the Strengthening Democratic Institutions Project

APPENDIX I

APPENDIX I

THE KURIL ISLANDS: RESOLUTION OF ANALOGOUS DISPUTES

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Preface

The International Boundaries Research Unit has appreciated the opportunity to collaborate with the Strengthening Democratic Institutions Project of the John F. Kennedy School of Government, Harvard University. We hope that in some small way the materials submitted in this report will contribute towards peaceful resolution of the Kuril Islands dispute. A basic aim of IBRU when founded in January 1989 was to seek to enhance the means available for international boundary and territorial conflict resolution. To this end a world database on international land and maritime boundaries is being assembled in Durham, from which some of the following information was derived.

Gerald Blake
Director
Durham, June 1992

Introduction

The International Boundaries Research Unit was formally commissioned in mid-May 1992 to prepare a report on the resolution of disputes analogous to that of the Kuril Islands. The main report was submitted in June 1992 and revised in October 1992. The essential characteristics of the Kuril Islands dispute were defined for us by the client as follows:

...three islands and one group of islets rather than a single space; some economic value on the surrounding ocean shelf in the form of fish stocks and potential mineral reserves; currently the residue of wartime rearrangements; occupied by "A" and claimed by "B"; a heated debate surrounding a long history of competing claims; and high saliency in the domestic politics of both "A" and "B."

To this list can be added the geopolitical and strategic importance of the islands lying outside Russia's main maritime access routes to the Pacific Ocean. It proved surprisingly difficult to find cases of similar scale and displaying all these features, although there is no shortage of disputed islands, territorial disputes, and contested seabed sovereignty worldwide. Cases were finally selected which demonstrate the variety of problems and the range of solutions to those problems, either implemented or proposed. Preference was given to islands, but the set is supplemented by eight cases of disputed sovereignty over mainland territories. A wide range of geographical locations is represented, with a number of cases included from the Asia-Pacific realm, as suggested in our brief. Most space is devoted to those cases which appear to be of greatest relevance to the Kuril Islands, notably the Falkland Islands and Hong Kong. Where key documents could be easily identified these have been included in the Appendix to the report. As indicated in our recommendations for further investigation, several of the cases presented would probably reward closer scrutiny than time allowed. The collection of more documents might form part of such work.

The variety of political arrangements devised to ensure the peaceful resolution of problems of sovereignty is surprising. This is amply demonstrated by the cases included in the report, and must point to the possibility of a satisfactory outcome in the Kurils dispute. Not all these political arrangements will prove to be permanent; some were never designed to be permanent, while others will fail the test of time. The important point is that there are several alternatives to the conventional ways in which states allocate their territory and their resources. Absolute sovereignty over territory, or resources, or citizens is not the only possible model, and the political mosaic of the world in reality comprises a large number of non-state territories which tend to be overlooked because of the scale of most of our world maps. Neutral zones, demilitarized zones, buffer zones, protected areas, and shared territories are all to be found on land. To these might be added the growing number of free trade areas worldwide, and trans-boundary nature reserves which already number more than 70 (J. W. Thorsell, 1990).

We have not focussed strongly upon the problem of seabed sovereignty around the Kurils, which is clearly secondary to the question of ownership of the islands. Nevertheless, title to the

Kurils means sovereignty over very large areas of ocean extending to the full 200 nautical mile limit of the Exclusive Economic Zone in the North Pacific, and to substantial areas of the Sea of Okhotsk. There are already at least 13 cases worldwide where rival claims to offshore areas have been satisfactorily resolved, at least temporarily, by some form of shared zone. We recommend that serious consideration is given to such arrangements and their possible application to the Kurils. An extended joint fisheries regime, for example, without prejudice to the shape of future sovereignty, might prove to be a valuable confidence-building initiative between Japan and Russia. There are a number of different types of joint and shared zones, but most relevant to the Kuril case are those in which the parties put questions of boundaries and sovereignty to one side, and agree to exploit resources on some equal basis in the disputed area. The case of Jan Mayen Island (Iceland and Norway) is outlined in section two, but attention is drawn to the other cases listed in Table 1. There are all kinds of agreement represented in Table 1, and several other maritime shared zones are currently under discussion in 1992 each of which is tailored to the specific needs of the parties concerned. There is also growing interest in the transfer of the shared zone concept to land boundary disputes.

In addition to the agreements listed in Table 1, many maritime boundary agreements routinely include provision for consultation and collaboration should an oil or gas field be found to underlie the agreed boundary. The United Kingdom-Norway Continental Shelf Agreement of the 10th March 1965 is a good example, and the provision for joint exploitation of a single geological structure has been implemented in the Frigg field. Other agreements, in which the parties may be less inclined to collaborate, forbid drilling for oil or gas within a specified distance of the boundary to avoid accusations of unfair practices such as directional drilling, or over-exploitation. Thus the Iran-Saudi Arabia Continental Shelf Boundary Agreement (24 October 1968) prohibits any drilling within 500 meters on either side of the line.

Twenty-seven case studies are presented in section two of the report, including a selection of resolved and unresolved island disputes, and resolved and unresolved territorial disputes. section three provides a commentary on these cases designed to answer the specific questions raised by Fiona Hill (Research Associate, Strengthening Democratic Institutions Project, Harvard University) in a document dated April 27th 1992 ("Thoughts for the IBRU Report").

Reference

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Table 1. Joint Maritime Agreements

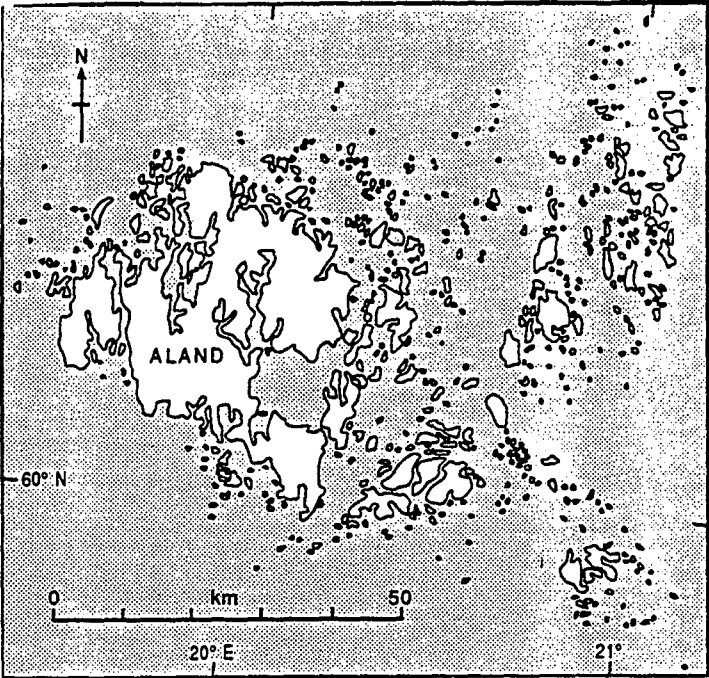
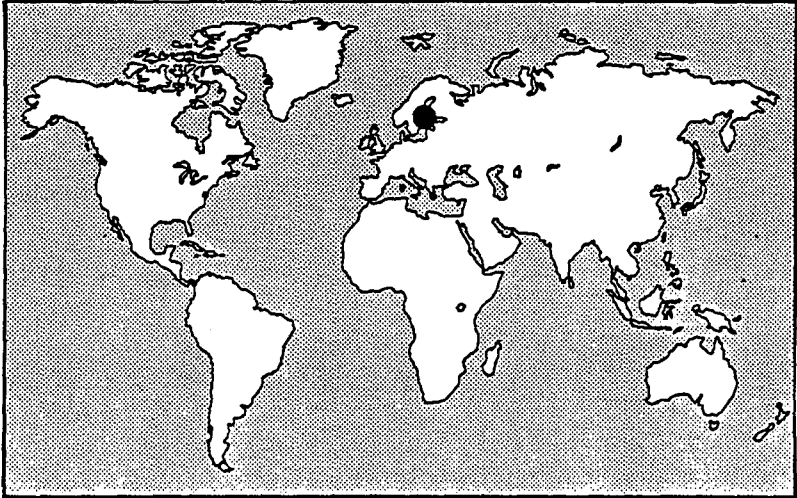
<i>The Signatories</i>	<i>Date</i>	<i>Summary of Provisions</i>
1. Bahrain-Saudi Arabia	22:01:1958	Continental shelf (C.S.) boundary agreed, but in the large Fasht Bu Saafa hexagon, formerly claimed by Bahrain but conceded to Saudi Arabia, oil revenues are equally shared.
2. Kuwait-Saudi Arabia	07:07:1965	When the Neutral Zone (on land) was partitioned, equal rights of joint exploitation were established offshore beyond six nautical miles.
3. Qatar-United Arab Emirates	20:3:1969	C. S. boundary agreed, but the divided El Bunduq oilfield to be exploited by Abu Dahabi (UAE) and revenues equally shared.
4. Australia-Indonesia	08:05:1971 09:10:1972	C. S. boundary agreed, with special provision for existing license holders to continue exploitation on a shared basis, and for equal sharing of resources in the area of the boundary.
5. Argentina-Uruguay	19:11:1973	Maritime boundary in the Rio de la Plata agreed; a Rio de la Plata Administrative Commission was established to jointly regulate fishing, promote scientific research etc.
6. France-Spain	29:01:1974	C.S. boundary agreed in the Bay of Biscay, but provision is made for collaboration in exploitation of structures intersected by the boundary.

- | | | |
|------------------------------------|--------------------------|---|
| 7. Japan-Korea | 05:02:1974 | The C.S. boundary was only partially agreed. Where no agreement could be reached, a Joint Development Zone was established for 50 years in which all resources are equally shared. |
| 8. Saudi Arabia-Sudan | 16:04:1974 | No boundary was agreed, but a Common Zone was established beyond the 1,000 meter isobath for the joint exploitation of metal-bearing sediments in the Red Sea deeps. |
| 9. Australia-Papua
New Guinea | 26:01:1973
18:12:1978 | A maritime boundary was delimited by two treaties, with a separate boundary in certain sectors for fisheries. A Protected Zone was established cutting across both lines to protect rights and movements of traditional fishermen. No drilling or mining is allowed in the Protected Zone for 10 years. |
| 10. Colombia-Dominican
Republic | 13:01:1978 | Maritime boundary agreed, but a rectangular zone 37 km (20 nautical miles) from the line was established for common fishing and research. |
| 11. Malaysia-Thailand | 30:05:1990 | No boundary is agreed, but a large Joint Development Area was established in the Gulf of Thailand for exploitation of non-living resources for a 50 year period. |
| 12. Australia-Indonesia | 09:02:1991 | No agreement could be reached by the parties in a region known as the Timor Gap (between the 1971-72 and 1973-78 treaty boundaries). Here, a Zone of Cooperation was established divided into three sectors in which different arrangements apply. |

References for Table 1: Joint Maritime Arrangements

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ALAND ISLANDS





Åland Islands

(Swedish ÅLAND SKARGÅRD: Finnish AHKENANMAA)

Geographical Setting

The Åland Islands are an archipelago lying at the entrance to the Gulf of Bothnia, 25 miles (40km) off the Swedish coast. There are some 35 inhabited islands and a further 6,500 uninhabited islands and rocky reefs. The archipelago has a total land area of 1,527 km² (590 sq. miles) made up predominantly of granite bedrock with clay soils. Nevertheless the islands have the highest crop yields in Finland per unit area because of a relatively mild climate in comparison with the rest of the country.

Politically the Åland islands form the Ahvenanmaan autonomous kunta or community, a part of Finland. They are populated by a Swedish-speaking people estimated in 1988 at 23,706. Swedish is the sole official language.

History of Claims

The islands have been subject to claims by Sweden, Russia and, since its independence in 1917, Finland. The archipelago was Christianized by Swedish missionaries in the 12th century and remained under the Swedish Crown until 1809. In that year the Grand Duchy of Finland, including the Åland islands, was ceded by Sweden to Russia. The islands remained under Russian sovereignty until 1917 when the newly independent state of Finland inherited the Russian claim.

Negotiating History

The Åland islands, together with the rest of the Grand Duchy of Finland, were ceded to Russia by Sweden by the Treaty of Frederikshamn (Hamina) in 1809. This transfer included a provision that the islands would not be fortified. Despite this commitment, Russia began the construction of fortifications on the islands at Bomersund in the 1830s. In 1854, during the Crimean War, Anglo-French troops destroyed these defenses and, under the 1856 Treaty of Paris concluding the war the islands were demilitarized and neutralized, but remained attached to Finland.

Finland declared its independence on November 15th, 1917. However, in the August prior to this announcement the Åland islanders informed the King of Sweden of their desire to be reunited with Sweden. Two plebiscites confirmed this. The King of Sweden subsequently supported the islanders' demand for self-determination, and in February 1920 Sweden sent a military expedition to secure the islands. A Finnish law granting autonomy to the archipelago within the Finnish state was rejected by the islanders. Later in 1920, the island's council and the British government called on the League of Nations to settle the issue.

Finland and Sweden presented their cases to the League of Nations Council in June 1920, with Finland maintaining that the League had no authority to intervene on the grounds that the issue was a wholly domestic Finnish one. The commission of jurists established by the Council to adjudicate on the matter did, however, conclude that the Council did have the authority to deal with the case as the Åland islands issue encompassed a situation of great concern to the international community and of great importance for the growth of international law.

The Council therefore proceeded to appoint a commission to visit and report on the area making specific recommendations. In April 1921 the commission reported that:

to detach the islands from Finland would be ... an alteration of its status, depriving this country of a part of that which belongs to it." Regarding the principle of self-determination, the commission stated that it was "not, properly speaking, a rule of international law but a general principle expressed in a vague formula," and that it would certainly not apply to "fractions of states" (like the Åland Islands) in the same way as it applied to "a people with a defined national life" (like the Finns). The commission also stated explicitly: "To concede to minorities, either of race or of religion, or to any fractions of a population, the right to withdraw from the community to which they belong, because it is their good will or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the state as a territorial and political unity.

The League therefore recommended that the islands remain part of Finland but granted them extensive autonomy, guarantees, demilitarization and neutrality. This was embodied in the London Convention of 20th October 1921 signed by Finland, Sweden, Britain, Denmark, France, Germany, Italy, Latvia, Estonia and Poland. This convention remains in force and, as a result of its provisions, the Ahvenanmaan autonomous kunta (or community) has a single-chamber parliament. Most administrative powers are vested in an Executive Council with ministers appointed by the provincial parliament. The people elect one representative to the Finnish parliament. There is a board which exercises certain administrative powers retained by the national government and is headed by a governor appointed by the Finnish president upon agreement with the speaker of the Ahvenanmaan provincial parliament.

At the end of World War II, the Legislative Assembly (Landsting) of the Åland islands unanimously demanded reunion with Sweden (12/09/1945). Sweden later officially denied that she had instigated the islanders' renewed request for reunion. In any case, the islanders' demand came to nought as the peace treaty between the Allies and Finland signed 10th February 1947 stated that the archipelago would remain a demilitarized part of Finland.

Subsequent relations between Finland and Sweden over the Åland islands have been amicable. The continental shelf boundary placing the Åland islands on the Finnish side was agreed by Sweden and Finland on 29th September 1972 and the maritime boundary between the two states was settled on 15th January 1975.

Evaluation

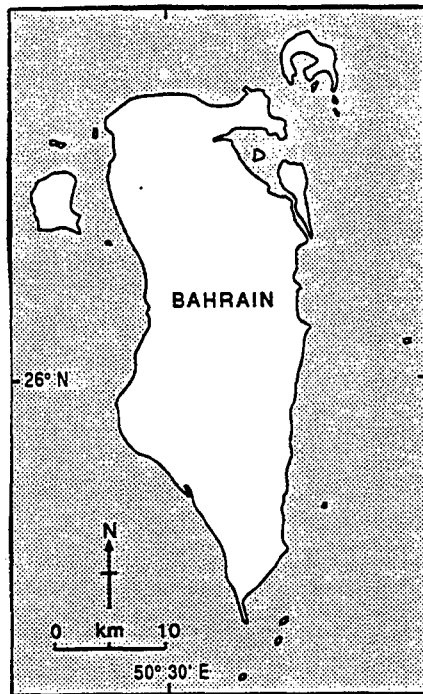
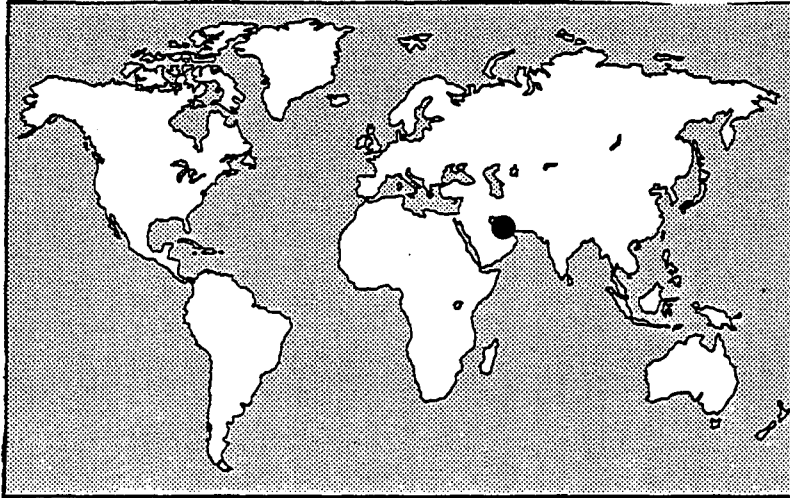
The case of the Åland islands exhibits significant similarities to the Kurils issue. The territory in question is a group of islands, the status of which has, at times, assumed a high profile in the domestic politics of the two main parties (Finland and Sweden). The archipelago also has a long history of competing claims in a manner analogous to the Kurils question. The Åland islands dispute was also solved in a manner that may offer insights as to how the Kurils issue might be resolved.

The use of a third party, the League of Nations, as recognized mediator/arbitrator was crucial to the resolution of the dispute. While not recommending any transfer of sovereignty, the League granted the islanders a unique form of autonomy and set of guarantees within Finland. This arrangement remains in force and was upheld after the end of the Second World War despite calls on the part of some islanders for reunification with Sweden. This sort of arrangement, offering formal sovereignty to one party but extensive autonomy to the territory's inhabitants could be a useful model in the Kuril islands case. It may also be important to note, in relation to the Kurils issue, the comments of the League of Nations commission on the Åland Islands regarding self-determination. The commission argued that the principle of self-determination should not apply to "fractions of states" such as the Åland or Kuril islands if this were to threaten the order and stability of the national state system.

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BAHRAIN



Bahrain

Geographical Setting

Bahrain is an archipelago of 33 islands and reefs centrally located in the Persian Gulf between Qatar and Saudi Arabia. Their total area is 662 km² (255 sq. miles). Bahrain Island is 565 km² (201 sq. miles). It is 48 km (30 miles) from north to south and 16 km (10 miles) from east to west. The population of 521,000 is therefore one of high density. The topology is largely low-lying and arid, although groundwater near Manama supports successful irrigated cultivation. A 25 km (15.5 mile) causeway links Bahrain and Saudi Arabia.

Iranian Claims

Persian claims to Bahrain persisted throughout the nineteenth century, based largely on distant historic ties and Persian affinity with the largely Shi'a Muslim Bahraini population. Even after Britain gained effective control over Bahrain by treaties in 1880 and 1892, the claims continued. After Riza Shah came to power in Persia in 1921 the claims became more frequent and overt. In 1969 the Shah announced that Iran would not use force and would listen to the wishes of the people of Bahrain as to their political future. In March and April 1970, a representative of the United Nations Secretary-General visited Bahrain to ascertain the feelings of the people and concluded that independence should be granted. Iran accordingly relinquished its claims to Bahrain and independence was recognized in May 1970. Following the Iranian Revolution of 1979, the Ayatollah Khomeini renewed Iranian claims to Bahrain but these have not been pursued.

The Role of the U.N. Special Representative

Following consultation with the parties concerned, the UN Secretary-General designated Mr Vittorio Winspeare Guicciardi to be his personal representative. Mr Guicciardi stated that:

In fulfilling the responsibilities conferred upon me by the Secretary-General...I shall endeavor to ascertain to all extent possible the wishes of the people of Bahrain on the question at issue. To this end I shall...meet and consult with the people of Bahrain: organisations, societies, institutions and groups, as well as individual citizens...

The UN Envoy completed his investigations in Bahrain in six days. In his report issued by the UN on May 2nd 1970 Mr Guicciardi declared:

My conclusions have convinced me that the overwhelming majority of the people of Bahrain wish to gain recognition of their identity in a fully independent and sovereign state, free to decide for itself its relations with other states.

The UN Security Council endorsed the findings, and the UN endorsement of Bahrain's independence was Ratified by the Iranian *Majlis* (Lower House) on May 14th 1970. Bahrain became independent on 14th August 1971.

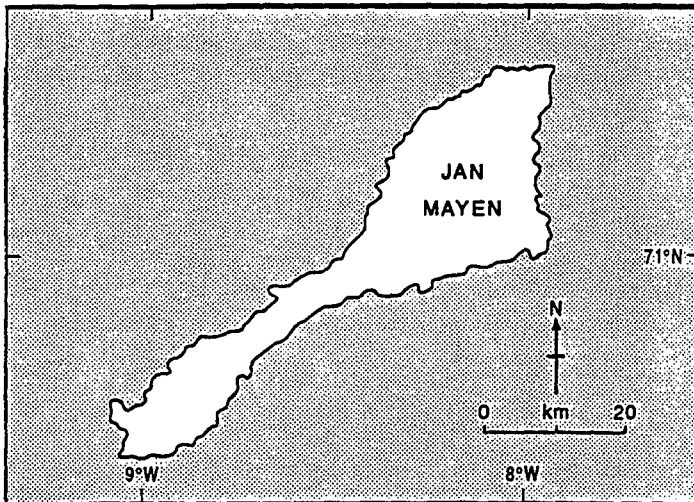
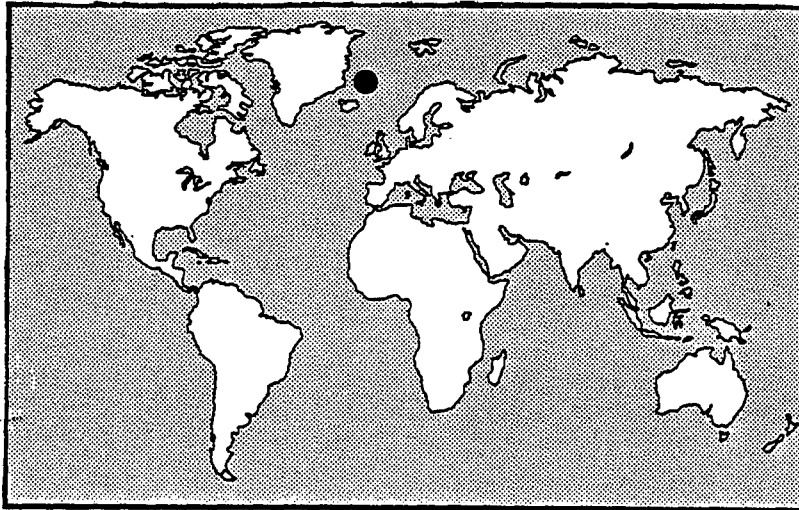
Evaluation

- (i) The wishes of the people of Bahrain were paramount, and the key party in the dispute (Iran) finally agreed to respect those wishes.
- (ii) There was no referendum; the alternative of a fact-finding mission by a U.N. official was acceptable to both sides. This method has the obvious advantages of speed and economy.

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JAN MAYEN ISLAND



Jan Mayen

Geographical Setting

Located centrally in the Norwegian Sea, Jan Mayen is 55 km (34 miles) long and has a total area of 380 km² (147 sq. miles). It is some 500km (300 miles) north-east of Iceland, with coordinates 70°10'N and 09°00'W. There are no native inhabitants, but its bleak environment is home to a transient small scientific population. The island consists of an extinct volcano, which rises to 2277 meters above sea level and is covered in glaciers. The Norwegians established a weather station on the island in 1921.

History of Claims

Jan Mayen was annexed by Norway on the 8th May 1929 and since World War II has been utilized as a center for the NATO surveillance of the Soviet Northern fleet. Most importantly as regards relationships with other states, Jan Mayen is at the center of very rich fishing grounds and potential hydrocarbon resources. On the 22nd December 1976, Denmark declared a 200 nautical mile fishing zone around Greenland, but on the east coast, this zone was terminated at latitude 67°N, which is approximately the latitude of northern Iceland. Subsequently, on the 29th May 1980, Norway also declared a 200 nautical mile fishing zone around Jan Mayen and Denmark later made a proclamation extending Greenland's fishing zone north of 67°N. A year later, Denmark stated quite clearly that "where the island of Jan Mayen lies opposite Greenland, the extent of the fishing zone is 200 nautical miles," but that would effectively mean that Jan Mayen would have no fishing zone. The special circumstances put forward by Denmark in support of this claim were: Greenland's dependence on fishing, Jan Mayen's remoteness from Norway, and the lack of any real indigenous population.

Against this claim it was argued that Greenland's fishermen had showed little interest in the area before, and Jan Mayen could clearly be defined as an island, under the terms established in the UN Law of the Sea Convention. Denmark's claim may therefore be rather excessive - as regards the suggestion of disregarding Jan Mayen's claim entirely.

Solutions

Other potential disputants in the area managed to solve their problems by conciliation and joint development. In 1981, Iceland and Norway established a Conciliation Commission which concluded that the seabed was a "micro continent" and not the natural prolongation of either Jan Mayen or Iceland. It therefore recommended joint exploitation in a rectangular (Of 45,474km²) area three quarters on the Jan Mayen side of Iceland's 200 mile Exclusive Economic Zone and one quarter within Iceland's claim. In the latter area, Norway would gain a 25% stake in any venture,

while Iceland would do likewise in the former area. A Continental Shelf Boundary Agreement between Norway and Iceland was accordingly signed on 22nd October 1981.

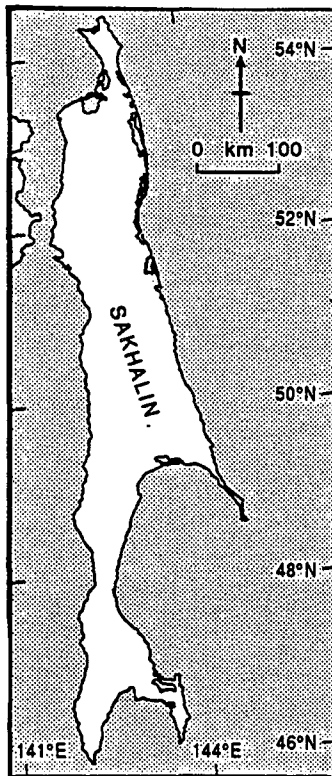
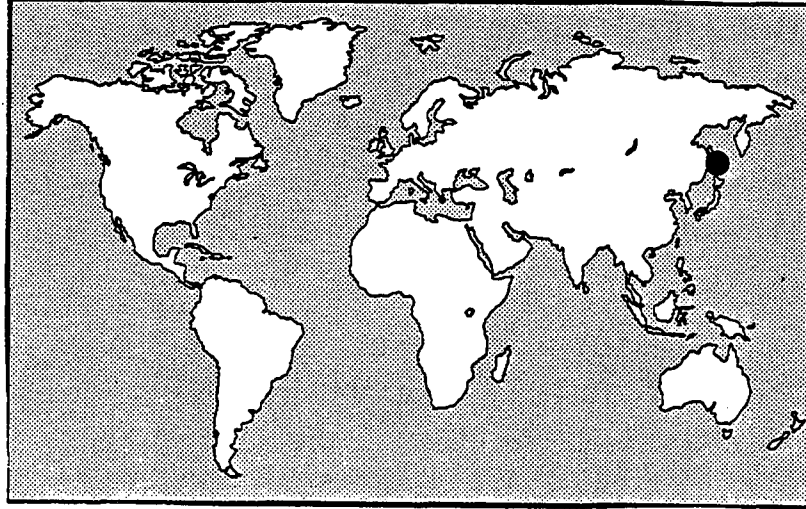
Evaluation

Due to good relations between the states involved in this dispute, conflict over Jan Mayen is extremely unlikely. Denmark's claim seems excessive and may need to go to Arbitration at the International Court of Justice. Anderson (1992) states however, that, "if the ICJ considers equity, then there are difficulties in awarding a small piece of land an area many hundreds or even thousands of times its own size." Norway and Iceland's joint exploitation of the seabed could be a model for future cooperation between Japan and Russia with the Kurils offshore area. However, this case study fails to address the underlying problem of the Kurils, which is the actual sovereignty of the islands. In Jan Mayen's case only the maritime claims were in dispute and not the actual sovereignty of the island, which has been part of Norway for 63 years.

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SAKHALIN ISLAND



Sakhalin Island

Geographical Setting

Sakhalin Island, which has a total land area of 78,200 km² (30,193 sq. miles) is situated off the coast of east Asia to the north of Japan, extending over 46-54° North latitude. The islands population of over 700,000 is composed mainly of Russian settlers but there are also small indigenous groups.

History

From the beginning of the nineteenth century, the Japanese went to Sakhalin, in order to trade with the indigenous communities. They called the island either "Kita-ezo" or "Karafuto." Following the Japanese, Russians settled on the island. In the first Treaty of Friendship between Japan and Russia in 1855, the question of the claim to Sakhalin was tentatively shelved. In 1867, a change in Japan's domestic politics led to the new government of the Meiji era, with its explicit imperialistic policies. As this policy was worked out, conflict occurred with Russia, including the Sakhalin Question.

Negotiations/Solutions

In 1875, the St Petersburg Treaty was concluded, which delimited a clear boundary between Japan and Russia. As a result of this treaty, Sakhalin island as a whole was brought under Russian jurisdiction and, in an Exchange, the whole of the Kuril islands (Chisima Islands) to the east of Etorofu were controlled by the Japanese.

The treaty, however, did not defuse tension between the two imperialist powers and confrontation finally led to a military conflict in 1904-1905. Russia was defeated in this war and was subsequently obliged to transfer to Japan the Sakhalin Island Region south of 50° North latitude. The island was therefore partitioned in two along this easily definable line.

However, following Japanese defeat in World War II, Japan was forced to renounce the territories which it had gained by military expansion since the Meiji era. The Soviet Union subsequently broke the 1941 Non-Aggression Treaty and invaded Sakhalin to use south of the 50° North Parallel a mere week before the ending of hostilities. Since 1945, the Soviet Union has occupied not only Sakhalin, but also the Kuril islands (which it had agreed would be Japanese territory in 1855). The claim to Sakhalin therefore remains undecided in a strict sense, although Japan did agree to hand it to Russia in return for part of the Kuril chain in the St Petersburg Treaty (1875). Although Japan currently makes no overt territorial claims to south Sakhalin, the Japanese government has maintained that the island's status has not been defined in international law:

By refusing to recognize Soviet sovereignty in southern Sakhalin, the Japanese appear to be trying to improve their bargaining position in relation to other territorial issues, namely the Japanese claims to Russian-occupied Kunashiri and Etorofu, the two southernmost Kuril Islands.

(Stephan, 1971).

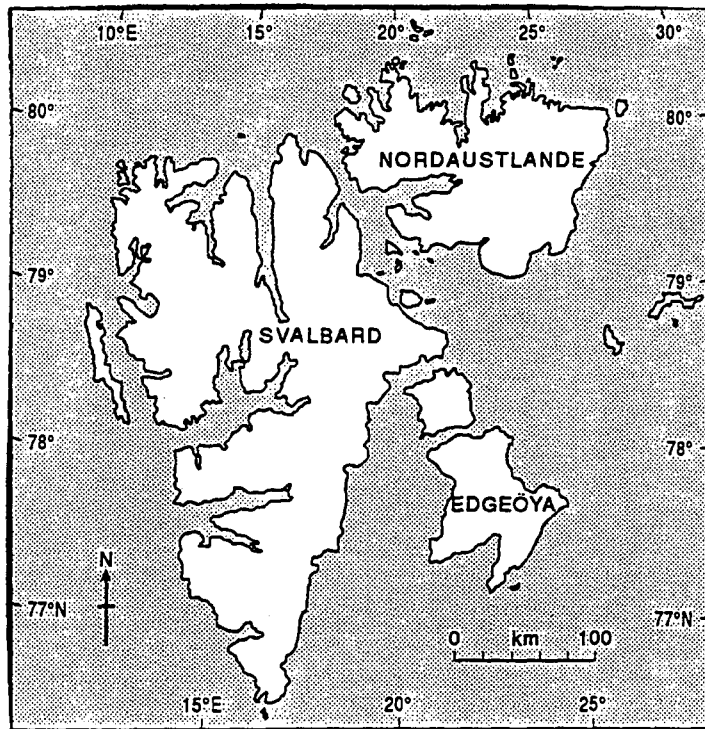
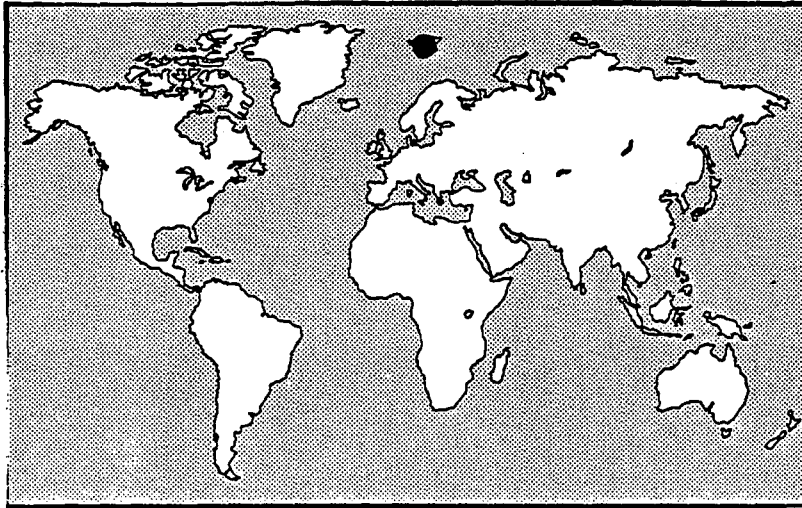
Evaluation

This territorial dispute, as has been illustrated, is intimately linked to the Kuril Island dispute. Unfortunately the northern territories are still subject to bitter debate. As the international boundary between Japan and Russia in this Pacific Region has changed so much over time, perhaps there is still room for another change. Diplomacy and negotiations are likely to be more productive than military occupation which will only prolong the dispute.

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SVARBARD



Svalbard

Geographical Setting

Svalbard is an archipelago of nine islands, the largest of which is Spitzbergen (39,044 km² or 15,075 sq. miles). The total area of the islands is 62,700 km² (24,209 sq. miles), equivalent to the area of West Virginia or Sri Lanka. Situated between 76°N and 81°N some 700 km from Norway, Svalbard experiences a harsh climate reinforced by the mountainous nature of the islands. About 60 per cent of the land is covered by snow and glaciers. pack ice accumulates in the shallow waters around the islands, especially in winter. Vegetation is sparse, but a rich Arctic faune exists which has attracted trappers in the past.

History

Dutch, English and Russian whalers visited Svalbard from the seventeenth century, but there was no permanent population and no claim to sovereignty. During the nineteenth century, foreign companies began coal exploitation. Mining activity increased in the years 1898-1920 when companies from the United States, Russia, Britain, Norway, Sweden and Holland claimed mining rights. British forces occupied some of the islands to deny them to Germany during World War II (1939-45).

Sovereignty Claims

Norway initiated conferences to decide the political status of Svalbard in 1910, 1912 and 1914 but none was successful. On February 9th 1920 in Paris the Treaty of Spitsbergen was signed giving sovereignty to Norway but allowing permanent equal mineral rights to the signatories (Norway, Great Britain, the United States, The Netherlands, Denmark, Sweden, France, Italy and Japan with the Soviet Union adding its signature in 1925). This treaty was an unusual blend of "sovereignty, internationalization and demilitarization" (Scrivener 1991). On August 14th 1925 Svalbard was formally declared part of the Kingdom of Norway.

The Treaty on Spitsbergen (9th February 1920)

The signatories have full rights to conduct commercial and mining activities in Svalbard and enjoy equally rights of fishing and hunting. At the same time Norway enjoys "full and absolute sovereignty" (Article 1) and the construction of any naval installations or other fortifications is forbidden (Article 9). The nationals of all the parties have equal rights as citizens and equal rights of access to Svalbard.

N.B. The full text of the treaty is attached in Appendix One.

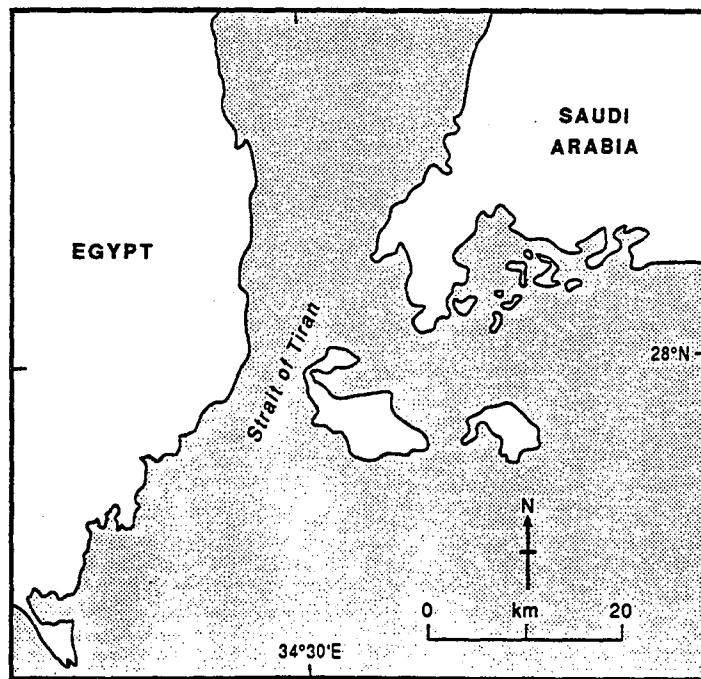
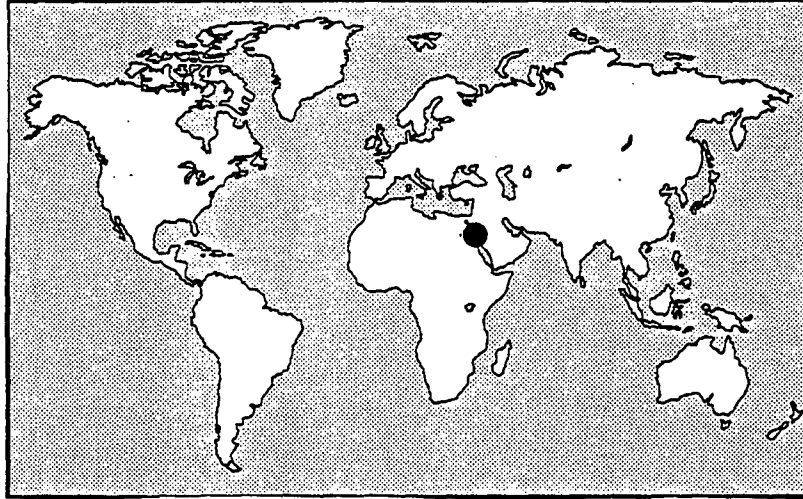
Evaluation

The population of Svalbard is very small (3,500) about one third of which is Norwegian and two thirds Russian. In general the Treaty has worked well, although the Soviet Union and Norway are the only signatories to have taken up mineral rights after early involvement by Swedish, British and American companies. The chief problem is that the Treaty did not define the limits of the offshore rights of the signatories. Article 2 implies "territorial waters," but the width of territorial waters is not defined. By Royal Decree of 15th March 1905, Norway claimed a 4 nautical mile territorial sea, which presumably applied to Svalbard. On 1st January 1977, Norway claimed a 200 nautical mile Exclusive Economic Zone, including Svalbard, much to the annoyance of the Soviet Union. Svalbard is important to Norway for its claim to a continental shelf boundary with Russia in the Barents Sea based on equidistance, while Russia clings to the "sector" principle. Russia has seemed to want a decisive influence in developments on this Norwegian sovereign territory, but in 1985 it instructed its Spitzbergen citizens to comply fully with Norwegian regulations and this has helped to dispel fears that Moscow wanted the archipelago to be managed as a "de facto bilateral condominium."

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STRAITS OF TIRAN



Strait of Tiran

Geographical Setting

The strait of Tiran is very narrow (4 nautical miles wide) and 7 nautical miles long passage varying between 73 and 183 meters in depth which links the Red Sea and Gulf of Aqaba. There are two main islands situated in the Strait, Tiran and Sanafir. The straits fall within the territorial seas of riparian states of Saudi Arabia and Egypt. However, even before the extension of territorial waters from 3 to 6 miles (in 1949 for Saudi Arabia and 1951 for Egypt) and later to 12 miles in 1958, the Riparian territorial waters encompassed the strait, and navigable channels.

The Straits of Tiran, along with the Gulf of Aqaba form a maritime outlet for the ports of Aqaba (Jordan) and Eilat (Israel) and are the only opening to the oceans for the Kingdom of Jordan.

Disputed Rights of Passage

The Straits of Tiran have become a source of dispute, with Arab states justifying the closure of the straits to Israeli shipping. In 1948 Tiran was closed to Israeli vessels and cargoes soon after hostilities in Palestine had occurred. Then in 1950, Egypt, apparently with Saudi Arabian consent, took possession of the islets of Tiran and Sanafir. In 1957, after the Suez conflict, transit was again opened to all vessels of *all* nationalities and UNEF troops were stationed on the western shore of the strait in order to guarantee freedom of passage. However, the dispute over free passage resurfaced again in May 1967, when Egypt requested the withdrawal of United Nations Forces and closed the strait to ships bound for Eilat. In June of the same year, in the Six Day War, Israeli forces occupied the western side of the strait. The straits were reopened to all nationalities and in 1979, under the Camp David accord, Israel returned the islands to Egypt as part of "Zone C" to be supervised by Egyptian police and UN forces. Although the straits of Tiran clearly fit well into the definition of "an international strait" the rights of Israeli shipping may yet be the subject of future dispute.

Negotiations

Arab states have justified closing the straits to Israeli shipping under several arguments:- Under the "Internal Sea" concept, Israel is not considered a legitimate riparian and despite multinational status the Gulf is described as "a closed Arab gulf" and therefore the principle of free passage does not apply. Israel, however, argued that Egypt, Jordan and Saudi Arabia are undeniably separate and that, because there is not a single riparian, the area is a multinational and not an internal sea. The "Historic Bay" argument has also been discounted by the Israelis, as this does not apply in multinational cases and foreign shipping using the straits is considerable and antedates riparian use. Therefore it cannot be considered a genuine historic bay.

Finally, the "State of Belligerency" argument is meant to give the right to mount a blockade,

but this is considered untenable, as is the argument that "Israel is a illegitimate riparian" due to the international nature of the waters, and Israeli status in international law.

The right of innocent passage through territorial waters and the right of transit passage for international sea traffic is one solution to the dispute surrounding the strait of Tiran as provided for in the 1982 U.N. Law of the Sea Convention (Articles 17 and 38). In 1991 the straits were blockaded by the US Navy who were monitoring Iraqi trade through the Jordanian port of Aqaba, and this reinforced the contemporary importance of the strait.

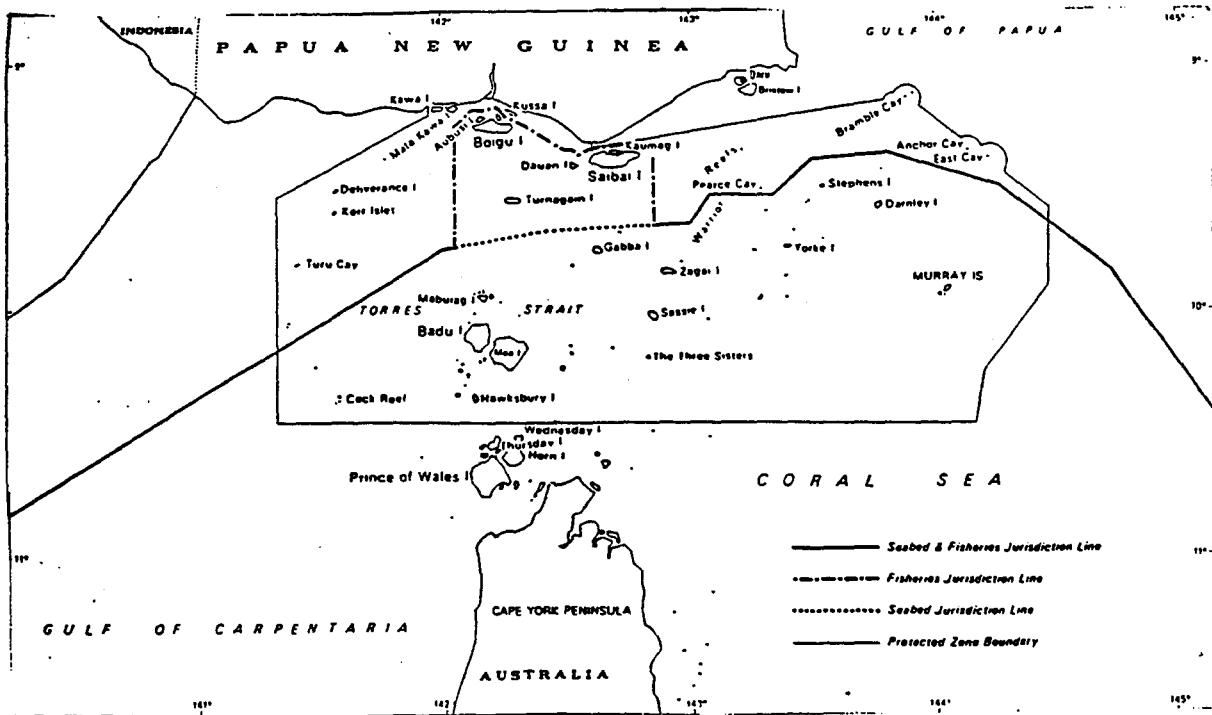
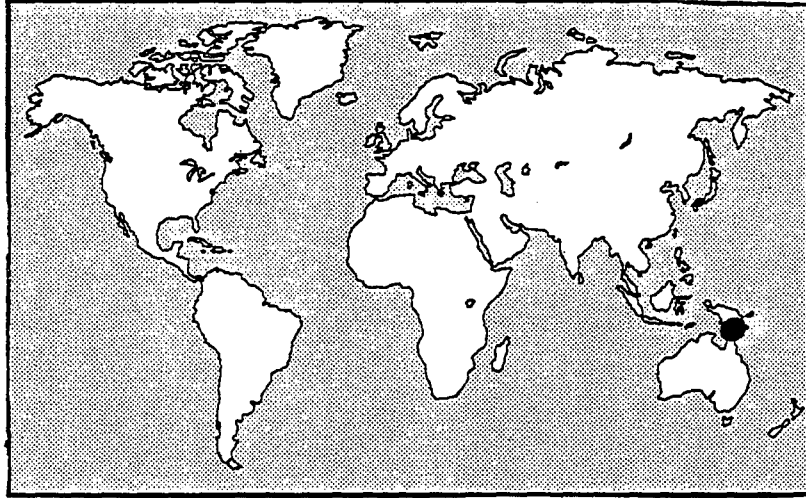
Evaluation

Rights of passage through the Kuril Islands could become crucial to a lasting settlement; the Tiran case illustrates the complexity of the Law, and the importance of the 1982 U.N. Convention in guaranteeing safe passage.

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STRAITS OF TORRES



Strait of Torres

Geographical Setting

The Torres Strait is located between the Cape York Peninsula, Queensland, Australia and the south coast of Papua New Guinea, dividing the Coral Sea from the Gulf of Carpentaria. Numerous inhabited islands and uninhabited rocks lie across the strait. As well as being an important international navigation channel, the straits are rich in fish resources, and many of the islands are home to native populations.

Negotiating History

In December 1978, Australia and Papua New Guinea signed a treaty concerning the sovereignty, maritime boundaries and other related matters in the Torres Strait area. The Treaty showed that direct negotiations can successfully resolve a complex maritime and island dispute and illustrates how imaginative thinking can produce a range of agreements on different aspects of a dispute. Among the features of the dispute are separate sea bed and fisheries jurisdiction lines, the establishment of a protected zone to maintain the livelihood and life style of local inhabitants, arrangements for sharing the catch of commercial fisheries, and navigation through the area. Thus the people, maritime jurisdiction, the islands, fisheries resources and navigation are all treated separately.

The two states had different aims when negotiating; for Papua New Guinea it was important to obtain a single all-purpose boundary which, apart from maritime jurisdiction, would also remove the apparent historical anomaly of Australian territory extending to within a few hundred meters of mainland Papua New Guinea. Australia wished to protect the rights and livelihood of the traditional inhabitants of the Torres Strait. The Papua New Guinea side saw little merit in giving one group of inhabitants special status over other "traditional" groups in Papua New Guinea.

The treaty had been negotiated during the 1970s against a background of very different aims and perceptions of the two countries. Compromise was therefore vital. In May 1978 the elements of a proposed agreement were announced. A delimitation of a separate fisheries resources line was recognized as a basis for settlement, together with provisions for sharing the catch and for freedom of navigation.

Evaluation

The agreement has been described as follows (Burmester, 1982):

The rigid and single-focus approach of the initial round of negotiations, where attention was given primarily to drawing a single

maritime boundary, did not lead to productive solutions. It was only after the adoption of an imaginative, broadly focused approach that a solution acceptable to all parties concerned - not just governments but the people themselves - was achieved. The Treaty represents an agreed solution that was reached without the assistance of any third party. While the possibility of referring the dispute to the International Court of Justice was mentioned from time to time in the press, both sides appreciated that no tribunal or court would be able to provide a comprehensive solution that dealt satisfactorily with the whole complex of issues involved.

The total population of the islands in 1971 was 9,663, of whom 60% lived in other parts of Australia. The islanders were Australian citizens. The Treaty established a Protected Zone, comprising "all the land, sea, airspace, seabed and subsoil" within a defined area (see Article 10(1), map). The Protected Zone was established to preserve the way of life of the inhabitants and the ecology of the area. As well as free movement and performance of traditional activities by the inhabitants of the islands, each party agreed to make legislative measures to protect and preserve the environment. A moratorium on mining and drilling of the seabed in the Protected Zone was agreed for a minimum of 10 years. Movement in and out of the Protected Zone can be controlled by both parties so as to allow control of quarantine and illegal immigration. A Joint Advisory Council, consisting of representatives of the national Governments, regional governments and traditional inhabitants was established. The Council is only advisory.

The needs of the inhabitants are therefore dealt with separately from the delimitation of fishing, seabed or other boundaries. Within the Protected Zone a special regime for the management of commercial fisheries was established, allowing parties to issue licenses for commercial fishing throughout the Zone. Fishing by third states is controlled by both parties.

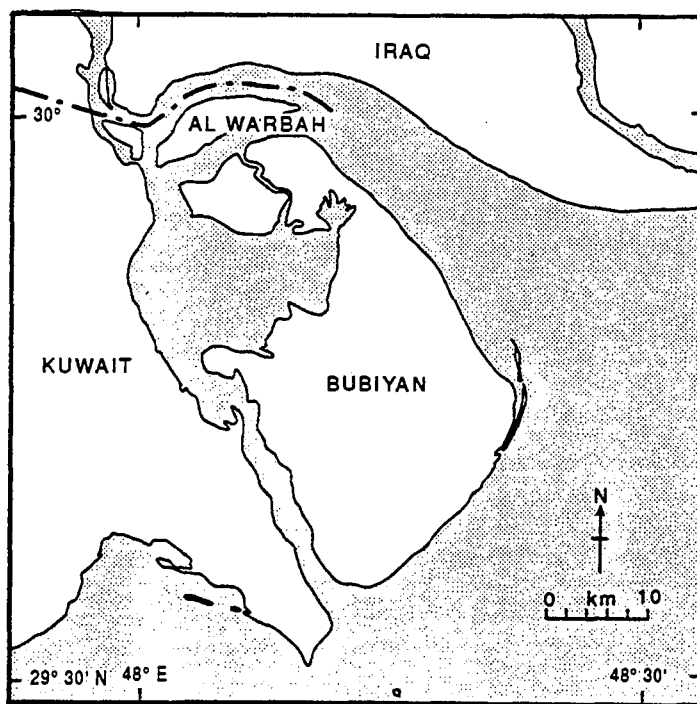
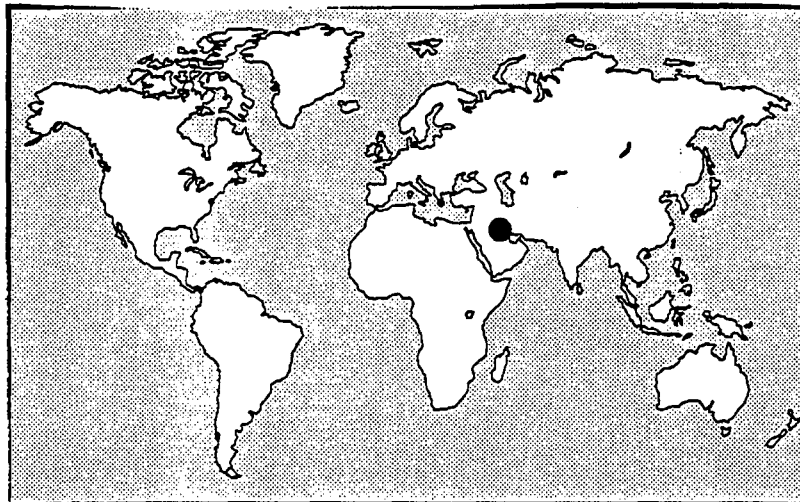
The fisheries and seabed jurisdiction boundaries diverge in the middle of the Torres Strait area. No joint development zone for seabed mineral resources was developed, as this was thought to be difficult to manage. The divergence was made in recognition of the importance of fishing resources of the area to the inhabitants of the Australian Islands, and in order to avoid the need to establish Australian-inhabited enclaves north of a general all-purpose maritime boundary.

The treaty also deals with navigation rights. In the Protected Zone north of the seabed jurisdiction line, and south of that line but beyond the limits of the territorial sea, each party accords high seas freedom of navigation and overflight of vessels and aircraft of the other party. So navigation along the south coast of Papua New Guinea is guaranteed. The right of passage for third party vessels through routes used for international navigation is also given.

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WARBAH AND BUBIYAN



Warbah and Bubiyan Islands

Geographical Setting

These two, low-lying islands are situated at the extreme northeastern corner of Kuwait, lying near the junction of the Kuwait and Iraq coastlines. Bubiyan lies within 2 km (1.2 miles) of the Kuwaiti mainland and within 7 km (4.3 miles) of Iraq's. Warbah is approximately 3.2 km (2 miles) from the Kuwaiti shore, and less than 1.6 km (1 mile) from Iraq. Bubiyan is 41 km (25.5 miles) long and 21 km (13 miles) wide, located at 29°80'N 48°20'E and Warbah is 11 km (6.8 miles) long and 3 km (1.9 miles) wide and located at 29°30'N and 48°05'E.

History of Claims

Although, of no intrinsic economic significance, these low-lying islands are strategically very important for two reasons, which relate to Iraq's tiny portion of the Gulf coastline. Firstly, the islands lie on the southern shore of the Khawr' Abd Allah, which provides the only access to the Iraqi port of Umm Qar built to alleviate Iraqi dependence on the vulnerable Shatt-al-Arab outlet. Secondly, possession of the islands would give Iraq claim to a far greater proportion of the Gulf's maritime resources and in particular the seabed, where the oil potential is very high.

In 1899 Kuwait was under British Protection and in 1913 an Anglo-Turkish agreement recognized Kuwaiti ownership of Warbah and Bubiyan Islands. Following World War II, Iraq "assented" to the 1923 Boundary between Kuwait-Iraq as part of a Peace Treaty but has consistently sought changes to it, to improve its limited sea access. Despite signing the 1963 agreement which apparently recognized the boundary on its own merits, Iraq has continued to demand the cession or lease of Warbah and Bubiyan before agreeing to a demarcation of the international boundary.

Following the termination of the British Protectorate of Kuwait, Iraq has continued to claim the whole of Kuwait, based on the fact that, historically, Kuwait had been part of the former Ottoman province of Basra. In 1961, it intensified this claim by constructing naval facilities and a commercial port at Umm Qasr.

In 1961, Kuwait requested British military assistance as a counter to continuing threats from Iraq, and British troops were duly deployed along the border. Several border violations occurred in the late sixties and early seventies. Kuwait pressurized Iraq to remove its forces from the Umm Qasr vicinity. Iraq eventually agreed, but argued that Warbah and Bubiyan Islands should be subject to a long term lease agreement. This was rejected by Kuwait which reestablished its sovereignty over the islands. Although Kuwait backed Iraq during the 1980-88 Iran-Iraq war, Iraq revived its claims to the islands and in August 1990 invaded Kuwait and designated it the nineteenth province of Iraq. This military intervention was thwarted when Iraq was ejected from Kuwait as a result of the multinational operation "Desert Storm." Iraq accepted the UN's settlement of the Kuwait crisis and committed itself, grudgingly, to respect the inviolability of the boundary from the 1963 agreement. It has also agreed to accept UN assistance in demarcating the boundary in accordance

with the agreed Minutes of the 1963 Agreement.

A UN Boundary Demarcation Commission was therefore established to report back on the final proposal for the demarcation of the Iraq-Kuwait boundary. The result of this commission as regards the boundary on the ground, is likely to mirror the 1951 British demarcation proposal which is the line shown on most existing maps (Schofield, 1992 p23). On 8th April the commission was meeting for a concluding session. It is compelled to finalize the *existing* legal boundary as originally defined in 1923 and 1932.

Evaluation

The islands remain part of Kuwait but Iraq's restricted access to the Gulf means that the basic geographic problem that underpinned Iraq's claims has failed to be addressed and remains unresolved. This could lead to further tension and disputes easily recurring in the future.

The dispute illustrated in this case study offers several relevant points in relation to the Kuril dispute:

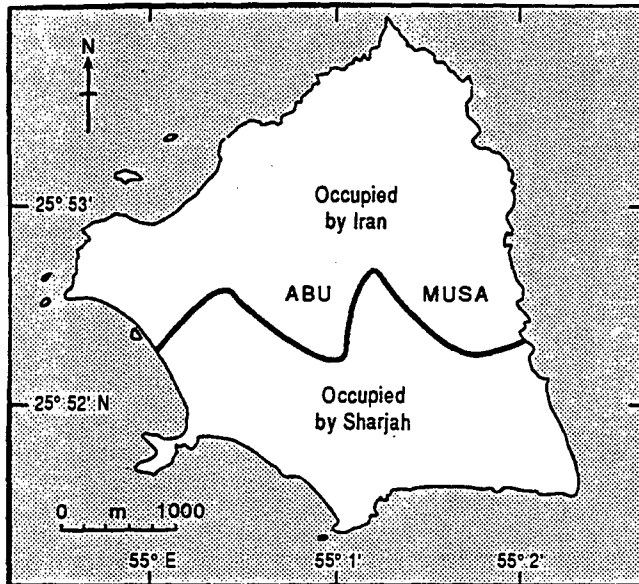
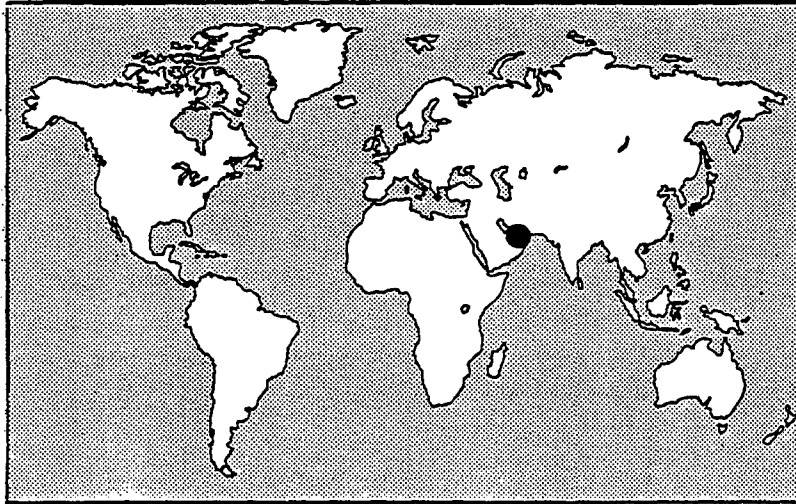
- (i) Arbitration and diplomacy are likely to be more useful in the long term than military intervention.
- (ii) UN mediation may fail to address the underlying geographical problems of a dispute, in this case, Iraq's limited sea access.
- (iii) Although Iraq accepts the 1923 boundary on a legal basis, *politically* it cannot accept it and therefore its claims for the islands and better access in the Gulf are likely to keep on recurring in the future.

Politically as well as legally acceptable settlements must be the goal of a Resolution to the Kuril dispute.

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ABU MUSA



Abu Musa

Geographical Setting

Abu Musa island (55°2'E, 25°42'N) is located in the Persian Gulf midway between the coasts of Iran and the United Arab Emirates, some 125km (78 miles) west of the Strait of Hormuz. Together with the neighboring Tunb islands, Abu Musa is often thought to be in a position to control vital tanker routes through Hormuz, but this strategic asset has probably been exaggerated. The island is small (about 5 km or 3 miles across). It has a permanent population of fewer than 1,000 Arabs in the south and a garrison of Iranian troops in the north. Fishing is important, and the island also services oil installations nearby.

History of the Claims

In the mid-nineteenth century, the Qawasim family of the Trucial Coast (comprising the UAE today) assumed possession of Abu Musa, and their ownership was recognized by Britain. Persia also claimed the island on historic grounds and in 1904 placed customs officials there and on the Tunb Islands which were withdrawn after British protests. In 1928, Persian action brought the dispute to the fore once again and, despite a verbal agreement between Britain and Persia that Abu Musa was an Arab island, Persian claims persisted. The prospect of the end of British protection for the Trucial States in 1971 encouraged Iran to negotiate the future of Abu Musa with Sharjah. The upshot was a Memorandum of Understanding in November 1971 which resulted in territorial compromise on the island. There was renewed tension in May 1992 when Iranian officials refused admission to certain expatriates employed by Sharjah in southern Abu Musa. In recent years such workers had been accustomed to enter Abu Musa via the only landing stage on the Iranian side, but this privilege has apparently been withdrawn.

The Memorandum of Understanding

By this agreement neither party gave up its claim to Abu Musa, but the island was partitioned peacefully between Iran and Sharjah; Iranian troops occupied the barren and empty north while Sharjah retained the south and its small resident Arab population. The full text of the Memorandum is found in Appendix Two.

It will be noted that oil revenues were to be shared equally between Iran and Sharjah, and fishermen were to enjoy equal rights in the territorial sea. A supplementary agreement provided for an annual payment of £1,500,000 to the government of Sharjah for a period of nine years, or until such time as Sharjah's oil revenues from the area of Abu Musa reached £3,000,000 per annum. (A.A.El Hakim 1972 p.128).

Evaluation

The arrangement which has operated in Abu Musa for over 20 years, with surprising success, is of interest in several respects:

- (i) Territorial compromise was reached on a tiny island.
- (ii) There is provision for sharing oil revenues and equal rights to living resources.
- (iii) For many years residents and workers in the south enjoyed passage through the Iranian north without customs formalities etc.
- (iv) There was provision for interim financial assistance for the weaker partner.
- (v) Sovereignty claims have been shelved but not abandoned.

Note on Abu Musa Dispute 1992

The dispute began in August 1992 when Iran refused entry over 100 Arab school-teachers returning to the Island after their holidays. On 13 September 1992 the Khaleej Times reported that the Arab League had expressed its unqualified support for the United Arab Emirates to safeguard its sovereignty over the Abu Musa Island. On 27 September 1992 senior Iranian and Arab officials met in Abu Dhabi in an attempt to defuse the crisis. The talks apparently ended in deadlock on 28 September 1992. The UAE issued a statement after the talks saying that Iran was "responsible for not achieving any progress in the talks." This was apparently "because of Iran's insistence on refusing to discuss the issue of ending the Iranian occupation of the Islands of Greater Tunb and Lesser Tunb or to agree on referring the issue to the International Court of Justice." (Voice of the UAE, Abu Dhabi). The Head of the Iranian delegation was reported by the Iranian agency on the 29 September to have said at a news conference in Abu Dhabi after the talks, that agreement had been reached on the major part of the agenda. A further UAE statement dated 29 September 1992 claimed that the UAE delegation had presented the following points to the Islamic Republic of Iran's delegation:

- (i) Ending the military occupation of the Islands of Greater Tunb and Lesser Tunb.
- (ii) Emphasizing Iran's commitment to the 1971 Memorandum of Understanding on the Island of Abu Musa.
- (iii) Refraining from interfering in any way and under any circumstances or pretexts in the UAE's exercise of its full sovereignty over its portion of the Island of Abu Musa, in accordance with the 1971 Memorandum of Understanding.
- (iv) Canceling all arrangements and measures imposed by Iran on Abu Musa relating to both citizens of the UAE and non UAE residents.

- (v) Finding an appropriate framework to resolve the issue of sovereignty of the Island of Abu Musa within a definite period of time.

Iran appeared to be rather more optimistic. In a statement of 29 September 1992 the Iranian side claimed that the talks had been "successful and fruitful."

On 2 October 1992 it was reported in MEED that the UAE had approached both Egypt and Syria for support in its dispute with Iran. It appears that Syria's Foreign Affairs Minister held talks with Iran's President Rafsanjani about the dispute during a visit to Tehran on 18 September 1992. However, Iran's position appeared to harden at the beginning of October. On the 2 October Ayatollah Emami-Kashani issued a strong statement saying that Iran's policy on the Islands was unalterable. On the 3 October the Supreme National Security Council of Iran issued a statement including comments on the Abu Musa dispute. This said that:

As for the Abu Musa island, Iran has no intention to change its policy whatsoever, and it respects the previous agreements. The Islamic Republic of Iran expects the UAE, as a brotherly neighborly country, to show self restraint in dealing with mutual issues, and avoid raising empty and unfounded claims, because these arrogance-inspired temptations would not be in Abu Dhabi's interest.

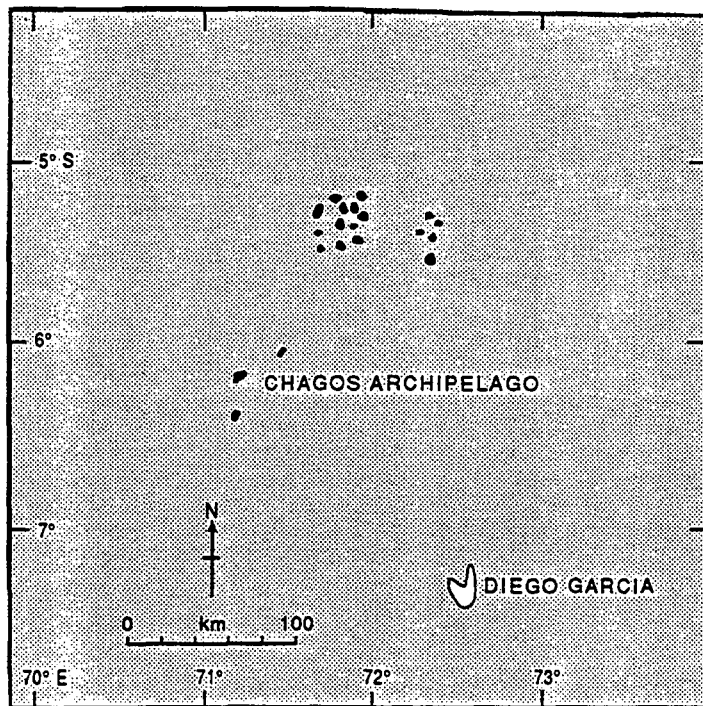
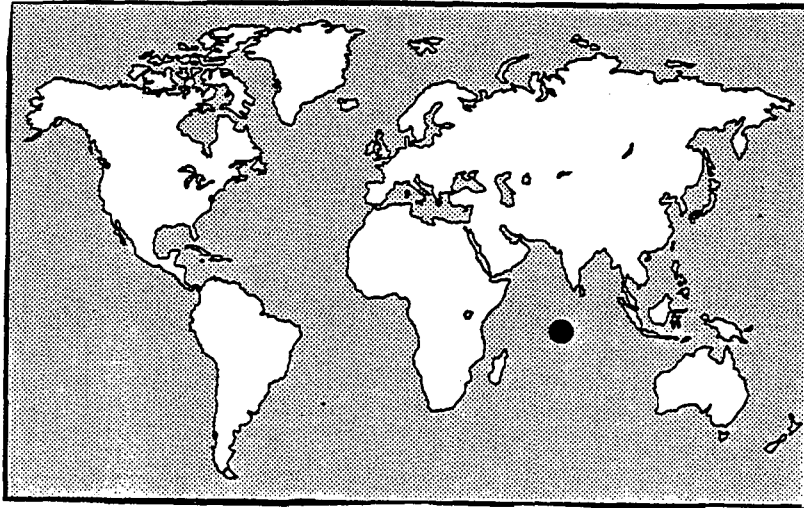
On the 5 October 1992 Iranian radio issued a long statement on border disputes in the Middle East. This included comments on the Abu Musa dispute.

It appears that neither side has shown willingness to give ground over the issue. Tehran says it will continue negotiations on Abu Musa but not covering the Tunbs, over which Iran claims full sovereignty. The UAE called for the Islands issue to be presented to the International Court of Justice after the negotiations finishing on the 29 September 1992, but this has been steadfastly rejected by Iran.

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CHAGOS ARCHIPELAGO (DIEGO GARCIA)



Chagos Archipelago (Diego Garcia)

Geographical Setting

This island chain is composed principally of the island of Diego Garcia, a coral atoll some 21 km long and 4 km wide. It is located approximately 1,610 km (1,000 miles) from India and 1,930 km (1200 miles) North East of Mauritius.

In 1965 the island became a joint United States-United Kingdom airbase and resettlement of the local population took place from Diego Garcia to Mauritius. It emerged later that the British Government had paid Mauritius £650,000 for the purpose of resettling 1,151 people, who had been transferred from Diego Garcia between 1965-1973 (Day, 1984 p159). These Indian Ocean islands are considered highly strategic, and their indigenous populations have been progressively eroded due to British and U.S. military influence.

History of the Claims/Sovereignty, Etc.

The Chagos Archipelago (Diego Garcia) was discovered by the Portuguese in 1532. Following failed British attempts to establish a supply station on the islands in 1786, it came under French control until the end of the Napoleonic Wars (1815) when it was ceded to Britain. An important refuelling and ship repair station in World War II, it became increasingly appealing to the United States in the 1950's which needed a secure naval base and airfield in the world's third largest ocean. In 1965, the islands became part of the British Indian Ocean Territory (BIOT) and was administered with Mauritius and three of the Seychelles. These three islands were returned to the Seychelles after they gained independence in June 1976. In 1966, the United Kingdom and United States signed a defense agreement, the terms of which leased the British Indian Ocean Territory to the United States for 50 years, with the option of an extended lease for another 20 years. The islands were therefore detached from the territory administered from Mauritius. From 1966 to the 1980's, there has been a steady development of military personnel (4,500 troops) and military infrastructure (for example a 4000 meter runway) by the United States, with over \$1 million invested between 1981 and 1986. Strategically important as a remote, secure and centrally placed island, Diego Garcia is likely to remain part of US Naval and military interest in the Indian Ocean for the foreseeable future.

Negotiations/Solutions

The program of forced depopulation means that the island is relatively immune from any local political conflict. However, the island has become a focus for anti-American feeling in the region. In 1980 all the Mauritian political parties called for the return of Diego Garcia from the Americans. In the same year the Organization for African Unity Heads of State called for the return of the atoll

and its demilitarization. The Mauritius High Commissioner stated on the 7th April 1974 that the United States' use of the islands as a military base violated various British undertakings given. The United Kingdom denied this, and the dispute continues, as does the resentment of those Chagos residents who were forcibly resettled on Mauritius. Continued US military interest suggests their claim will not be fulfilled.

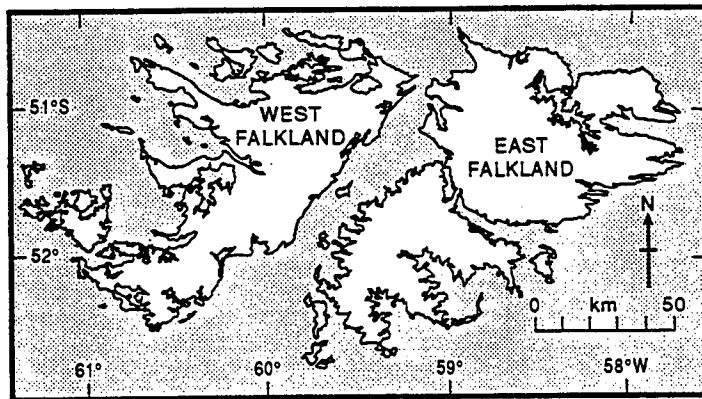
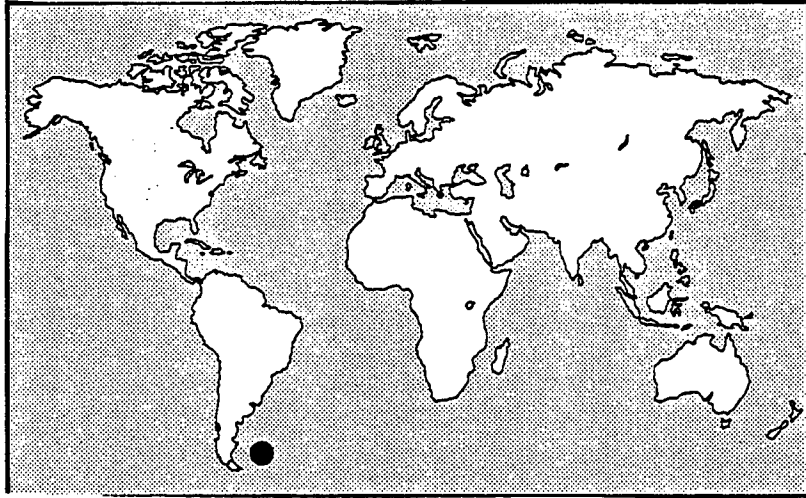
Evaluation

The lease-agreement between America and the United Kingdom, is a system which could perhaps be used for the Kuril Islands. The *lease* arrangement has also been illustrated in the case of Hong Kong. Whether the Japanese would agree to such an interim arrangement which only guarantees them sovereignty for a fixed period, remains to be seen. The military importance of Diego Garcia for the USA is perhaps a contrast to the Kurils' more economic significance as one of the world's richest fishing regions. However, it is a valuable case study of a 'Leasing' method between states, with the one major disadvantage that it ignores the wishes and aspirations of the local population and involving compulsory removal of population.

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FALKLAND ISLANDS



The Falkland (Malvinas) Islands and the Falkland Islands Dependencies

Geographical Setting

The Falkland Islands consist of about 200 small islands together with two large ones, East Falkland and West Falkland, situated in the South Atlantic Ocean about 483 km (300 miles) from the mainland of South America. Their total area is approximately 12,150km₂ (4,700 square miles). The Falkland Islands Dependencies consist of several islands in the South Atlantic/Antarctic area: principally South Georgia, the South Sandwich Islands, the South Orkney and South Shetland Islands.

The Dispute

The dispute between the UK and Argentina over sovereignty is probably the longest existing territorial dispute in the world. While attempts have been made to solve the issue, none of these has actually succeeded. The fact that it remains unsolved perhaps limits its usefulness as a model for the Kuril Islands, except as a *recommendation against* the use of force.

The Falkland Islands were first discovered in the sixteenth century. Claims to have achieved this feat have been made by the Portuguese, the Spanish, the Dutch and the English. It is common ground that the Falkland Islands were first settled by France in 1764 and it is arguable that at this time they were *terra nullius*. Spain, however, claimed territorial rights by virtue of the Papal Bull *Inter Caetera* of 1493, issued by Alexander VI, which essentially divided the whole of South America between Spain and Portugal.

In 1765, Great Britain made a claim to West Falkland and neighboring islands, having established a settlement on Saunders Island, and apparently unaware of the French presence on East Falkland. In 1767 France ceded its rights to Spain, which then established its own settlement. In 1769, Spain demanded the removal of British settlers and evicted them in 1770. This gave rise to a dispute between the two countries, which ended with Spain permitting the return of the British while reserving the right to sovereignty which it claimed. It has been asserted but never proved that there was a secret commitment made at this time by Great Britain to withdraw its settlement after the dispute had calmed down. The British did indeed leave but said this was for reasons of economy. A plaque was left behind maintaining the British claim, though this was removed by Spain in 1775. In 1776, Spain formally incorporated the Falkland Islands into the jurisdiction of the province of Buenos Aires. In 1811 Spain abandoned the Falklands. Argentina became independent in 1816 and succeeded to Spain's title. It established settlements on East Falkland which remained until they were removed by Great Britain in 1833. There was no settlement on West Falkland, though Argentina and, earlier, Spain has exercised some authority there through periodic visits and inspections.

From 1833 onwards, Great Britain established settlements throughout the Falkland Islands. The British claim has been repeatedly disputed by Argentina, though for certain lengthy periods it

was silent, on the ground that it felt humiliated that its protests were always ignored. Thus the Argentine claim was maintained.

The current position therefore is that sovereignty is claimed by the UK and Argentina. The latter offered in 1884 and 1888 to refer the dispute to arbitration; the offer was rejected. Argentina has also referred the dispute to the General Assembly of the United Nations. Both sides have been prepared to accept in private that their claims were not so clear-cut as their official postures indicated. Neither side has been willing, since 1888, to refer the dispute to arbitration or judicial settlement. The distance between the sides was reflected in the short-lived invasion of the Falkland Islands by Argentina in 1982, followed by an armed conflict from which the UK emerged the winner.

Falkland Islands Population

The population of the Falkland Islands is a little under 2,000, almost entirely British or of British origin. Argentina has argued that this is not an indigenous population but rather one "transplanted" from outside. It argues that they are illegal immigrants. It might equally be argued that the "white" population of Argentina is not indigenous either.

The UK has argued that the Islanders have a right to self-determination, and that they choose, in exercising this right, for the Falkland Islands to remain a colony of the UK. The right to self-determination applies to "peoples"; it is debatable whether the Islanders may be regarded as a separate people.

The United Nations (UN)

The UN has dealt explicitly with the Falkland Islands in two Resolutions of the General Assembly: Res.2065 (XX) of 16 December 1965 and Res.3/60 (XXVIII) of 14 December 1973. The UN acknowledged that a dispute existed. It referred to the Islanders as a "population" rather than a people, and urged the UK and Argentina to negotiate without delay on the future of the Falkland Islands.

Diplomatic efforts for a solution ensued. In 1977 sovereignty was discussed formally. The possibility of "freezing" the dispute was mooted. This would have entailed an agreement that, for a certain period, neither side would pursue its claim and that any actions taken by either side during this period could not be interpreted as affecting its claim. A similar regime has existed, rather successfully, in the case of Antarctica, since 1962.

Another option raised was a "leaseback" scheme, based on the model of the UK-China agreement on Hong Kong. However, no decision was reached and in 1982 Argentina invaded the Falkland Islands. This resulted in the involvement of the UN Security Council, which passed Resolution 502 of 1982 which called for an end to hostilities, an immediate withdrawal of Argentine forces, and urged the two States to seek a diplomatic solution to their differences. This was affirmed in Security Council Resolution 505 of 26 May 1982. The UK was able later to use its position as a permanent member of the Security Council to veto a draft resolution calling for the cessation of hostilities then taking place on the Falkland Islands. The conflict ended with the surrender of the Argentine forces. Since then, there have been occasional negotiations, or attempts at negotiations, between the two countries. The UK's position has hardened as a result of the conflict. It now

maintains that sovereignty is not for discussion.

Evaluation

The Falkland Islands are not the best model for a solution to the Kuril Islands dispute. While there have been negotiations at different times, the proceedings have usually remained quite secret. Each side has hardened its position to the extent that it would be difficult to compromise without being seen to lose face. In this situation the best option (though a high risk one) would be to submit the dispute to arbitration or judicial settlement at the International Court of Justice, which in recent years has dealt successfully with several territorial disputes. This would allow the "losing" side to withdraw under the cloak of international legality instead of political humiliation. The practical chances of this happening in the foreseeable future are minimal.

The status of the population could also prove a problem. The simplest solution might be to resettle the population, given its British origin, in the UK. They could be offered Argentine citizenship were that country to agree, but it is unlikely that the population feels that it has any real links with Argentina. Its homogeneity indicates that options involving Argentinian citizenship would not be acceptable.

Two interesting recent developments have, however, occurred which may be of considerable value in the Kuril Island dispute. The 1990 Fishing Conservation Agreement and the 1990 Interim Reciprocal Information and Consultation System (see appendix three) have both been valuable confidence building measures, as well as helping in the management of the islands, and could provide useful models for similar developments in the Kuril Island dispute.

Falkland Islands Dependencies

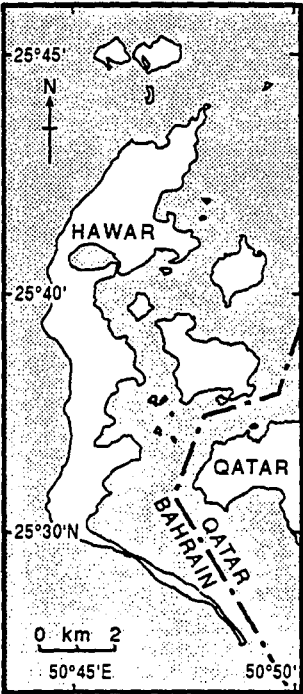
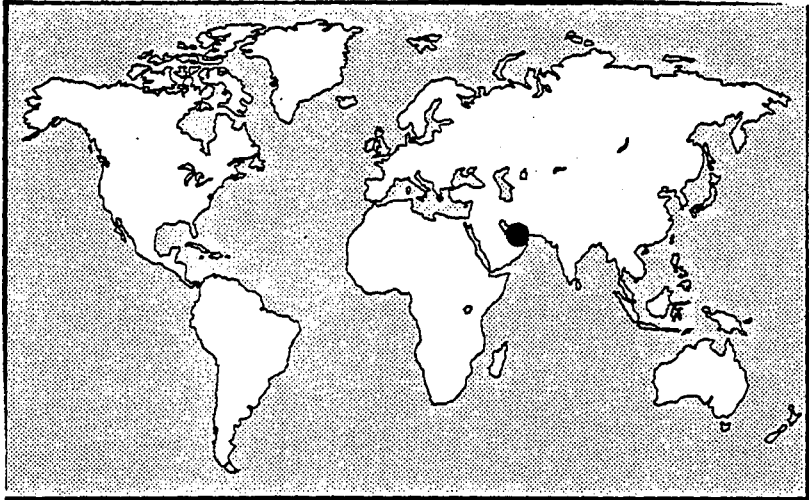
Argentina made no claims to the Falkland Island Dependencies till 1925, when it claimed sovereignty over South Georgia. This was rejected by the UK. During the 1982 conflict, Argentina repeated its claims and added the South Sandwich Islands, which it claimed in 1948. These were discovered by the UK in 1775 and it has administered them ever since. They have never been occupied or claimed by Spain. These claims are to some extent linked to a dispute between the UK and Argentina (and indeed Chile) with regard to parts of Antarctica. In 1955 the UK attempted to institute proceedings at the International Court of Justice with regard to the Falkland Islands Dependencies and Antarctica, but neither Argentina nor Chile accepted the Court's jurisdiction, so the matter rested there. Since 1937 Argentina has presented its claims to the Falkland Islands as including the Falkland Islands Dependencies. Because of their link with Antarctica and its claims there, the UK is even less likely to accept a deal on the Falkland Island Dependencies.

N.B. See Appendix Three.

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HAWAR ISLANDS



Hawar Islands

Geographical Setting

Hawar Island (25°40'N, 50°46'E) is the largest - 16km by 3 km (10 miles by 2 miles) - in a small group of 16 barren, low-lying islands and reefs situated very close to the east coast of Qatar and about 20 km (12 miles) from Bahrain. Apart from a token Bahraini military presence, the islands are uninhabited. Their chief importance is the effect they might have on the continental shelf boundary between Bahrain and Qatar where hydrocarbon prospects are good.

History

The rulers of Bahrain and Qatar are both able to demonstrate associations with Hawar Island in the nineteenth century, but the evidence either way is not substantial. Questions of sovereignty arose in 1936 when the Bahrain Petroleum Company and Petroleum Concessions Limited acting for Bahrain and Qatar respectively sought concessions in the sea. A small Bahraini military post was established on Hawar. Following presentation of their rival claims, the British Political Resident in the Persian Gulf awarded the islands to Bahrain in 1939. It was a strange adjudication, but Britain decided to stand by a decision which some officials regarded as unjust. In 1947, therefore, Britain delimited the maritime boundary between Qatar and Bahrain as a median line with the Hawar Islands enclaved as Bahraini. Qatar has never accepted the British adjudication. There have been a number of incidents, some of them associated with another disputed feature - the Fasht al-Dibal reef, 50 km (30 miles) from the Hawar group. Neither Saudi Arabia nor the Gulf Cooperation Council (GCC) has succeeded in their efforts to mediate. A GCC Ministerial Committee ruled in December 1990 that should no out-of-court settlement be attainable within six months, the Hawar case should go to the International Court of Justice. Accordingly, when the deadline passed, on 8th July 1991, Qatar filed against Bahrain in respect of Sovereign Rights over the Hawar Islands submitting its Memorial on 10 February 1992.

Bahrain is due to submit its Memorial on the 11th June 1992. The outcome of the court action in the Hague should settle this dispute once and for all.

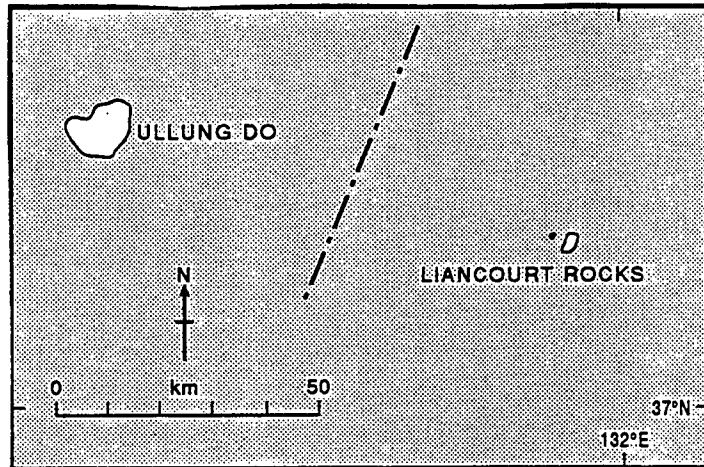
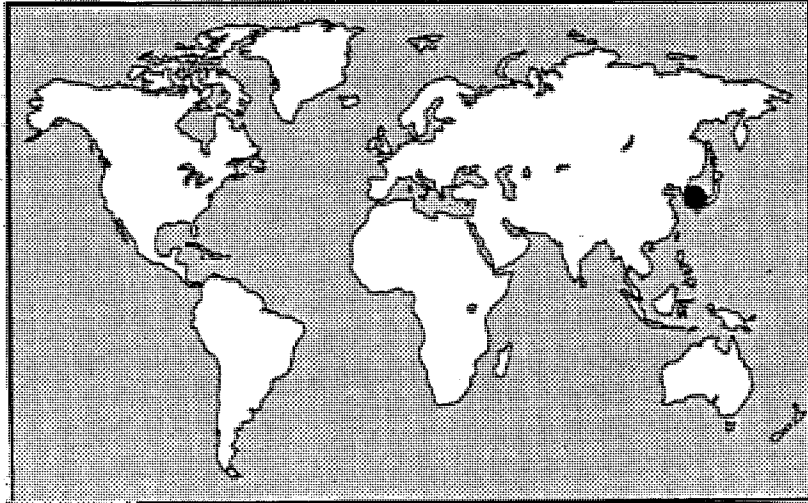
Evaluation

- (i) As with several island cases worldwide, history and geography are at odds in Hawar. There are historic grounds for a state to claim an island intimately associated with the physical geography of another state.
- (ii) The International Court of Justice became involved when other means had failed.

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LIANCOURT ROCKS



Liancourt Rocks

Geographical Setting

Situated in the Sea of Japan, the Liancourt Rocks are a small island group known as the Take-shina by Japan, and the Tak-do by South Korea. They are approximately 208 kilometers equidistant from the disputants' mainlands.

History of Claims/Sovereignty

The dispute over the islands has been an issue between Japan and South Korea since 1952. Before then, the importance of the Liancourt rocks had not been considered, but in 1954 South Korea occupied the rocks and has subsequently refused any international arbitration. The rocks have strategic and economic importance as they are well placed to survey entry to the Sea of Japan by naval vessels through the Korean Strait. During the cold war, the Sea of Japan was a major operating ground for the Soviet Union's Pacific fleet. Economically, ownership of the rocks will allow claims to some 16,600 square nautical miles of sea and sea bed. Also there are prospects for hydrocarbon development and important fisheries in the area.

Solutions Proposed

At the present time, the Liancourt Rocks issue appears dormant, and South Korea maintains its occupation of the islands. Future possibilities for a solution include a joint development zone similar to that at the south end of the Korea Strait. Another option is for one side to withdraw its claim in return for a major discounting of the islands in the demarcation of maritime boundaries.

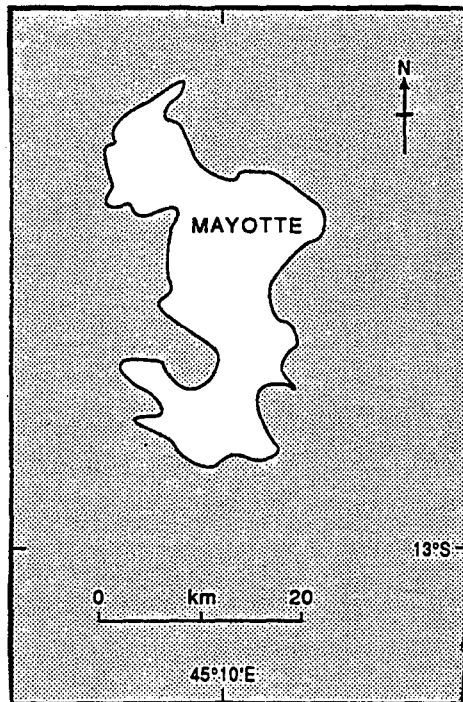
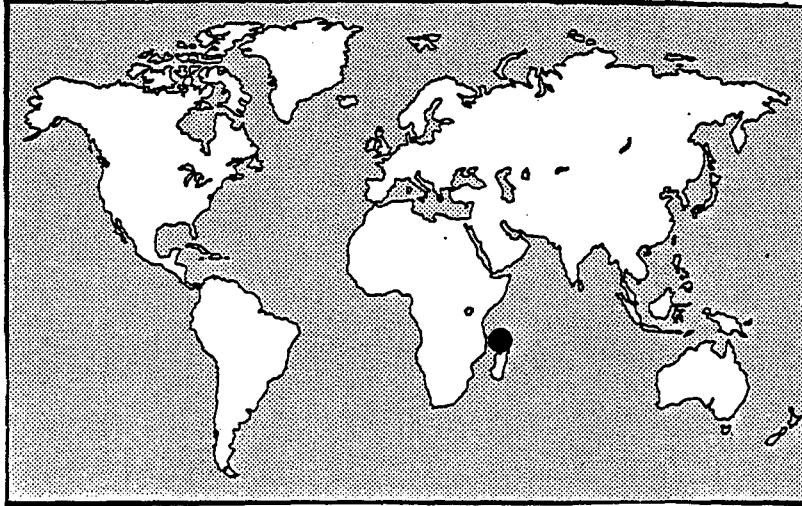
Evaluation

Although no solution has been reached, the future options of Joint Development of the islands and their adjacent economic resources is perhaps applicable to the Kuril Islands. Unlike the Kurils, this issue seems dormant and is not particularly affecting diplomatic relations between Japan and Korea.

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MAYOTTE ISLAND



Mayotte Island

Geographical Setting

Located in the Mozambique Channel, along with the Comoros and other island groups, Mayotte is a coral-fringed volcanic island with heathland in the center and agriculture in the lowlands. With a total area of 375 km² (145 sq. miles) and a population of 67,000 in 1989, it is administered by France, but has been subject to dispute for a long time. Precise location is 45°0' East and 13°20' South.

History of Claims

Mayotte is located in a strategic position in the Mozambique channel, which is the main tanker route in approaches from the Gulf to the Cape of Good Hope. It is also in some of the Indian Ocean's best fishing grounds which lie between Madagascar and Mayotte. It is one residual of imperialism untouched by the de-colonization process which has occurred in the rest of Africa.

The dispute stems from Mayotte's decision to preserve a special relationship with France, following the independence of the Comoros in 1975. Comoros has continued to press its claim to the island, backed by the United Nations, but Mayotte's politicians limit their ambitions to attaining the status of a department of France. As Mayotte is one of the four islands comprising the Comoros chain (Njazidja, Nzwari, Mwali and Mayotte), any unilateral action by the people of Mayotte would be seen as detrimental to the process of achieving independence for the islands corporately.

However, in 1958 the "Mouvement Populaire Mahorois" (MPM) was founded on the basis of safeguarding the interests of Mayotte. From 1972, as its political influence increased, this movement held 5 of the 39 seats in the chamber of deputies.

On September 10th 1972 in the Comoros chamber of deputies, a vote was taken to promote *independence* in friendship and co-operation with France. The 5 MPM members voted against but the following year a Joint Comoros-French declaration stated that independence of the Comoros would take place within five years. The Comoros leader had stated that any referendum should be collective, but the MPM had strongly advocated an island-by-island process.

In 1974 a referendum on the question of independence resulted in a 96% vote in favor. However, in Mayotte, 63% voted against independence and 25% of the islanders did not even vote. On 26th June 1975, the Comoro Islands Independence Bill was passed by the French Parliament and this established a constitutional committee and an "island by island referendum." This was seen as unacceptable by the Comoro government, who voted for immediate independence on July 6th 1975. The MPM members, who abstained from the vote, contacted the French President asking him to place Mayotte "under the protection of the French Republic." Due to this intervention, on the 10th July 1975, France stated that it would grant independence rather than unity to the Comoros. When French military personnel withdrew from Comoros, Mayotte retained 200 foreign legionnaires for security.

Negotiations/Solutions

On 10th December 1975, the French National Assembly passed a bill, which recognized the independence of three of the Comoros Islands, and provided for a referendum on Mayotte to determine the island's future. Part of the Bill provided for a second referendum to decide on the future status of Mayotte as an 'overseas department' or 'territory', should a decision be taken on the first vote to remain part of France.

On the 8th February 1976, the First Referendum saw a turnout of 83% and 99.4% voted in favor of remaining with France. France fully supported this "stance for self determination." The United Nations Security Council criticized France in a Resolution, saying that it was interfering in the internal affairs of the Comoros Islands, and talks should be held on the hand-over. France vetoed the idea, but the UN intervened again in October 1976 when it passed a motion calling on France to withdraw from Mayotte. On 6th December 1976, a further resolution adopted by 112 votes to 1 reaffirmed Comoros Sovereignty over Mayotte calling on early negotiation.

France, however, rejected UN Resolutions, calling them "an impermissible interference in the internal affairs of France." By 1979, the National Assembly and French Senate had promulgated a law stating that Mayotte was "part of the French Republic and cannot cease to belong to it without the consent of its population." The *status quo* continues in 1992 with continued French occupation. To many, Mayotte represents a failure of the decolonization process, whilst others subscribe to the view that the people are simply exercising the right of self determination. As almost the entire population is in favor of retaining the current status, it seems unlikely that this island will ever be handed back to the Comoros. Problems of the delimitation of maritime boundaries, the EEZ and fishing are looming. Madagascar and the Comoros are still strongly opposed to Mayotte's current status and discussion could easily escalate into conflict. As Mayotte sends one deputy to the French National assembly, it would expect full military support in the event of any problem. This issue is far from settled.

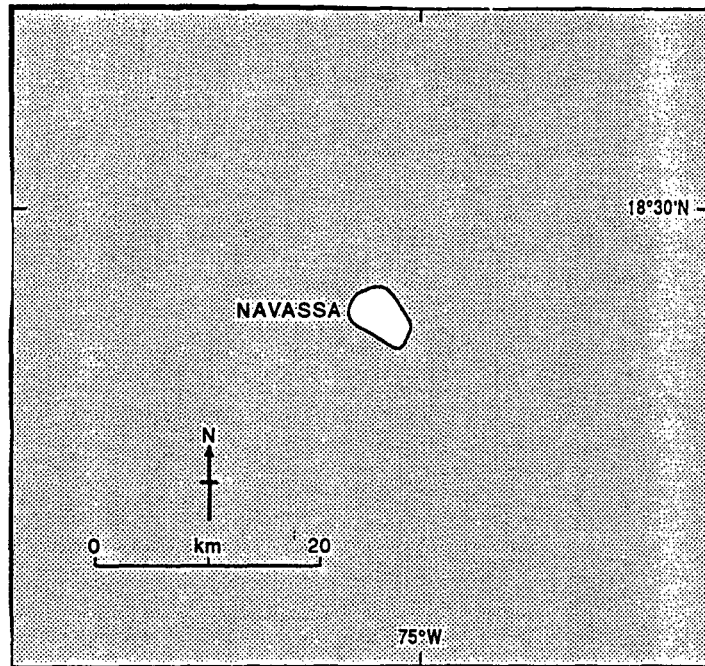
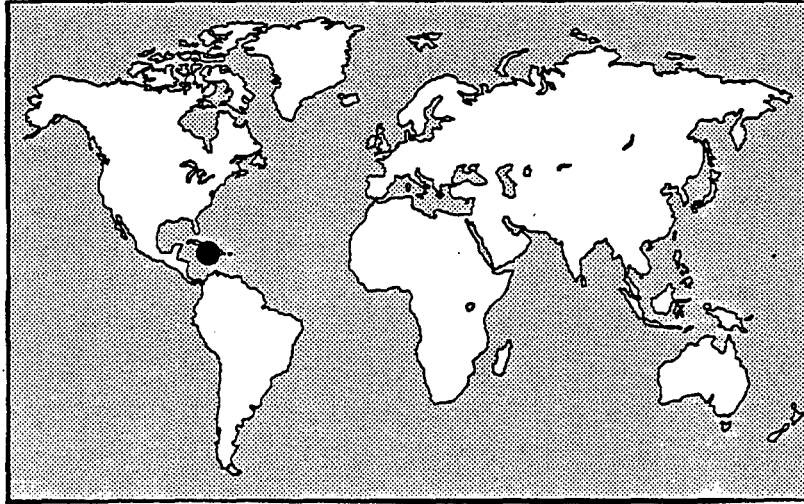
Evaluation

An island by island referendum as used in the Mayotte island case represents a possible way forward in the Kurils. However, the one drawback is that this procedure did not have the backing of *all* the parties involved, and this means that no durable settlement could be established. The UN and Comoros opposed the French Referendum even though the majority of Mayotte's indigenous population voted to stay with France. It is highly probable that, due to the high number of Russian speaking people on the Kurils, any vote or referendum would result in a mandate for continued Russian administration or independence from Japan and Russia. Both these results would be highly undesirable to Japan. The "island to island referendum" is certainly a an appropriate step towards resolving island disputes, but it would take a great amount of compromise and political will to get it to work for the Kurils.

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NAVASSA ISLAND



Navassa Island

Geographical Setting

Situated in the Caribbean Region, in the Jamaica Channel that separates Haiti and Jamaica, this United States-administered island has a total area of only 5km² (1.9 sq. miles), with only a handful of permanent residents. It is visited regularly by the United States Army, and attracts tourists during the holiday season. It is approximately 53km (28.6 nautical miles) west of Haiti.

History of Claims/Sovereignty

Under an Act of 1860, the Americans claimed Navassa as a guano island and during the Second World War a lighthouse was constructed on the island by the Americans. However, the claim to the island was in dispute, and in the 1950's the other claimant, Haiti, built a church on Navassa for use by passing fishermen.

The dispute resurfaced again during the 1980's, when on the 18th July 1981, a group of six Haitians, landed on the island without seeking permission from the United States, and subsequently 'symbolically occupied' the island. Haitian National Television was also present and the Haitian Communications Authority decided to allocate the island a Haitian Radio call prefix, instead of a US prefix. This illegal activity was dealt with by US marines, who had the men flown out to a nearby US Naval vessel. During the occupation, the Haitian flag had been ceremoniously raised on the island.

Solutions Proposed

Strategically located, Navassa is also important as it would allow a possible claim of some 4,100 nautical miles² of the surrounding sea area. If resources are discovered, Navassa could become a much greater source of conflict. There are, however, already signs of conflict, since Cuba and Haiti have already agreed to a maritime boundary which cuts into the Navassa equidistance area. There has been no agreement on a change of ownership of the islands. The United States have claimed the island, and for the foreseeable future, looks set to preserve the status quo.

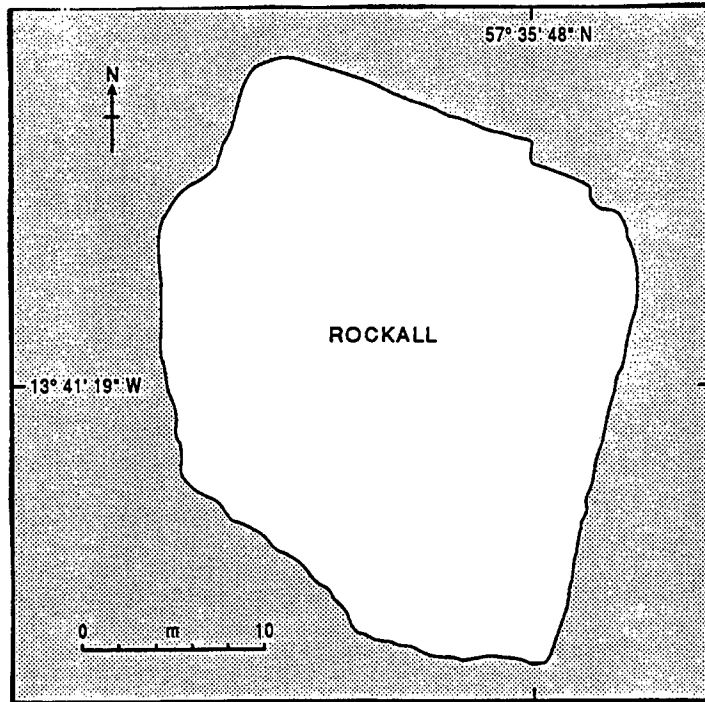
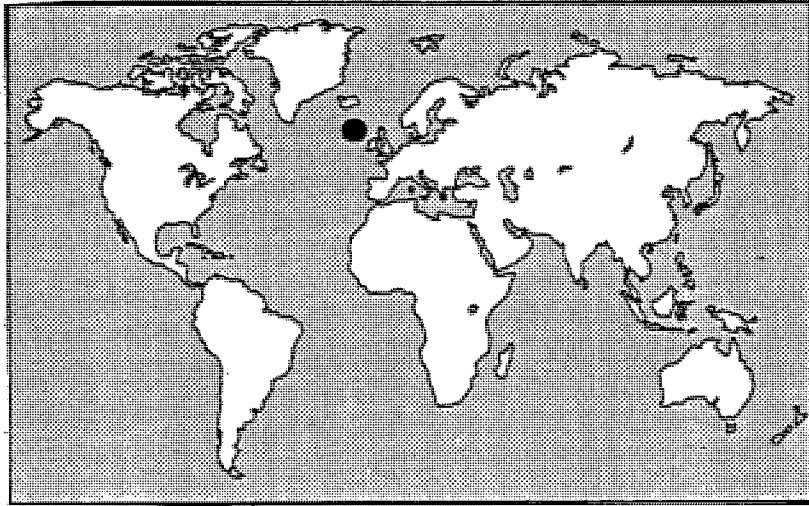
Evaluation

Ownership of the Navassa Island is in dispute between Haiti and the United States, although America has claimed the island as a consequence of a historical act of the nineteenth century. It would appear that the issue is relatively dormant and, as no solution has been found, or has needed to be found, this case study has little application to the Kuril Island dispute.

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ROCKALL



Rockall

Geographical Setting

Rockall is located 420 km (260 miles) west of the Hebrides (57°36'N, 13°41'W). It is a large uninhabitable rock which Britain has claimed for many years. Geologically, Rockall is separated from the United Kingdom continental shelf. Both Iceland and Denmark (on behalf of the Faroes) claim parts of the Rockall Plateau on geological grounds.

Outline of the Dispute

The United Kingdom has long argued that Rockall generates a right to possession of the surrounding continental shelf, a view strongly opposed by the Irish Republic. Article 121 of the 1982 Law of the Sea Convention, which the United Kingdom has not signed, would not define Rockall as an island since it cannot sustain human habitation or an economic life of its own. It would not be entitled to an Exclusive Economic Zone (EEZ) or continental shelf rights, but it would be entitled to a 12 nautical mile territorial sea. The Irish attitude to Britain's claim to Rockall itself is not altogether clear; Ireland has never made a formal claim to ownership of the rock which has very little intrinsic value.

The United Kingdom - Republic of Ireland Agreement (1988)

Negotiations dragged on without much progress until 1986, when both sides agreed to recommence serious discussions. One incentive to reach agreement was increasing Danish and Icelandic interest in the Rockall Plateau region. The Anglo-Irish Continental Shelf Agreement was finally signed on 7th November 1988, delimiting the Irish Sea boundary as well as the northwest boundary in the Atlantic. The treaty does not mention Rockall, which was completely ignored as a basepoint. The delimited boundary runs 1,174km (634 nautical miles) in a series of stepped lines which very broadly represent a median line between the United Kingdom and Ireland. The agreement does not attempt to deal with the status of territorial waters around Rockall, nor with the respective 200 nautical mile fishery limits of each state which still overlap as before. Oil concessions however can now be conveniently and safely made. Where Denmark and Iceland have designated claims, however, oil concessions are unlikely to be made.

Evaluation

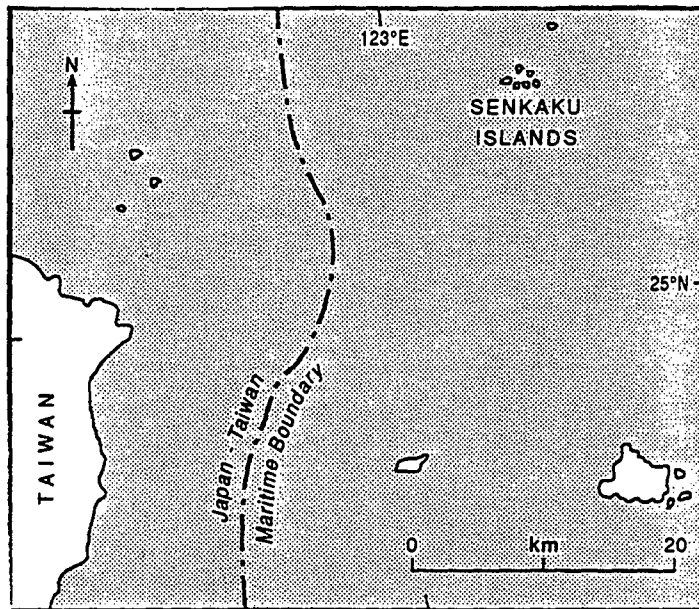
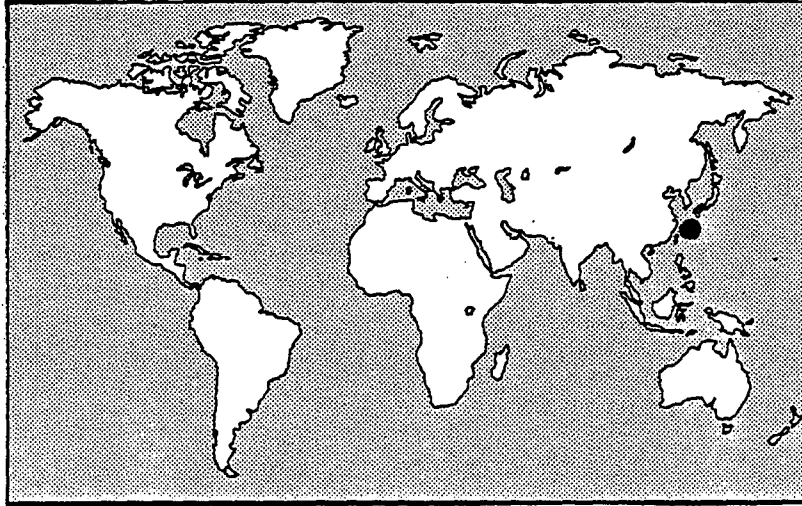
- (i) Application of the Rockall case is limited, but it demonstrates the possibility of agreement being reached on questions of sovereignty without *every* aspect being solved at the same time.

- (ii) No detailed explanation of how the boundaries were delimited has been made public, which has reduced speculation about a "climb down" by one or other party.

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SENKAKU ISLANDS



Senkaku Islands

(Japanese - SENKAKU: Chinese - DIAOYUTAI)

Geographical Setting

These uninhabited islands are located about 322 km (200 miles) west of Okinawa and about 161 km (100 miles) north east of Taiwan. They have become the subject of a dispute involving three countries: Japan, Taiwan and the People's Republic of China. Often included in or associated with the Ryukyu Island chain, they consist of five coral islands and associated islets. Although of little intrinsic value, their sovereignty offers valuable sea bed claims in a potentially oil rich area of the East China Sea, as well as the possibility of fishing rights in a 200 nautical mile Exclusive Zone, therefore their ownership has been bitterly contested for these economic and strategic reasons.

History of Claims/Sovereignty

Japan's claim to the Senkaku islands rests primarily on the fact that they are part of the Ryukyu island chain. The islands, along with the Pescadores and Taiwan were ceded to Japan by Imperial China in 1895, following its defeat in the 1894-95 Sino-Japanese War. Post World War II, the San Francisco Peace Treaty of 1951 placed the Senkaku group under US administration, and the islands were incorporated into the Ryukyu island chain. Then, on the 14th May 1972, under the provisions of the US-Japan 1971 Treaty, the islands' sovereignty reverted to Japan.

China, however, has bitterly disputed Japanese ownership of the islands. It claims that the Senkaku group was discovered by one of its citizens in 1719, and this predates Japanese discovery of the islands (1884). China asserts that the 1895 Treaty which ceded the islands to Japan described the islands as "the island of Formosa (Taiwan) together with all the islands appertaining or belonging to the said island." These islands were therefore part of Taiwan, and should have been handed back to China after the Second World War. China argues that the islands have effectively only been under Japanese control from 1895 to 1947, when Japan should have handed them back as it was divested of territory it won by conquest. Declaring the 1951 San Francisco Peace Treaty as "illegal" and "null and void," in 1971 the Chinese declared that the islands appertained to Taiwan and had, like Taiwan, been "an inalienable part of Chinese territory since ancient times." Indeed, in a 1992 law pronouncing sovereignty over the South China Sea China reasserted its claim to the Senkaku islands.

The third player in the dispute, Taiwan, laid claim to the Senkaku islands on 11th June 1971 and in February 1972 announced that they had been incorporated into Taiwan.

Negotiation/Solutions

Following this unilateral action by Taiwan, Japan protested on the 17th February 1972, and issued a document maintaining that Senkaku had been incorporated into Japan by the 1895 Treaty with China (The Treaty of Shimoroseki). In March of the same year, Japan announced that it would *only* deal with China on the Senkaku group question, but it was wary of concluding any agreement on the issue, for the damage it might cause to trade with Taiwan.

By 1975, when negotiations between China and Japan were taking place on a possible Treaty of friendship and peace, the Japanese believed that China would shelve the issue of the islands. This was confirmed, following an incident in April 1978, when a fishing vessel from China was caught operating in the territorial waters of the Senkaku group. Following Japanese protests, the Chinese government said the incident had been an accident and subsequently withdrew all fishing vessels from the vicinity of the islands.

In 1978, when the Peace Treaty between China and Japan was signed, it was stated by a spokesman of the Japanese ruling Liberal Democrat Party that China had effectively recognized Japan's control over the islands, and that Deng Xiaoping had stressed there would be no further incidents in the area.

The status quo has therefore been maintained, with no real solution and Japan still occupying and claiming sovereignty over the islands. The dispute resurfaced in 1991, when Japanese patrol boats turned back two Taiwanese vessels that were seeking to assert Taipei's sovereignty over the island. Prescott (1985) maintains that "Since Japan has announced that it will not sanction exploration for petroleum until the matter is resolved, there is a good chance that this problem will remain dormant in the foreseeable future." However, the dispute still exists, and no real solution has been found. China still maintains its claim that legally the islands are part of Chinese territory - and the Senkaku dispute looks set to remain a delicate issue in the area.

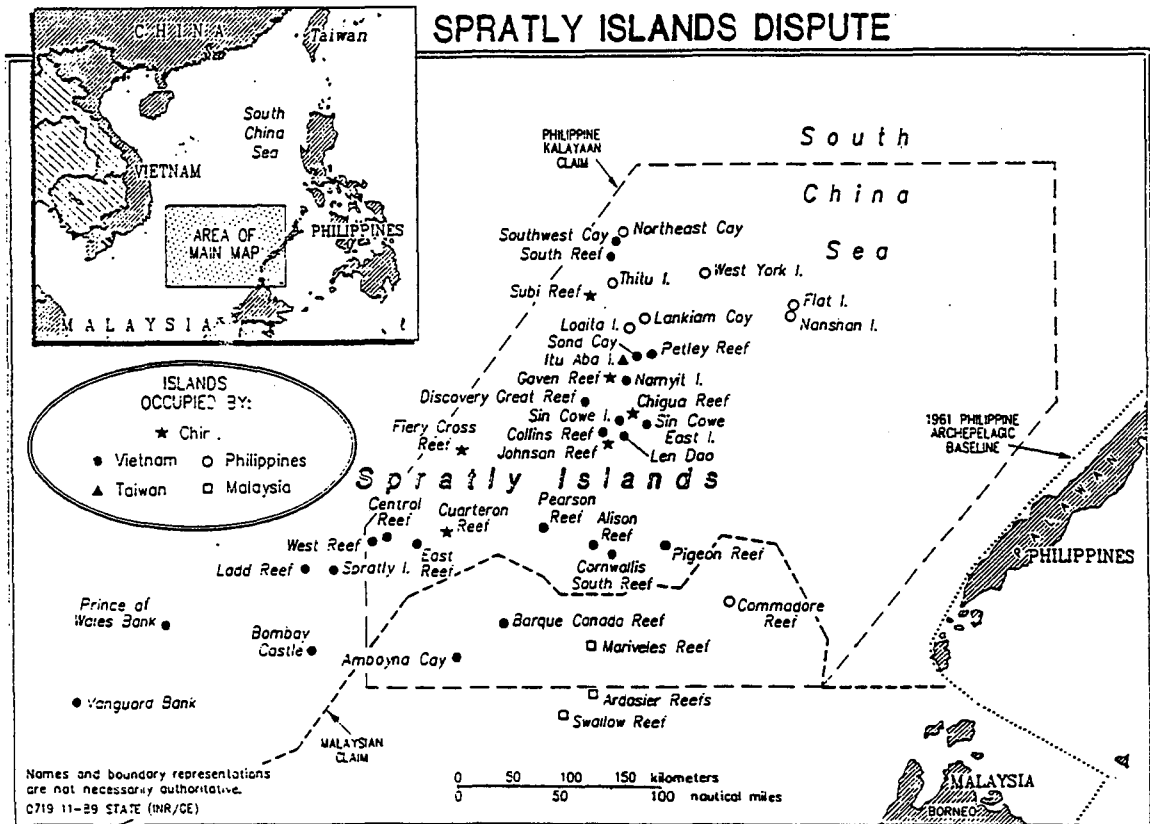
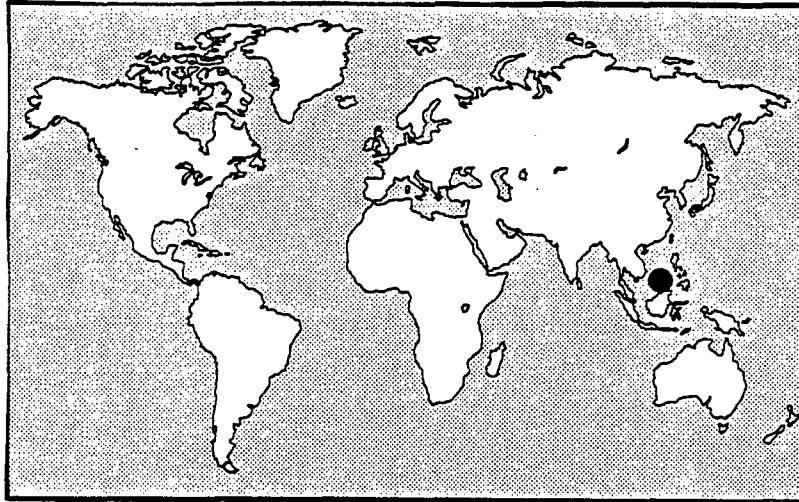
Evaluation in Relation to Kurils

This dispute is very similar to the Kuril islands, in that one country claims sovereignty over and occupies the islands, the sovereignty of the islands is in dispute and claimed by another party - in this case China and Taiwan. The different interpretations of the treaties is also similar to the Kuril island dispute. The "Senkaku Formula," by which the two opposing sides agree to disagree on the issue in question indefinitely, has been suggested in connection with the Kuril dispute. The Senkaku island group remains a model for the Kuril islands for continued diplomacy and no military aggression.

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SPRATLY ISLANDS DISPUTE



Spratly Islands Dispute

Geographical Setting

This virtually uninhabited and long ignored archipelago in the South China Sea has become the focus of one of the most complex regional disputes in postwar years. As the San Francisco Peace Treaty of 1951 did not determine the sovereignty of the seas' principal island groups, the Spratlys and the Paracels, a geopolitical vacuum was created leading to a string of competing claims by the five littoral states of the region.

The South China Sea is a semi-enclosed sea linking the Indian and Pacific oceans. It has strategic importance due to major international shipping lanes passing through the area and is bounded by P.R. China, Taiwan, Malaysia, Brunei, Vietnam, the Philippines, Thailand and Singapore. The main archipelago is estimated to consist of some 33 islands and 400 atolls and reefs, unevenly distributed over about 70,000 km² of the South China Sea. These islands are potentially important due to the economic benefits they offer in the shape of control over surrounding areas which are rich in fisheries and possibly have abundant reserves of hydrocarbons. Due to their strategic importance, they have become a focus for several multilateral claims by the surrounding states.

History of the Claims

China claims all the islands in the South China Sea, basing its claim on the proposition that Chinese discovered the islands in the second century BC, during the Han Dynasty. As regards recent history however, in 1939 Japan seized the Spratlys and placed them under the jurisdiction of Taiwan, which was then a part of the Japanese Empire. Following the Japanese surrender in 1945, Japanese troops withdrew from the Islands. The 1951 San Francisco Peace Treaty confirmed that Japan had renounced all rights to the Islands.

Taiwan has managed to occupy the island of Itu Aba, and has subsequently built up troops on the island to give it a stake in the South China Sea. In 1956, a businessman called Thomas Cloma claimed 33 islands, sand, cays and reefs in the Spratlys for the Philippines. These "Kalayaan" group were affectively annexed to the Philippines by a decree by President Marcos in 1978 which said that the Philippines had established its sovereignty by "History, indispensable need and effective occupation and control."

Malaysia was a relative late-comer to the race; in 1978 a Malaysian contingent visited several features in the Southern Island chain and claimed them for Malaysia. These included: Amboyna Cay, Marvieles Reef, Commodore Reef, Louisa Reef, Swallow Reef, Royal Charlotte and Barque Canada Reef. More controversial was its 1979 publication of a "Peta Baru" or New Map, which extends its boundaries into areas proclaimed by other littoral states.

Finally, Vietnam has claimed all of the Spratly group, occupies Amboyna Cay and China claimed it occupied 20 islands in the Spratlys in 1988.

Negotiating History

A peaceful settlement is the solution supported by most of the countries in the South China Sea Region, although without relinquishing their claims to Sovereignty over the islands. National pride, the realization of long-claimed frontiers and the sensitivity in the region due to its colonial history make negotiations a delicate and long-term process. The ASEAN states realize that no enduring peace will be possible without the constructive participation of the People's Republic of China. Unfortunately military action with Vietnam in 1988 increased tensions and a heavy military presence makes negotiations doubtful. Although in 1990, the Chinese Premier Li Peng said that China was ready to join with ASEAN countries to develop the Spratly Islands, while putting aside for the time being the question of sovereignty, there is no sign of any reduction in the military presence in the area, a trend which is needed for negotiations and cooperation to work.

As recently as March 1992, the Philippine Navy confirmed that there were Chinese warships present near the Philippine-controlled Kalayaan Islands in the Spratlys. A battalion of approximately 500-800 Chinese marines was reportedly scattered around the islands controlled by China. Arrests for illegal fishing have also been made, which illustrate the extent to which the sovereignty of islands and their surrounding waters is taken.

In February 1992 China again declared its irrefutable sovereignty over the whole group and has recently issued a law on its territorial waters which reserves the right to use force to prevent any violation. In addition on 8th May 1992 China signed an agreement for oil exploration in the south-west of the disputed area with a US oil company, Crestone Energy Co. This action brought immediate condemnation from other S.E. Asian nations in particular Vietnam. However, in Indonesia in 1991, a meeting of representatives of ASEAN governments led to an agreement on negotiations to discuss the establishment of institutional machinery through which development issues like Environment, Navigational Safety and Resource Exploitation could be resolved. As a result representatives from 10 nations (claimants: Brunei, China, Malaysia, Philippines, Indonesia, Taiwan and Vietnam plus non-claimants: Singapore, Thailand and Laos) met in Indonesia in late June for their third workshop in three years to discuss co-operation in the Spratlys region. Unilateral action may well jeopardize the negotiation process, but a multiplicity of solutions have been proposed for the South China Sea, and several bilateral initiatives have been taken to resolve conflicts. However, unless the claimants join hands in arriving at creative approaches, this unresolved territorial dispute promises to be a volatile question that will seriously damage and destabilize the region.

Solutions Proposed

Before we look at the many solutions proposed for the Spratly islands let us look briefly at some bilateral agreements to resolve conflicts by several littoral states in the South China Sea. Malaysia's and Thailand's dispute over an overlapping area of 7,347 km² water was solved by declaring a "Joint Development Area" which would last for 50 years whilst the boundary dispute was negotiated and resolved. As recently as February 1992, Vietnam and Malaysia agreed to cooperation with regard to their overlapping continental shelves, and Malaysia and the Philippines have submitted their dispute to the International Court of Justice for arbitration.

Peaceful negotiation is therefore possible, although China's and Vietnam's all-inclusive claims to the islands will need to be modified by both sides - for any substantial progress to be made.

Several confidence building measures have been proposed such as decreasing the military presence in the area, unilateral restraint of force, respecting national sensitivities and respecting the status quo with no more expansion in territories and no military expansion. These confidence building measures, however, will only be successful in an environment of mutual respect.

Solutions include a *Status Quo* option - where the present claims to sovereignty are recognized and then bilateral agreements on Maritime Boundaries negotiated. This would prove very difficult as some islands are claimed by more than one party and in some cases it is ambiguous as to whether some insular features are islands or rocks. Other options include an "Islandless Exclusive Economic Zone" where a maritime division of the South China Sea is created, disregarding the influence of islands.

The "Condominium" concept has also been argued - with sharing of the resources in the South China Sea in a cooperative regime, along with Joint Exploration Zones. The most radical proposal is a cooperative regime for the entire Spratly area based on the "Antarctic Treaty Model." This would require the major players in the dispute (China, Vietnam, Malaysia, Thailand and the Philippines) to agree to set aside claims and establish a "Spratlys Authority" to manage resources, fisheries, environment and navigation. This would also create a unique regional institution which *unlike* the present ASEAN group, would incorporate China.

Unfortunately, radical proposals like the one outlined above, require an immense amount of collaboration and political will which is perhaps absent at the present time. The Spratlys is an example of an island dispute that has, as yet, found no over-reaching and lasting resolution and until military skirmishes are ended and demilitarization is pursued solutions are unlikely to be achieved.

Evaluation

Fortunately, the Kuril Islands *are* in some respects *less* complicated than the South China Sea dispute. It is primarily a bilateral dispute between Japan and Russia (formerly USSR) over inhabited islands whereas the Spratlys are largely uninhabited and subject to multilateral competing claims.

The Joint Development Authority, sponsored by Malaysia and Thailand, could well be useful as a concept for use on the maritime zone surrounding the Kurils for joint development of fisheries and any mineral/hydrocarbon resources.

It would seem that mutual cooperation and confidence building is needed, to prepare a platform for real negotiations, and several of the measures proposed for the Spratlys, may well be useful in the Kurils dispute.

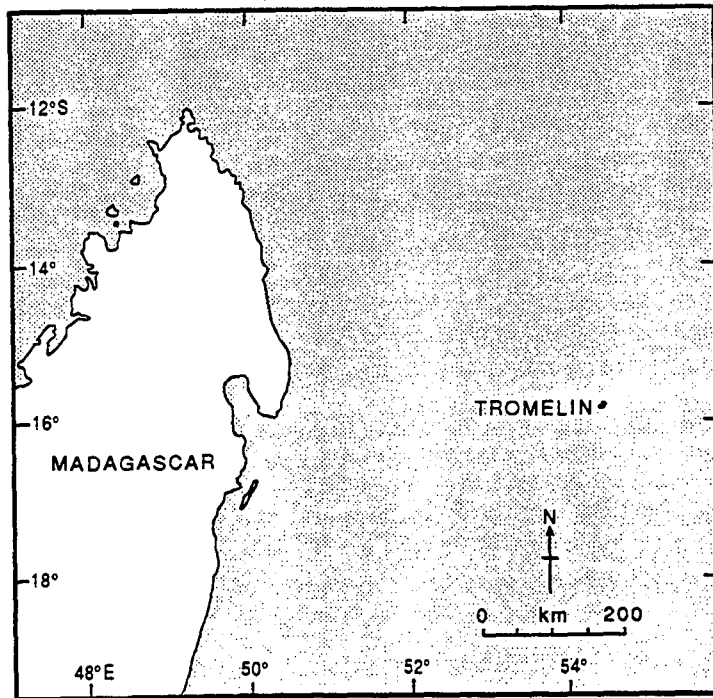
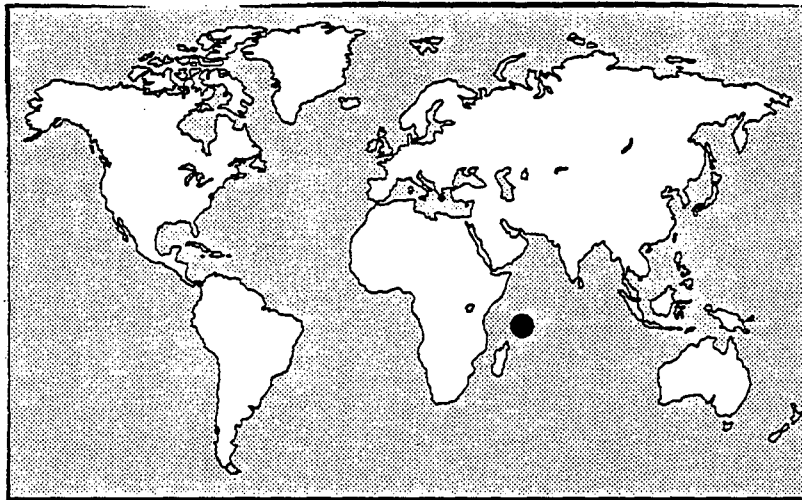
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TROMELIN ISLAND



Tromelin Island

Geographical Setting

Tromelin is located at 15°52'S, 54°25'E and is 519 km (280 nautical miles) East of Madagascar. It is approximately 1km² in area and comprises a volcano which reaches an elevation of 4,000 meters above sea level. The summit is topped by a coral plateau. It has no major economic importance and it is difficult to gain access to the island from the sea. The only possible potential for Tromelin is the Exclusive Economic Zone to which it gives title.

History of Claims

Tromelin was discovered by French mariners in 1722 and in 1776 was named after the Frenchman who was first to land on it. However, there is no evidence of France ever announcing occupation, and the island was not in dispute until the twentieth century. In 1954 however, a meteorological station was established on the island and this date remains the effective date of French occupation. In 1959, the first seeds of a dispute were sown at the World Meteorological Organization conference, when Mauritius stated that it considered the Tromelin Island to be part of its territory. This suggestion was strongly refuted by France.

Prior to independence, Madagascar administered the island and when Madagascar finally achieved independence in June 1960 she also laid claim to Tromelin island as did France and Mauritius. However, in 1976, Madagascar waived its claim in favor of Mauritius. On 2nd April 1976, Mauritius officially laid claim to Tromelin. Mauritius fought its case on the interpretation of the wording of the Treaty of Paris of 1814. In the treaty, Britain had restored certain Indian Ocean islands taken from France in 1810, "except the Isle of France (Mauritius) and its dependencies, *especially* Rodrigues and the Seychelles." The key word in the Mauritius case, was especially, which it defined in its claim as "in particular, among others or notably." The Mauritius interpretation was that as well as Rodrigues and the Seychelles, there were other minor dependents (including Tromelin) which remained British and on independence in 1968 fell to Mauritius. In December 1976, the French government rejected the claim of Mauritius and said they interpreted the word "especially" as equivalent to "namely" and therefore Tromelin was French from 1814. Indeed Britain had intervened on the 2nd April 1973, and stated that there was no Franco-British dispute over Tromelin, nor had there ever been. In 1980 Mauritius announced that its constitution had been amended to include Tromelin in a list of dependencies, and the island was included in its sea bed claim.

Solution

Mauritius still claims Tromelin, but its claim appears weak and Britain's intervention has not given it any authenticity. Today it is still occupied by France, and the only issue of importance is the effect the island will have on sea-bed and EEZ claims. If resources are found in this area, perhaps the debate will resurface. Conflict over the issue seems very unlikely.

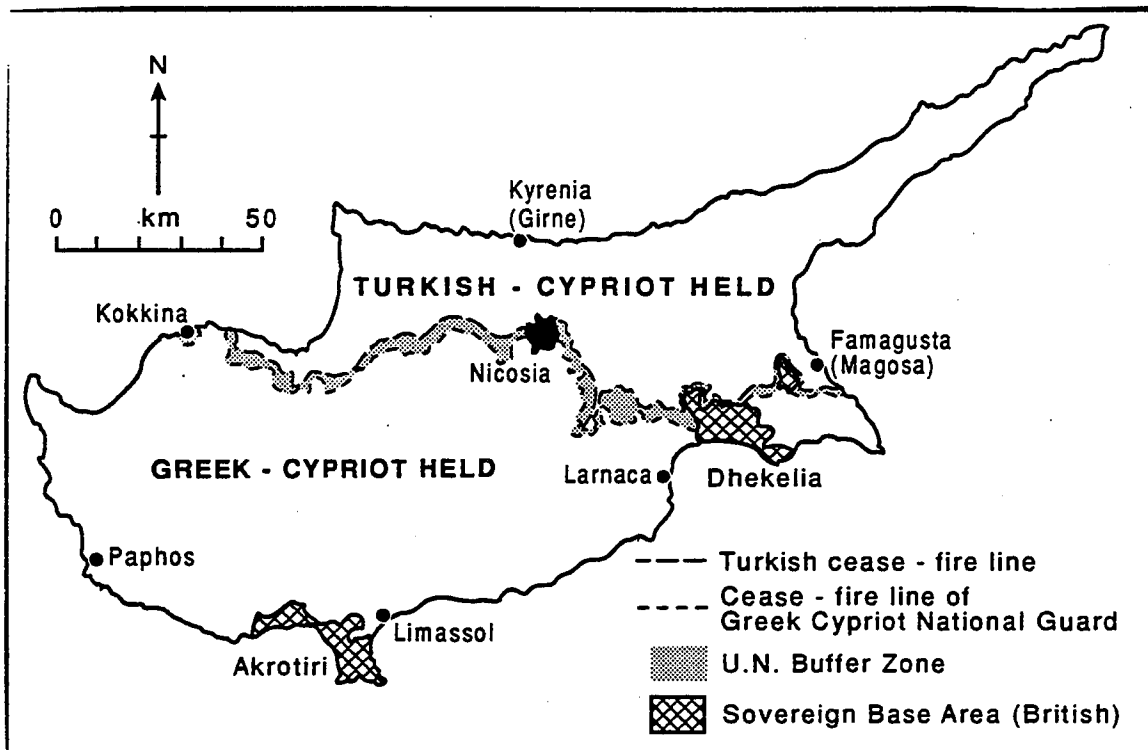
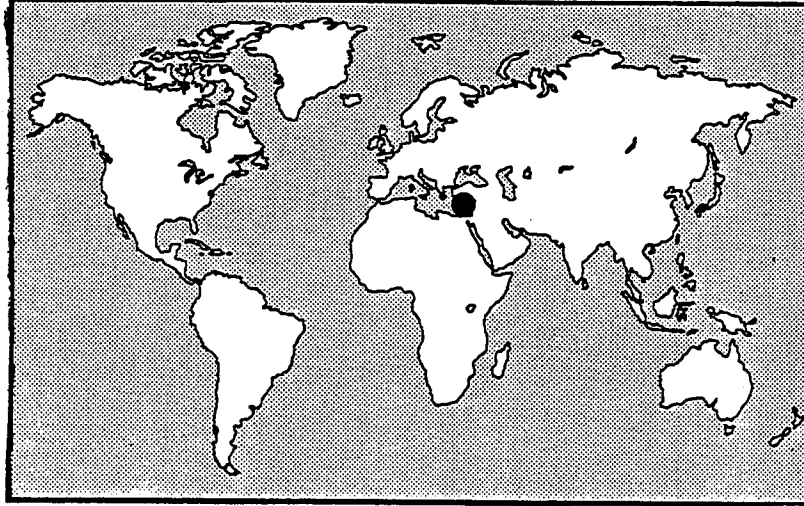
Evaluation

The fact that Tromelin island is still considered part of French territory illustrates the inherent weakness of Mauritius' claim, and it is very unlikely that the sovereignty of the island will change in the future. Similarity to the Kurils rests on the differing interpretations of the Treaties, concerning the islands, between France and Mauritius, just as Japan and Russia differ in their interpretation of the Treaties regarding the Kurils. Preserving the status quo, as is the case here, is certainly not an option for the Kurils, where the Japanese are insisting on the return of their Northern Territories.

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CYPRUS



Cyprus

Geographical Setting

The island of Cyprus is located in the Eastern Mediterranean Sea and is crossed by latitude 35° North and located between longitudes 30°-40° East. It has been subject to a long-running dispute with Turkey which occupied Northern part in 1974. It is now partitioned by a United Nations Buffer Zone. The United Kingdom Sovereign bases on the island are, however, the focus for this case study, rather than the Bilateral dispute between Greece and Turkey.

Political History

The growing issue of Cyprus Independence led to the London and Zurich agreements in 1959, following Tripartite discussions between Cyprus, Greece and Turkey. The London agreement meant that action was being taken to prepare for the transfer of sovereignty.

Four treaties were subsequently proposed, the first of which, "The Draft Treaty of Establishment between the United Kingdom, Greece, Turkey and the Republic of Cyprus" (see Appendix Four) was delayed in signature from February 1960 till the 1st July 1960, due to controversy over the two sovereign bases. However, the Treaty of Establishment, did provide for two sovereign bases to be ceded to Britain, with no more than 100 sq. miles being the limit argued by President Makarios. Article 1 and Annex A of the draft Treaty of Establishment dealt with the delimitation and demarcation of the land boundaries of the two areas retained under British sovereignty and of their territorial waters (HMSO CYPRUS 1961 p 7). The interests of the British community were also safeguarded under this treaty.

The two bases represent 159 km² (99 sq. miles) of Cyprus' 5,749 km² (3,572 sq. miles) and are known as *Dhekelia* sovereign base and *Akrotiri* sovereign base. Upwards of 5,000 troops are stationed at the bases, which serve primarily as the headquarters and supply base for British forces in the Near and Middle East, and as a staging point between Great Britain, Southern Asia and the Far East.

Although the two bases have consistently proved to be a source of political stress, they are, however, recognized as making a considerable impact upon the local economy.

Evaluation

The case of British sovereign bases on Cyprus illustrates the following points:-

- (i) Territory was ceded in perpetuity to the United Kingdom under the Treaty of Establishment,

- (ii) British sovereignty could be exercised over the territory and surrounding territorial water with formally agreed land and maritime boundaries.
- (iii) British citizens in these territories had their rights safeguarded under the provisions of the Treaty.

NB. The 1960 Draft Treaty is included in Appendix Four.

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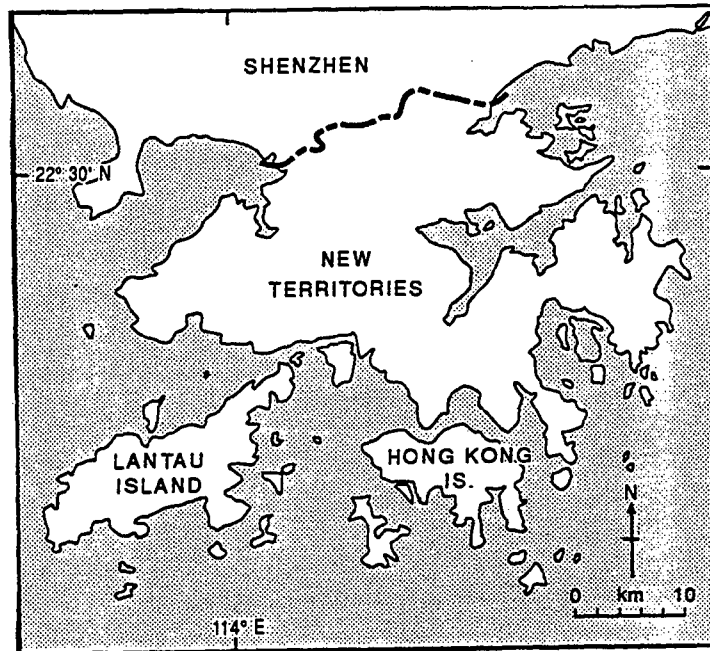
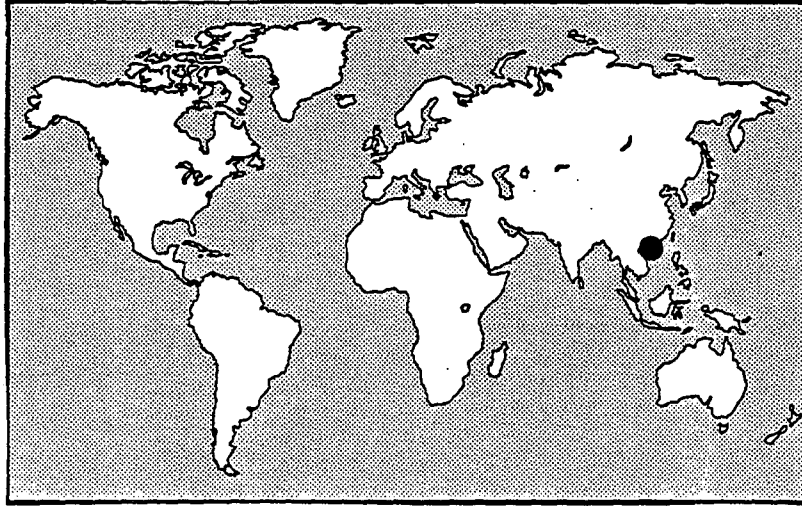
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HONG KONG



Hong Kong

Geographical Setting

The Islands of Hong Kong, Kowloon and the New Territories with a total area of 1067km² (412 sq miles) are situated off the coast of mainland China, at the northern terminus of the South China Sea. The present population of the Colony is estimated at 5.5 million. Originally a base created to facilitate British merchant companies' expansion into the Chinese markets, this British Crown Colony evolved in three stages, each of which meant an extension of British Colonial penetration into Chinese territory.

During the nineteenth century, the United Kingdom concluded three Treaties with the Chinese Government in relation to Hong Kong: the Treaty of Nanking (1842) ratified in 1843, under which Hong Kong Island was ceded in perpetuity; the Convention of Peking in 1860 under which the Southern Sector of the Kowloon Peninsula and Stonecutters Island were ceded in perpetuity; and, most importantly, The Convention of Peking (1898) under which the New Territories (92% of the total area of the territory) were leased to Britain for 99 years from 1st July 1898. The Chinese, defeated by the Japanese in 1895, were in a weak bargaining position and the British took advantage of this by demanding further concessions, which resulted in the 99 year lease. Each stage therefore involved a northwards expansion of British Colonial interest and territory into mainland China.

Negotiating History

The fact that the Dependent Territory of Hong Kong is subject to a finite lease with a *fixed* expiry date, lay behind the decision by the United Kingdom Government to seek to enter negotiations with the Government of the People's Republic of China on Hong Kong's future. The negotiations have proved successful with the signing of the "Joint Declaration" on the future of Hong Kong on 17th September 1984. It would be helpful to outline the history of the negotiations prior to this point before we consider the nature of this political solution and any applicability that it may have for the Kuril Islands.

China had always taken the view that the whole of Hong Kong is Chinese Territory. It held the position for many years that the Hong Kong question was part of the category of "unequal treaties" left over from nineteenth-century history and that it should be settled by *peaceful* means through negotiations when the time was ripe. Before a settlement was reached, it was agreed that the *status quo* would be maintained. In 1972, the Government of PRC made its view of Hong Kong's status abundantly clear in a letter to the Chairman of the United Nations Special Committee, on the situation with regard to implementing the Declaration on the Granting of Independence to Colonial countries and peoples in March 1972. The letter maintained that the settlement of the Hong Kong question was a matter of *China's sovereign right* and that, consequently, Hong Kong should be *excluded* in the Declaration Granting Independence by Colonial countries and people.

Throughout the 1970's, the UK government came to the realization that confidence would

begin to erode in the early 1980's if nothing was done to alleviate the uncertainty caused by the 1997 deadline. In January 1982, the Lord Privy Seal visited Peking and was given significant insight into Chinese policy towards Hong Kong by the Chinese government. This paved the way to the opening of bilateral negotiations between the two governments.

In the same year, the then British Prime Minister, Mrs Margaret Thatcher, visited China and had substantive discussions with the Chinese Government on the future of Hong Kong. Following a meeting with Chairman Deng Xiaoping, a joint statement was issued on 24 September 1984:

Today the leaders of both countries held far-reaching talks in a friendly atmosphere on the future of Hong Kong. Both leaders made clear their respective positions on this subject. They agreed to enter talks through diplomatic channels following the visit, with the common aim of maintaining the stability and prosperity of Hong Kong.

(HMSO 1984)

Two phases of negotiations were pursued in 1982-83 in the course of which the UK Government explained the systems that operate in Hong Kong and the importance of the British administrative role and link. However, continuation of British administration after 1997 would not be acceptable to the Chinese *in any form*. It was therefore agreed by both sides to discuss, on a conditional basis, what effective measures other than continued UK administration might be devised to maintain the stability and prosperity of Hong Kong. The UK government also sought to explore with the Chinese Government the implications of the Chinese Government's concept of Hong Kong as a "Special Administrative Region" of the PRC. It was the idea of the UK government, expressed by Foreign Secretary Sir Geoffrey Howe, "to arrive at arrangements that would secure for Hong Kong, post 1997, a high degree of autonomy under Chinese sovereignty, whilst preserving the way of life in Hong Kong"

Finally, in 1984, a "Sino-British Joint Declaration on the question of Hong Kong," with three annexes, was signed in Beijing. The whole agreement makes up a *formal international agreement* which is the highest form of commitment between two sovereign states. In paragraph 1, China declares that it will resume the "exercise of sovereignty over Hong Kong on 1st July 1997."

The full text of the Joint Declaration appears in Appendix Five.

Annex II provides for the establishment of a Sino-British Joint Liaison Group, which will provide a forum for liaison only and *not* to exercise any power or play any part in the administration of Hong Kong, or to have any supervisory role. The United Kingdom Government declared its confidence in the agreement, as providing a framework that would maintain stability and prosperity after 1997. Although originally the Lease was only applicable to the New Territories, the UK government has realized that since 1898 the remainder of Hong Kong (Hong Kong Is, Kowloon etc) has become an integral whole and that the agreement means the reversion of *all* of the territory to China. The UK government was confident that the Declaration provides the necessary assurances about Hong Kong's future, and will allow the territory to continue to flourish and to maintain its unique role in the world as a major trading and financial center. It also preserves Hong Kong's common law and legal system and gives it a high degree of autonomy to administer itself and pass its own legislation as well as deciding on its own economic, financial and trade policies. Hong

Kong's future policies will be stipulated in the *Basic Law* of the "Hong Kong Special Administrative Region of the PRC," and will remain unchanged for 50 years, it was agreed (paragraph 12 of the Joint Declaration).

Solutions

The re-establishment of China's sovereignty in 1997 has therefore been recognized under the Sino-British Joint Declaration and Hong Kong will retain a separate identity with its own currency, economic system, free port and degree of political autonomy under what has become known as the "one country, two systems" policy, adopted by the PRC government in 1982. The International boundary between Hong Kong and China will cease to exist on the 1st July 1997. It is possible that the Chinese may pursue a policy of integrating their new possession with the Shenzhen Special Economic Zone to "enhance their economic complementarity." (Kelly 1990 p 7). However, China has decided that a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the "one country, two systems" the socialist system and policies will *not* be reproduced in Hong Kong.

A *Basic Law* was enacted for the Hong Kong Special Administrative Region which prescribed the systems to be practiced in the Hong Kong SAR. Article I states that the Hong Kong Special Administrative Region is an inalienable part of the Peoples Republic of China. It also states that "the previous capitalist system and way of life shall remain unchanged for 50 years," but land and natural resources within the Hong Kong SAR shall be the property of the state. The SAR does however come directly under the Central People's Government, who are responsible for the foreign affairs relating to the Hong Kong SAR. Residents of Hong Kong, under China's Basic Law, now fall into the two categories of "permanent" and "non-permanent" residents with non-residents qualified to obtain Hong Kong identity cards in accordance with the laws of the region, but having no right of abode.

The Basic Law, in summary, "fleshes out" the social, economic and political implications of Hong Kong under Chinese rule, and the actual workings of the Colony when it is handed back to China. The compatibility of Hong Kong Law and the Basic Law, means that the former will continue to be in force in the Hong Kong SAR from 1st July 1997, in accordance with paragraph 7 of Annex 1 of the Joint Declaration, and Article 8 of the Basic Law.

Evaluation

Painstaking negotiations have led to an agreement that is acceptable to both the people of Hong Kong and the People's Republic of China. Transfer of Sovereignty in full to the Chinese satisfies them, as "Hong Kong has been part of the territory of China since ancient times..." (Basic Law, 1990). As regards application to the Kuril Islands, reversion of sovereignty, but with a degree of political autonomy reserved for the present population of the islands may seem a plausible scenario. This might help to appease the strongly Russian local population. A 50 year moratorium on changes to any constitution could be arranged for the Kuril Islands, mirroring the 50 year delay developed for Hong Kong.

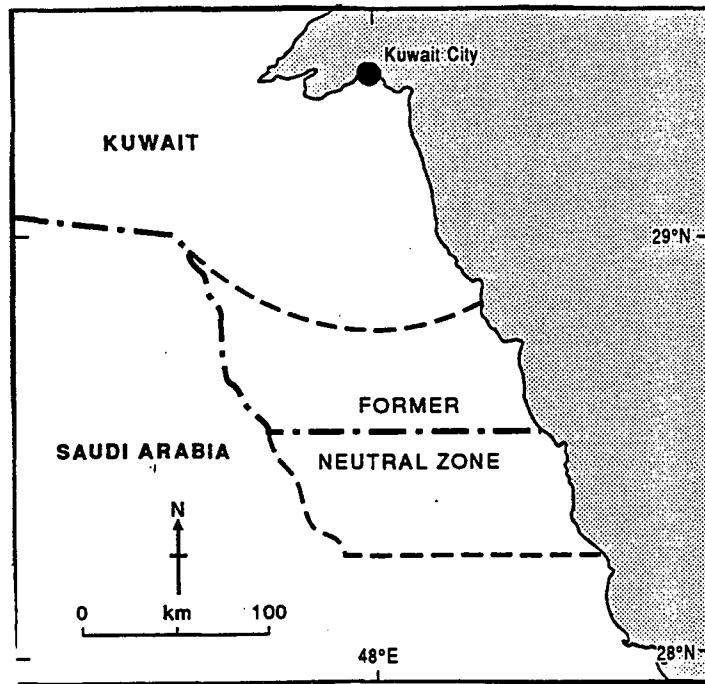
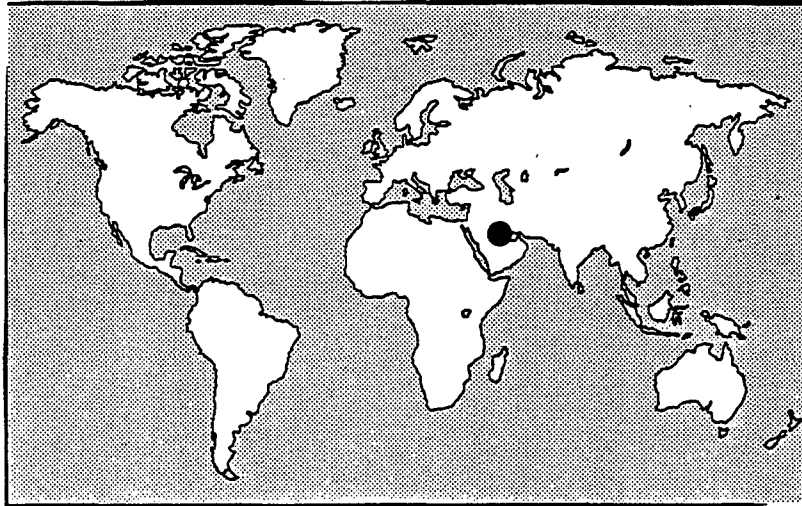
Whatever its application, Hong Kong presents us with an illuminating study of how a colonial

territory is to be handed over to a country of different political ideology, whilst preserving its way of life and economic system.

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NEUTRAL ZONE: KUWAIT-SAUDI ARABIA



Neutral Zone: Kuwait-Saudi Arabia

Geographical Setting

The former Neutral Zone of 7,044 km² (4,377 sq. miles) between Kuwait and Saudi Arabia was equivalent to about 36 per cent of the area of Kuwait. It is a flat, arid region in which tribal grazing lands were once quite important. From 1953 it was an important oil-producing region.

History

The Kuwait-Saudi Arabia Neutral Zone was established in the Treaty of Uqair in December 1922. Under the Treaty, the Sheikh of Kuwait lost about two thirds of the territory allocated to him in the 1913 Anglo-Turkish Agreement, and the provision of a large Neutral Zone may have been an attempt to mollify him. Far more important however were reports of oil in the vicinity of Khor Maqta, which Britain wished to ensure was not lost entirely to Kuwait. In the Neutral Zone:

...the governments of Najd and Kuwait will share equal rights until through the good offices of the government of Great Britain a further agreement is made between Najd and Kuwait concerning it...

(E. Lauterpacht, et al. 1991 p 48).

After over 40 years of reasonably successful operation, the Neutral Zone was partitioned equally between Saudi Arabia and Kuwait in July 1965.

Administrative Arrangements

No proper guidelines were laid down for the administration of the Neutral Zone, which is surprising because it was thought to be a potential oil-producing area. There was no reference to offshore arrangements, no provision for government, and no guidance about what to do in cases of dispute. In later years a number of agreements were reached which helped define the roles of the two states. One such agreement recognized the jurisdiction of each state over its own nationals in the Neutral Zone. From 1953, however, oil production in the Neutral Zone created strains and stresses between the parties as the number of workers rose to over 4,000. There were accusations by Kuwait for example that the Saudis were treating the entire workforce as though it was under Saudi Law (H.M. Albaharna, 1968, p 272). Saudi Arabia proposed the creation of a proper joint administration for the Neutral Zone, headed by a Council of four, but Kuwait rejected the idea as too complex. In 1963, after much discussion, the principle of equal partition was agreed.

The Partition Agreement of July 1965 provided for the division of the Neutral Zone into two equal parts which would be annexed as integral parts of the territories of the parties. Equal rights

to exploit hydrocarbon resources were to continue, and the citizens of Saudi Arabia and Kuwait had the right to work in either part of the Partitioned Zone. The width of the territorial sea of the annexed territories was fixed at six nautical miles. Beyond the six mile limit, the parties enjoy equal rights to resources by means of joint exploitation, unless they agree otherwise. The offshore arrangement is greatly complicated by disputed sovereignty over the Qaru and Umm Al Maradim islands which are claimed by Kuwait. Saudi Arabia apparently argues that the islands should be subject to co-sovereignty as part of the former Neutral Zone.

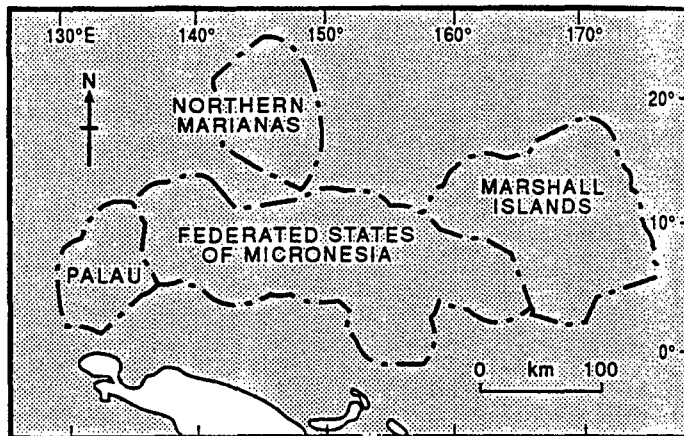
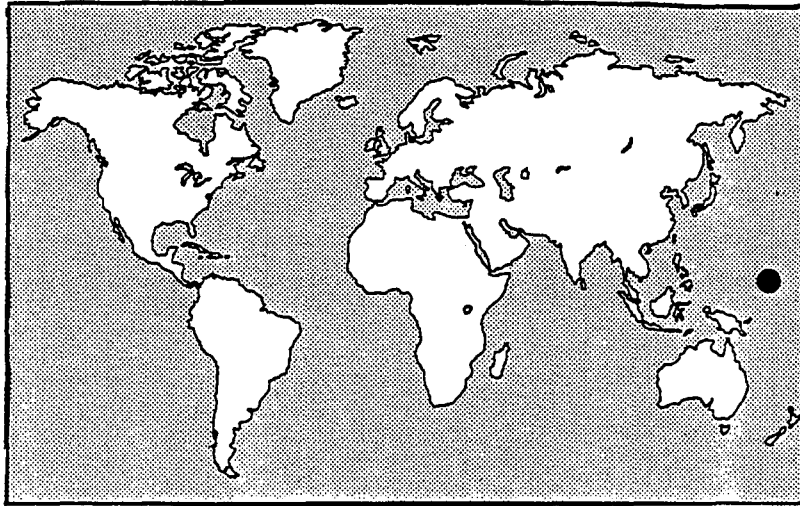
Evaluation

Joint resource exploitation as practiced in the Neutral Zone can be a creative arrangement where sovereignty is disputed, but proper understanding must be reached concerning administration, and the exercise of law. Several ingredients were present in the Neutral Zone which also feature in the Kuril Islands - disputed territory, disputed seabed, valuable resources, and people. Inadequate thought was given to the relationship between these four elements, particularly the status and rights of the workers, and the nature and extent of offshore jurisdiction.

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TRUST TERRITORIES OF THE PACIFIC



Trust Territories of the Pacific

	<i>No. of Islands</i>	<i>Land area</i>	<i>Population</i>	<i>Status</i>
Federated States of Micronesia	580	700 km ²	108,000	Independent
Marshall Islands	1,200	181 km ²	40,000	Independent
Northern Marianas	22	477 km ²	21,000	Independent
Palau	340	508 km ²	15,000	Trust Territory

Geographical Setting

The vast area of the western Pacific Ocean known as Micronesia includes several extensive archipelagos each consisting of large numbers of islands and atolls. The Caroline Islands archipelago is shared by the *Republic of Palau*, stretching in a chain 650 km (400 miles) long, and the *Federated States of Micronesia* extending 2,900 km (1,800 miles). The *Marshall Islands* archipelago comprises two parallel chains of coral atolls stretching 1,300 km (800 miles) which occupy some 180,000 square miles of the Pacific Ocean. The *Northern Marianas Islands* are a chain of volcanic peaks and uplifted coral reefs extending some 800 km (500 miles). The Marianas group includes the politically separate island of Guam. There are many uninhabited islands in Micronesia.

Political History

Under the Treaty of Versailles (1919) Japan was appointed mandatory power to the former German possessions in the Pacific, including the islands of the Caroline, Marshall, and Mariana groups. After the defeat of Japan in World War II, the United States agreed to administer the former Japanese-mandated islands under Trusteeship from the United Nations (18 July 1947). In June 1975, in a plebiscite observed by the United Nations, the Northern Marianas Islands voted to become a self-governing state in voluntary political union with the United States, and in April 1976 they ceased to have Trust Territory status. Similarly the Marshall Islands adopted a locally drafted constitution in May 1979 and became the independent Republic of the Marshall Islands. A Compact of Free Association was concluded with the United States on 21st October 1986.

The Caroline group of islands consists of the Federated States of Micronesia and the Republic of Palau. The USA signed a Compact of Free Association with the Federated States of Micronesia in October 1982, approved by plebiscite in June 1983. In November 1986 the USA formally ended its administration of Micronesia. The Republic of Palau came into existence on 1st January 1981. Successive plebiscites have failed to secure a 75% vote in favor of a proposed Compact with the USA, similar to those approved by the Northern Marianas, Marshall Islands, and Micronesia, and Palau therefore remains the only Pacific Trust Territory.

On 1st December 1990, the United Nations Security Council agreed to terminate formally the Trusteeship Agreement for all the Pacific territories except Palau.

Trust Territory Government

In the Republic of Palau, which still has Trust Territory status, administrative authority is exercised by an Assistant Secretary in the U.S. Department of the Interior. Executive authority is vested in a directly-elected President and Vice-President and legislative power rests with an elected National Congress. Palau is defined as a nuclear-free zone in its constitution, but the United States wanted to base nuclear weapons there under the proposed Compact of Free Association.

Compact of Free Association with the U.S.A.

The terms of the Free Association Compacts are similar for each of the three signatories. The USA remains responsible for defense (but not external relations) and provides financial and economic assistance. The republics can become fully independent, or alter their status with regard to the USA at any time, subject to plebiscite. Economic and defense provisions are renewable after 15 years, but the Association continues indefinitely. The people of the Northern Marianas are citizens of the USA, who elect a non-voting representative to the US House of Representatives.

Evaluation

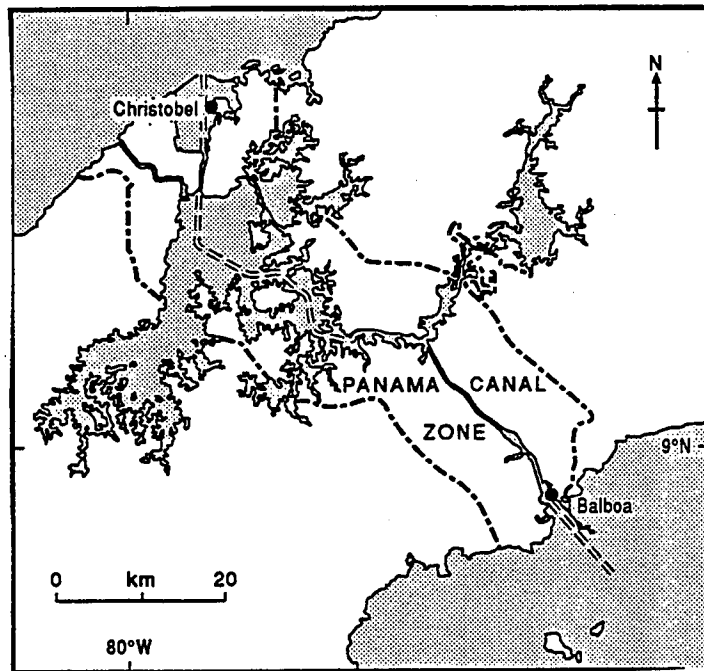
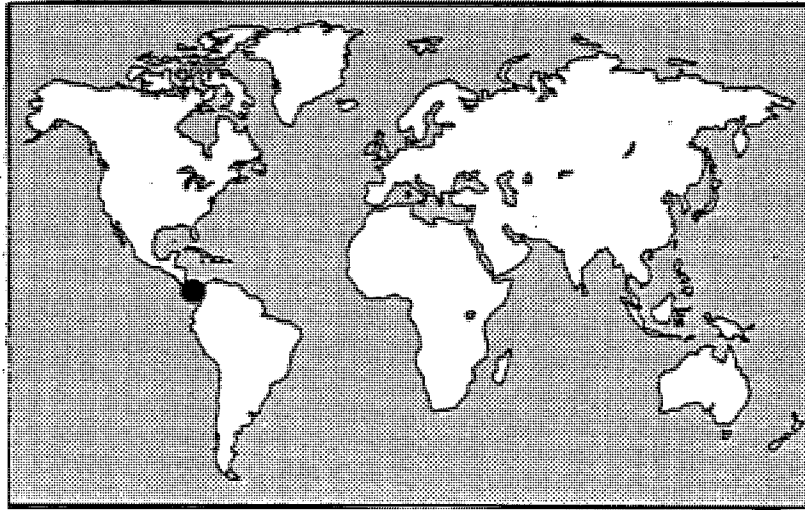
Some form of Trusteeship may be an option for the Kuril Islands. The features of the Pacific Trust territory which deserve attention are:

- (i) The people have been free to decide their political status by plebiscite;
- (ii) Democratic government, based on locally-drafted constitutions was able to operate in collaboration with Trusteeship;
- (iii) The United States provided economic and military support for a minimum period of 15 years;
- (iv) In the Northern Marianas, the people opted for self-government, but United States citizenship.

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PANAMA CANAL



Panama Canal

Geographical Setting

Passing through Panama and connecting the Caribbean Sea and Pacific Ocean, the Panama Canal is 43.5 nautical miles long and takes between 8-10 hours transit time. The canal zone area covers 1,438 km². The zone that extends 8 km on either side of the canal, and includes the cities of Cristobal and Balboa. The Panama Canal is vital to United States strategic interests, especially the redeployment of naval vessels between the Pacific and Atlantic Oceans. It is also a vital world shipping and trade passage between East and West and therefore its strategic importance cannot be overestimated.

History

In 1880 the French attempted to design at sea level a waterway but this was abandoned after a few years due to costs. However, a lock-based canal was built, backed by the U.S., between 1904 and 1914. On the 18th November 1903, the United States-Panama Canal Treaty gave the United States unilateral control of canal operations and administrative authority over the canal zone. The Panama Canal was opened on the 15th August 1914. 60 years later, in 1975, a widening program was embarked upon, and in 1977 a new Panama Canal Treaty was negotiated, which came into effect in 1979.

Solutions

By the new Canal Treaty, which came into force on the 1st October 1979, the canal zone was formally transferred to Panamanian sovereignty, including Cristobal and Balboa, the dry docks, trans-isthmus railway and naval base at Coco Solo. The agreement states that by 2000 AD, the control of *the canal* will pass to Panama and the United States must have removed all its bases from Panama. However, in 1992, US military presence has again become an issue as the Panamanians debate the future of their own military, which has been effectively disbanded following the US invasion of Panama in 1989. Under present arrangements, if the Panamanians decide to scrap their own military altogether they will not have the ability to guarantee the canal's defense, an argument used by those who favor a US military presence beyond 2000AD. There is a great degree of political uncertainty surrounding the departure of US troops, as well as more practical problems of congestion on the canal. In a recent poll, 65% of Panamanians wanted continued U.S. military presence and 62% said they had no confidence in Panama's ability to operate the waterway on its own. Without investment and proper maintenance, the Panama Canal could easily become obsolete.

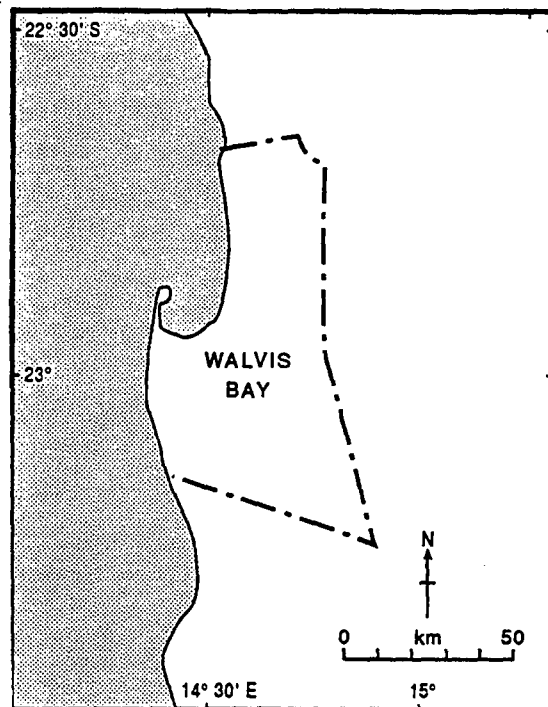
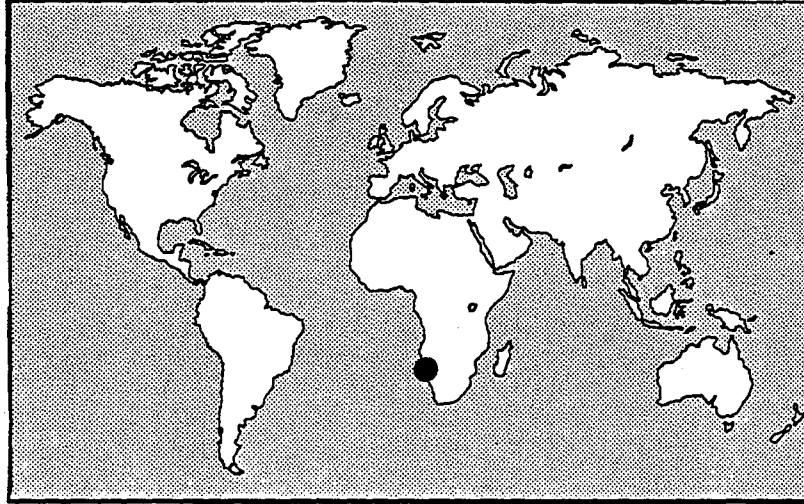
Evaluation

The transfer of sovereignty from one state (United States) to another (Panama) with the guarantee of United States demilitarization by the year 2000 AD is certainly applicable to the Kurils, where it presents itself as a solution to their dispute over sovereignty. However, in reality, the Panama Canal Treaty is more ambiguous, with Panamanian popular opinion, calling for the US military bases to remain. Whether total US withdrawal is achieved remains to be seen, but it does present itself as a useful case study of how a strategic location, occupied by a foreign power, can be handed over to management and control by the native state.

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WALVIS BAY



Walvis Bay

Geographical Setting

Walvis Bay is an enclave of 1124 km² (350 sq. miles) located along the coast of Namibia, in Southern Africa. It has a population of approximately 25,000. 160 km (100 miles) south of Walvis Bay are the "Penguin Islands," which run in a line parallel to the coastline from *Holland's Bird* Island for a distance of some 400 km (250 miles) southwards. The islands include: Roast beef, Ichaboe, Mercury, Long, Seal, Penguin, Halifax Possession, Albatross Rock, Pomova and Plumb pudding. These islands and the Walvis Bay enclave are important for fisheries and maritime boundary claims and have been the subject of a long dispute between Namibia and the Republic of South Africa.

History of Claims

Although the coast was visited by the Portuguese navigator Diaz in 1487 no significant developments took place until the Dutch occupied Walvis and Halifax Island in 1793. The British, however, took control of the enclave in 1795 and by 1861 had claimed sovereignty over all 12 of the Penguin Islands. In March 1878, Walvis Bay was also annexed by the British and Letters Patent ratified the claim later in the year. In 1884, Southwest Africa became a German Protectorate and in 1890 Germany and Britain recognized each others territory in the area.

In 1922, the League of Nations gave the administration of Walvis Bay and South West Africa solely to the South African Government. In 1977, under the Walvis Bay Administrative Proclamation, Walvis was detached from Southwest Africa and absorbed into South Africa's Cape Province. This angered the United Nations and SWAPO, and led to subsequent UNSC Resolutions (1978) on returning the enclave to Namibia. Strategically important as a deep water port, shipment point for uranium and a center of the fishing industry, Walvis Bay's sovereignty has become a thorny issue, especially since Namibian Independence in 1990, South Africa is still administering Walvis Bay.

Recent Negotiations

In March 1991, top level bilateral negotiations were held in Cape Town to try to reach a solution to the dispute. President F. W. de Klerk, eager to improve relations with neighboring Black majority Frontline States was put to the test, as Namibia demanded nothing less than South Africa ceding sovereignty of the Walvis Bay enclave entirely to Namibia. South Africa, however, seems prepared only to enter into discussions on a form of "Joint Administration" and is unlikely to cede the territory directly to Namibia. The Namibian Foreign Minister said that South Africa's claim to the port on the basis of title ceded by tribal chiefs was invalidated by International Law, and called

for the return of Walvis and its islands by reiterating United Nations Security Council Resolution 432. Namibia's National Assembly was told by him that Namibia "was only interested in the Unconditional Surrender of Walvis Bay, and nothing less." (Keesings, March 1991). The talks ended without agreement, with the two Foreign Ministers Pik Botha and Theo-Ben Gurirab unable to agree a joint statement.

Solution Proposed

However, by September 20th 1991, the political dialogue between the two states proved fruitful, and Namibia and South Africa agreed to the *Joint Administration* of the Walvis Bay enclave and the offshore islands, pending final settlement of the future of the disputed territory.

Under this agreement, a Joint Technical Committee will be set up to advise both governments on the appropriate structure for joint administration of the territory. South Africa has also agreed to cooperate during a Namibian nationwide census to be conducted on 21st-30th October 1992, which includes Walvis Bay. The international political climate in Southern Africa continues to improve, as relations between post-apartheid South Africa and the Frontline states gradually "thaw" out. This has facilitated the solution between Namibia and the South African government.

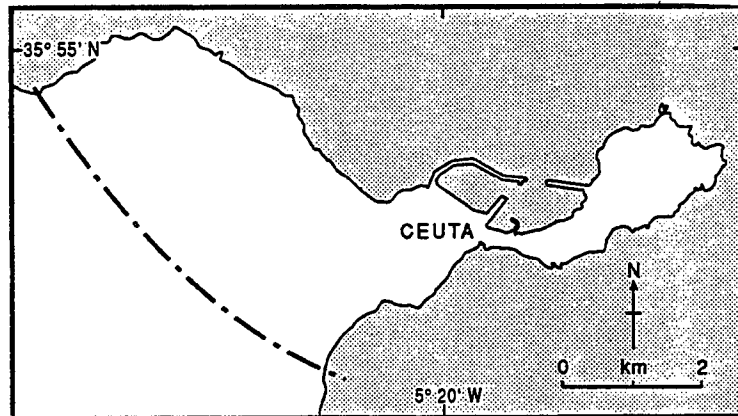
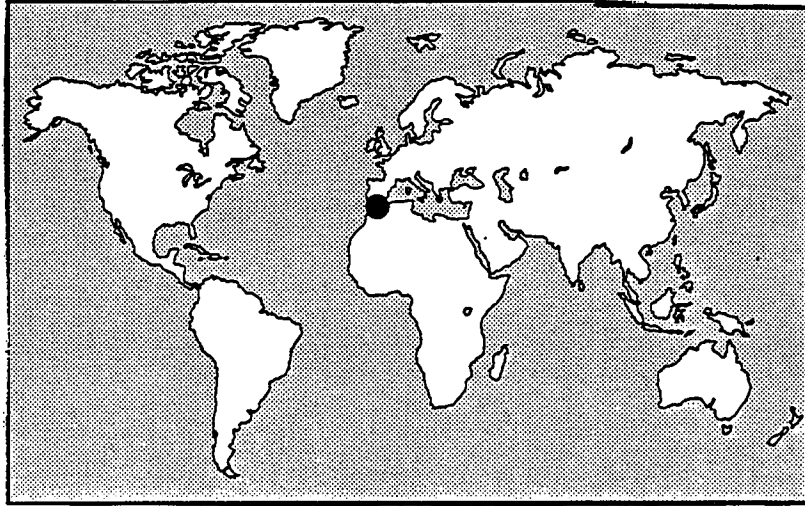
Evaluation

This solution, a joint administration before a final settlement is an excellent example for the Kurils to follow. It helps to improve political relations as well as increasing economic cooperation between the two parties. Arrangements will be carefully drawn up by the Joint Technical Committee. Whether joint administration means joint access to fisheries and EEZ resources, remains to be seen. A joint fishing agreement was reached for the Kurils and joint administration of the islands presents itself as a useful scenario.

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CEUTA



Ceuta

Geographical Setting

Ceuta is a Spanish enclave situated at the tip of North Africa near Tangiers in Morocco. It has an area of 19 km² and a 20 km sea coast, as well as a predominantly Spanish population, estimated at some 67,000. Strategically situated at the southern end of the Strait of Gibraltar, it is also occupied by Spanish troops and has become the subject of a long-running dispute over sovereignty with Morocco. Other enclaves in this area include the Spanish enclave of Melilla and the British enclave of Gibraltar. As the strait forms a major shipping channel, with an annual passage of around 55,000 ships, its strategic importance, and that of these enclaves cannot be overestimated.

History of Claims/Negotiations

Ceuta was occupied and annexed by Spanish colonists in 1580, approximately 80 years after the annexation of Melilla, also in Morocco. However, since Morocco received its independence in 1956, it has constantly pressed for the return of the enclave from Spain, and since 1945 Spain, consequently, has pressed for the return of Gibraltar. In 1961, Morocco called on the United Nations to recognize its rights to Ceuta but Spain responded by reinforcing the enclave's borders. On 29th June 1962, Morocco reasserted its claim to the enclave, and next day extended its territorial waters from 6 miles to 10 miles. The tension between the two states was eased between 1963 and 1965 following several meetings between King Hassan and General Franco.

On 27th January 1975, Morocco formally requested the UN decolonization committee to put the Ceuta case on its agenda and between 1978-79 the Moroccan Patriotic Front carried out several bomb attacks in both Ceuta and Melilla enclaves. Morocco has always stated that it would raise the question of the two enclaves if Gibraltar were to be transferred to British control. It appears therefore that the Ceuta issue is intimately linked with the other disputed enclaves, and Spain is only prepared to move on this issue if it received a favorable solution to the Gibraltar issue with Britain.

Possible Solutions

In October 1991, the proposal of Gibraltar becoming a self governing dependency of the European Community was flatly rejected by Spain. King Hassan has stated that, if Spain were to regain Gibraltar, Morocco *would* retrieve the enclaves and islands as "no power can permit Spain to possess both keys to the same Straits."

Following unrest in November 1986, the Moroccan government had become more directly involved in the affairs of the enclaves, but on January 22nd 1987, it was reported that the Spanish government had rejected a proposal by King Hassan for a joint Spanish-Moroccan commission to

study their future. In April 1987, Morocco announced that any change in the status of Ceuta, especially the granting of autonomy, would provoke a serious crisis, and Spain responded by saying that the proposed new status for the enclaves would refer to "self-government" rather than autonomy.

The situation has continued to simmer, but in July 1991 King Juan Carlos of Spain paid a state visit to Morocco and a treaty "of friendship, good neighbourliness and co-operation" between the two countries was signed in Rabat by the two Prime Ministers. This treaty guaranteed the peaceful settlement of disputes between the two countries, and is particularly relevant to the Ceuta enclave - which was subsequently visited by Spanish and Moroccan Ministers. Possibilities of self government have therefore been aired, but no proper solution has been forthcoming.

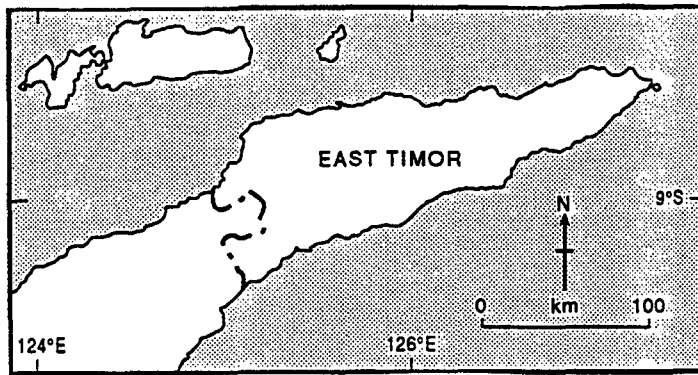
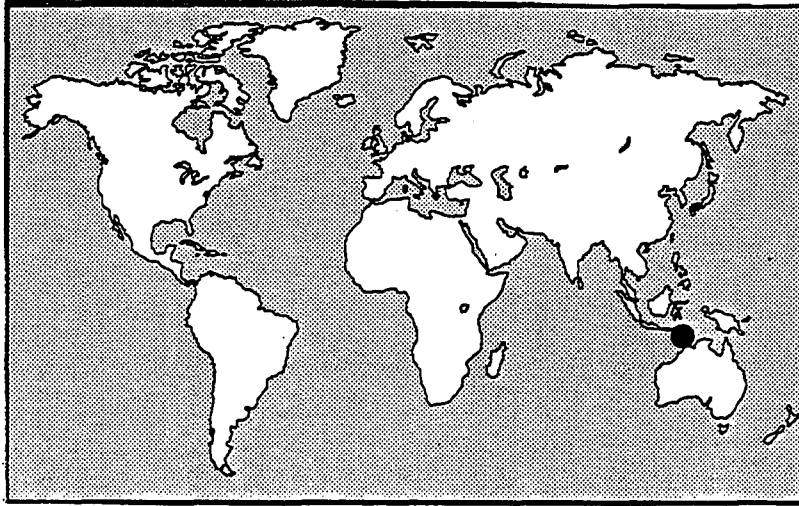
Evaluation

It is clear that the Ceuta issue is intimately linked, as already stated, with the Gibraltar dispute between the United Kingdom and Spain. Progress with one will mean progress with the other, and this is distinctly different from the Kurils - where only this dispute dominates relations between Japan and Russia. Self government - the possible solution for Ceuta- may be a scenario for the Kurils, although this may not interest the Japanese, who are more concerned about reversion of full sovereignty. In Ceuta, the wishes of the Spanish inhabitants must be taken into account, and this applies to the Russian speaking inhabitants of the Kurils. Their rights must clearly be safeguarded for any solution to prove durable. In November 1991, an agreement was signed in Rabat, which paved the way for more flexible visa arrangements for Moroccan citizens wishing to visit Ceuta. There has been progress also in the Kurils, for allowing Japanese people to visit the islands. Equal access to both disputed areas by people from both countries is a good confidence building measure for a future solution to the problem.

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EAST TIMOR



East Timor

Geographical Setting

East Timor makes up nearly half - 14,874 km² (5,745 sq miles) - of the island of Timor - 33,900 km² (13,094 sq. miles) - which lies east of Indonesia. It is the subject of a long-running dispute with Indonesia following Indonesia's annexation of the territory in 1975. The population of Timor in 1991 was estimated at 650,000 with an average income per capita of approximately \$200.

History of Claims/Sovereignty

The history of East Timor is rooted in the colonial era which began when the Portuguese established themselves on the island in 1520. In 1680, Western Timor was taken over by Dutch settlers and East Timor remained a Portuguese colony from 1702, becoming an "independent colony" in 1926. This division of the island, at such an early stage, has resulted in continuing conflict to the present day.

In 1949, Western Timor became integrated into the remainder of the Dutch East Indies to become the Republic of Indonesia. This reinforced the division, but the most controversial action came after the overthrow of the Portuguese government in 1974 by a military coup, when the Prime Minister of Australia and President of Indonesia met, and said they would not intervene in Portugal's internal political affairs, but that the best interests of the Timorese would be served by Indonesian annexation of the eastern part of the island. In May 1974, the Portuguese Minister for inter-territorial co-ordination promised a referendum would take place on the decolonization process. However, by 1975 no referendum had taken place and the East Timorese were being promised self determination, with a law providing for elections to the Timorese People's Assembly in October 1976 being passed in July 1975.

However, on the 21st August 1975, Portugal lost control and a full scale civil war began. The Left Wing Fretilin Liberation Movement fought for independence against several other parties including the U.D.T. By the 8th September 1975, Fretilin was claiming complete control and Indonesian threats were defused by a memorandum of understanding between Portugal and Indonesia in November 1975 that confirmed Portugal as the legitimate authority. The proclamation of the independence of the "Democratic Republic of East Timor" by Fretilin on 28th November 1975 led many pro-Indonesian parties to claim that this removed the last vestiges of Portuguese sovereignty in Timor, thus legitimizing union with and annexation by Indonesia. Portugal asked for United Nations assistance but by 7th December 1975, Indonesia had launched a full scale military annexation, when 1,000 Indonesian paratroops entered East Timor. Portugal immediately broke diplomatic ties with Indonesia but, by the end of 1975, various parts of East Timor had been annexed, including the Oucssi Ambero enclave. It was alleged that 60,000 people had been killed by the end of December 1975, and the United Nations was swift to condemn Indonesia. Indonesia,

unmoved by international condemnation, declared East Timor its 27th province in August 1976. The operation had allegedly cost 1,000,000 lives but the western world took little notice, seeing Indonesia as an ally and bulwark against communism in South East Asia.

Negotiations After Annexation

In January 1978, the Australian government recognized Indonesia's annexation of East Timor but in 1979 the Non-aligned Movement adopted at its 6th conference a resolution reaffirming the Timorese' right to self determination. In 1980, Portugal restated its claim to East Timor but the Indonesian government refused to negotiate. In the mid 1980's, Indonesia was criticized by the United States and the Pope for alleged violations of human rights in East Timor and Amnesty International (1985) issued a report that stated that 500,000 people had been killed since the 1975 invasion. From 1986 to the present day, Indonesia continues to administer and claim sovereignty over East Timor, with estimated troop concentrations of about 60,000. However, the Fretilin Liberation Movement is still active and estimates vary between 1,000-1,500 active Fretilin guerrillas are involved in small-scale, but widespread attacks. No solution to the conflict looks possible at the present time. In fact, 1991 saw renewed reports of human rights violations and military violence. In February 1991, another report by Amnesty International claimed continued human rights abuses, with over 100 people being detained and possibly tortured in East Timor over the past six months for alleged involvement in pro-independence activities. In October 1991, a planned visit by Portuguese Parliamentarians and international journals was indefinitely postponed, after Indonesia objected to the inclusion of an Australia freelance reporter on the grounds that she was a "crusader" and propagandist for East Timor's Fretilin guerrilla movement.

On 12th November 1991, Indonesian troops opened fire on pro-independence demonstrators at a cemetery in Dili, the capital of East Timor. Estimates put the number of deaths between 60 and 180 with eyewitness accounts from foreign journalists saying that 200 troops fired on an unarmed crowd for several minutes before moving in to beat and arrest the survivors. The troops, however, blamed the incident on provocation by armed demonstrators and alleged an army officer had been stabbed. This was rejected by the eyewitnesses. On the 19th November, President Suharto announced he would set up a seven-man commission to investigate the incident, but this was seen by opposition groups as unobjective with a military bias. The Dili massacre has caused international condemnation and has once more highlighted the East Timor issue. Portugal called for an end to Indonesia's "illegal occupation" of its former colony, and on the 28th November 1991 the UN Secretary General announced the dispatch of a mission to Dili, to which Indonesia responded that it would *not* accept foreign commissions of inquiry in East Timor.

The Indonesian enquiry on the 20th December 1991 stated that there were approximately 50 dead and over 91 injured and mildly criticized the army. Japan and Australia, who had been under pressure to cut economic aid to Indonesia, saw the inquiry as a good excuse for inaction and Australia has gone ahead with Timor sea oil exploration, following its 1989 Bilateral Agreement with Indonesia on a zone of cooperation in the Timor Sea. As Indonesia is a major source of hydrocarbons for Australia and Japan, they have no wish to disturb this relationship and are therefore very influential at downplaying the East Timor issue.

Solutions/UN Resolutions

Due to the Dili massacre and other events that have increased the political tension in East Timor, a solution seems a very long way off, and any pro-independence voices East Timor are harshly dealt with by the Indonesian Authorities. Various UNSC Resolutions have been drafted on this issue, but at the present time Indonesia is not prepared to discuss sovereignty over the area.

Evaluation

Annexation, military occupation and suppression are hardly ideal scenarios for the Kuril island situation, and this case study demonstrates the extent to which the military option in territorial disputes can cause disaster.

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Possible Administrative Regimes for the Kuril Islands

3.1 Direct transfer of the Islands from Russia to Japan:

The direct transfer of the islands from Russian to Japanese sovereignty might appear to be a simple solution involving no complicated division of the islands. However there are numerous problems that would be associated with this. Politically it would be very difficult for Russia to be seen handing over sovereignty in one act. Previous discussions have not succeeded, and there appears to be a strong reluctance on the part of the Russian authorities to loose all control over the island group and the surrounding maritime area. The local population on the islands is likely to be very suspicious of a total transfer of sovereignty. The problem of citizenship of the islanders would need to be resolved. Most of the current population are of Russian origin, with no ethnic links to Japan.

The Russian authorities would also want to retain some control for strategic and military reasons, particularly with regard to naval access between the Sea of Okhotsk and the Pacific Ocean.

An example of a change of sovereignty of a disputed territory is the exchange of the Sinai desert between Israel and Egypt between 1979 and 1982 after the signing of the Camp David Agreement. This has proved successful, though cooperation between the two states was vital to the management of the agreement. United States participation in the process was also a key to success.

Hong Kong will revert to Chinese control in 1997, from previous British control. This case is different to the Kuril Island dispute however in that the arrangement for territorial control was largely based on a previous treaty signed in 1898, and the territory was not a subject of major dispute.

3.2 Some form of dual sovereignty over the islands might be arranged. A large number of options are available. A Joint Development Zone could be arranged for all the islands. Examples of joint development zones include the Torres Strait agreement between Australia and Papua New Guinea (though Australia has kept notional sovereignty over the islands), and the various maritime joint development zones (see section two).

The territory could be divided, as has occurred on Abu Musa between Iran and Sharjah (although with complications in the latter half of 1992, see case study). This option has been discussed by Japan and Russia. The Russian side has offered on occasions to give Japan control of Habomai and Shikotan.

Another option is illustrated by the Torres Strait Treaty between Australia and Papua New Guinea where a Protected Zone was developed to control the economic and social development of a loosely defined area. This also involved agreement on navigation. A special zone could be defined around the disputed Kuril Islands, and agreement reached on a method of managing this area, perhaps ignoring sovereignty issues.

- 3.3 Sovereignty could rest with one of the parties, but administration of local issues could be done by the other party. The allocation of resources would need to be very carefully agreed and managed. The major problem with this arrangement would be the wishes of the local inhabitants, and the form of citizenship offered to them. This would need to be clearly defined. In the Falkland Island case, a similar arrangement was put forward by the Argentinian side during negotiations in the 1970s, but was rejected by the British side, in part because of the views of the inhabitants of the Falkland Islands.

The cases of Diego Garcia and Svalbard fall into this category. However, Diego Garcia involved no dispute over territorial claims, and was simply an agreement between allies.

- 3.4 The Kuril Islands could be leased to one of the parties for an agreed period of time. This was effectively done in the cases of Hong Kong and Macau, where Britain and Portugal leased the territories. In the cases of Hong Kong and Macau this arrangement has worked reasonably well, and might be a model for the Kuril dispute. A number of questions would need to be answered. Which state would have residual sovereignty? Which state would lease the territory? How long would the lease run for? What would be the citizenship of the local population? Would movement between the Kuril islands and Japan and Russia be restricted (as has been the case between China and Hong Kong)? Would the population living in Japan that was forced off the islands after 1945 be permitted to return to the islands?

- 3.5 Third party control of the islands might be considered, particularly as a temporary arrangement during a transfer of sovereignty between the two states, or from the present regime to another one (for example dual sovereignty). The third party might be the United Nations (as occurred in the Pacific Trust Territories) a regional organization or a third state. It is unlikely that a regional organization or third state would take control in the Kuril Island dispute since there are no other states adjacent to the region.

Third party control tends to be used where a dispute has reached a crisis point (for example the United Nations Protected Areas in Croatia, the United Nations peacekeeping areas in Cyprus and Lebanon, and the intervention of armed forces organized by members of the Organization of African States in Liberia in 1991). Direct third party intervention in the dispute will not occur unless open war breaks out over the islands, and even then in extreme circumstances. This final scenario is considered very unlikely.

Processes for Achieving a Resolution to the Dispute Over the Kuril Islands

4.1 The Kuril Islands dispute has been conducted primarily between the two central governments of the two parties in Moscow and Tokyo. It has focussed attention on territoriality and state control of the islands, rather than on local control or issues of minority rights, local preferences, joint development or third party international control. The dispute has been an important part of Japanese-Soviet/Russian relations since 1945, and is important to the domestic and international politics of both states. Up to now it has not led to major armed conflict. In any successful resolution to the dispute, these characteristics of the dispute and the attitudes of the two parties will determine the process of resolution, and therefore any final administrative regime for the area. There are, however, a number of methods of resolving such a territorial dispute.

Two general categories of dispute settlement may be defined: diplomatic means where the parties maintain control of the dispute, and legal means where a binding decision is given usually on the basis of international law. Within these two general groups five methods can be examined. These are:

- negotiation
- mediation
- conciliation
- arbitration
- litigation

4.2 *Negotiation*

This is the principle means of handling international disputes, and is employed more often than any other method. It obviously relies on a degree of cooperation between the two parties and it has the advantage to both sides of their being able to maintain complete control over the dispute. As well as being used to solve disputes, negotiation may also help to avoid disputes arising by maintaining contact between the two parties. In the case of the Kuril Islands dispute, the two states have discussed the topic even if no agreement has been reached on the issue of sovereignty.

Negotiation may be conducted at a variety of levels.

Discussion may occur through *normal diplomatic channels*, where the issue is a subject of discussion during regular diplomatic contact. This may not achieve an immediate solution to such an important issue as the sovereignty of territory, however it may be an important

confidence- building measure (CBM), allowing other forms of more formal negotiation on the issue of sovereignty to be started later. It may also allow differences between the two states to be more clearly defined before an attempt is made to resolve the dispute. Years of contact between Japanese and Russian diplomats has achieved little to settle the dispute; however, both sides know each other and will be aware, even if only partially, of each other's position on particular aspects of the issue.

Negotiations may be carried out by *competent authorities* of the two states. These may often be at a local level, discussing particular issues - for example fishing authorities, local military and other government authorities. The Soviet Union had experience of doing this along her borders, particularly with P.R. China, and there is therefore experience within the context of the Kurils Island dispute for this form of negotiation. This may also primarily be a CBM rather than a means to a final solution to the problem. However, cooperation between authorities at local levels is generally vital. Disputes involving relatively unimportant local issues or incidents can be avoided, so that they do not complicate higher level intergovernmental discussions, and it will help in the management of any new regime that is developed.

An example of a local system of cooperation between states that disagree over the sovereignty of territory and which may be applicable to the Kuril Islands dispute is the *Interim Reciprocal Information and Consultation System* established in 1990 between Argentina and the United Kingdom to regulate the movement of forces in the South West Atlantic. This system established a direct link between the two sides so that incidents could be avoided or, if they did occur, the consequences could be limited. The agreement helps to manage the area in dispute rather than providing any mechanism for discussing the major issue dividing the two parties - the sovereignty of the Falkland Islands. It defines in detail methods of communication between the two sides and the geographical areas over which the system operates. It was established after long and detailed negotiations between the two states.

Local authorities may be given specific responsibilities and powers regarding the management of territorial disputes between countries. For example in an article to a treaty between France and Spain on the management of the international boundary between the two countries local authorities are clearly defined as being responsible for managing a border:

The highest administrative authorities of the bordering Departments and Provinces will act in concert in the exercise of their right to make regulations for the general interest and to interpret or modify their regulations whenever the respective interests are at stake, and in case they cannot reach agreement, the dispute shall be submitted to the two Governments.¹

¹ See the Additional Act to the three Treaties of Bayonne (1866) Art. 16 in (1957) 24, *International Law Reports*, p.104.

A *special commission* may be established by the two states to examine the issue that is being disputed. This may be temporary with a set agenda and a time limit for reporting to both governments, or it may be permanent and designed to monitor aspects of the particular dispute and facilitate communication between the two states. A useful example of a permanent commission with a broad brief is the Canadian - United States International Joint Commission which, since its creation in 1909, has examined a wide range of transboundary issues. A commission may have the advantages of formalizing the discussion on the issue and encouraging a clear definition of the problem.

Summit discussions of the issue may be carried out between the two states. The value of such discussions should not be exaggerated, however they are a conspicuous form of discussion. Normal procedures may be by-passed, allowing faster agreement. The citizens of both countries may demand a "result" and prestige may be attached to a successful outcome to the discussions, thus giving an incentive to leaders tackling the issues. Examples of summit meetings include the Camp David agreement in 1979 between Egypt and Israel over the Sinai desert territorial dispute, and the various meetings between Presidents Gorbachev and Reagan during the 1980s. However, too much public attention may also create problems if negotiators feel that they cannot afford to give any concessions to the other side. Media attention may influence negotiations in a way that is not helpful in the longer term.

If negotiations reach an impasse this may be tackled in a number of different ways.

A more serious method of settlement may be attempted such as *mediation* or some form of *litigation*. These will be discussed later.

A dispute may be *divided* into a number of related but discrete parts, and negotiation may be attempted on the separate aspects of the dispute. This allows further negotiations and contact between the two sides to take place, and allows the dispute to be managed if not totally resolved. Examples of this related to sovereignty issues are numerous, partly because of the often complicated nature of sovereignty disputes, involving many different issues. The Falkland Islands dispute between Argentina and the United Kingdom has, in effect, been divided. The issue of sovereignty has largely been placed to one side, while the two states have agreed on various issues related to the management of the territory (fishing, the movement of vessels, aircraft, military equipment and people). The Antarctic Treaty, first signed in 1961, made no commitment regarding the sovereignty of different parts of the Antarctic Continent, but has been very useful in helping to regulate the activities in the region. Negotiations before 1978 between Australia and Papua New Guinea over the maritime delimitation in the Torres Strait involved separate agreement on a series of issues.²

² See Burmester H., 1982, *The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement*, American Journal of International Law, 76, p.321-349.

A time limit may be placed on negotiations in order to encourage agreement. The 1965 Convention on Transit Trade of Land-locked Countries provides for a period of nine months for negotiations between states, after which a dispute can be settled by arbitration.

There are various limitations to negotiation between two states which may hinder the resolution of a territorial dispute. Two obvious cases are if two states have severed diplomatic links or if they do not recognize each other. These have been particularly important in developing negotiations between Israel and the Arab states and the Palestine Liberation Organisation. Neither of these cases applies to the Kuril Island dispute.

Negotiation is also very difficult if there are no common interests between the two states. Negotiation invariably involves some form of compromise and bridging between the parties, particularly over territorial disputes where the occupying side may see no value in negotiating.

Unsuccessful negotiations may have the effect of reducing the room for manoeuvre of the two parties. For example a commentator of the Falkland Islands dispute has explained:

While negotiations can control a conflict for a certain time while alternatives are being considered, every time an alternative is considered and discarded by mutual agreement, the dispute... has less and less room to evolve toward a settlement. The successful control of a conflict - not necessarily its resolution - seems to lie in the ability to avoid running short of viable alternatives.³

Negotiations between two states are the most common method of resolving disputes, and in many ways the most successful, since the final administrative regime that is developed is a product of the two states in dispute with no outside involvement; hence the commitment to the regime is likely to be great. The states have complete control over negotiations.

4.3 *Mediation*

Where negotiations between two states fail, the intervention of a third party may be a means towards resolution. A mediator, whether a government, international body or individual, is an active participant in the discussions, providing both a means for communication between the two sides and ideas of possible solutions to the dispute.

A willing mediator is the first requirement. This may be an internationally recognized body: the United Nations or a regional body such as the European Community, the Organisation of American States, or the Association of South East Asian Nations (ASEAN). In the current dispute between Croatia and Serbia, the E.C. has played an important role since June 1991. An individual may be nominated: the Secretary-General of the U.N., a leading diplomat or

³ See J G Merrills, (1991) *International Dispute Settlement*, Grotius, Cambridge, p.24.

a head of state. In the territorial dispute between Chile and Argentina over the Beagle Channel, the Pope acted as a mediator between the groups. Lord Carrington has acted as a mediator between the Croatian and Serbian governments. Alexander Haig attempted to mediate between the Argentinian and British in 1982. A government may act as mediator, however both sides must have confidence in the mediator and this may be particularly difficult for a third government to maintain. However, there have been a number of examples: Algeria mediating between Iran and Iraq in 1975 over the Shatt al-Arab boundary, the Soviet Union mediating between Pakistan and India over the Kashmir dispute in 1965. The choice of mediator is up to the two parties involved in the dispute. The U.N. and its officers will generally agree to be involved in mediation. Regional groupings may be more hesitant, though there is an increasing role for them in international disputes (for example ASEAN in the Spratly Islands dispute, the EC in Croatia and Bosnia-Herzegovina).

Mediation cannot be forced on the parties to the dispute. They must consent. However, by accepting mediation the states do in effect acknowledge that they have a dispute that is a legitimate matter of international concern. States may agree to mediation either because they wish to maintain general international sympathy, or the support of particular regional allies (Croatia - Serbia 1991-2, Argentina - Britain 1982), or if neither side feels it can go further with direct negotiations. It may be particularly relevant if a dispute gets to the stage where all initiative is lost (after conflict or long-standing but unproductive negotiations).

Mediation is particularly appropriate if a third party is involved in the final administrative regime established to resolve the dispute. It is not confrontational; both sides must inevitably trust the mediator. If this is either a government or some international organisation, then a solution involving transfer of territory to a third party can be discussed.

Of particular importance is the monitoring of a resolved dispute by the mediator after an agreement has been reached. Failure to do this may lead to a reemergence of the dispute, or to new previously unforeseen problems developing which may themselves need monitoring.

4.4 *Conciliation*

This may be seen as a more formal type of mediation, and has been defined as involving the setting up of a commission by the two parties (either permanent or ad hoc) to examine the evidence and to define terms for a settlement. It institutionalizes mediation. Conciliation was particularly popular during the 1920s and 1930s, but has not been used much recently. The role of a conciliation commission was most first clearly defined in 1925 in a treaty signed by France and Switzerland:

The duty of the Permanent Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all useful information by inquiry or otherwise, and to endeavour to bring the Parties the terms of settlement which seem to it suitable, and lay down a time-limit within which they are to reach their decision. At the close of its proceedings the Commission shall draw up a report

stating, as the case may be, either that the Parties have come to an agreement and, if need be, the terms of the agreement, or that it has proved impossible to effect a settlement. The Commission's proceedings must, unless the Parties otherwise agree, be concluded within six months of the day on which the dispute was laid before the Commission.⁴

Though conciliation commissions are used less than before this method has proved useful, particularly in territorial disputes where more formal arbitration or litigation is not appropriate or not wanted by either party. For example, a Commission was set up in 1980 by Iceland and Norway to make recommendations on the division of the area of continental shelf between Iceland and Jan Mayen Island. Following detailed investigations, the Commission proposed a joint development zone. This was accepted and incorporated in a treaty signed in 1981 which effectively ended the dispute.

Conciliation commissions can have a number of clear advantages: the institution focuses the attention of the two parties on the dispute and on the collection of information and views. It can have a time-limit imposed on its work, which may improve the chances of a conclusion being reached. The findings of the Commission may be incorporated into a treaty, and the more formal collection of information and discussion may help to avoid misunderstandings between the two parties. It appears to be a particularly useful method of resolution where the main issues are legal but the parties desire an equitable compromise rather than a purely legal interpretation of the dispute. It is unlikely to produce surprise conclusions since both parties are represented in the conciliation commission, and the findings are not binding and can be further negotiated.

Conciliation has not been used very often in bilateral relations since 1945, but is important in multilateral relations. The Law of the Sea Convention (1982) Art. 284, Annex V, provides for conciliation between parties to a dispute, and various regional treaties have similar provisions: the European Convention for the Peaceful Settlement of Disputes (1957), the Charter of the Organisation of African Unity (1963) and the Treaty establishing the Organisation of Eastern Caribbean States (1981). The dispute over the Kuril islands' maritime jurisdiction could be placed before a conciliation commission established under the provision in the Law of the Sea Convention.

4.5 *Arbitration*

Arbitration and litigation are used when a binding decision is wanted to resolve a dispute. Both can be expensive and time-consuming methods of dispute resolution. In arbitration the parties to the dispute are responsible for establishing a tribunal or arbitration commission rather than referring the case to some permanent independent legal body such as the

⁴ See M Habicht, *Post War Treaties for the Pacific Settlement of International Disputes*, Cambridge (Mass.), 1931, p.226.

International Court of Justice (ICJ). These may be permanent or temporary arbitration commissions. An arbitration commission may involve only members of the disputing parties or may involve neutral parties or some foreign authority. There are a number of recent cases where territorial disputes have been referred to an arbitration commission (for example the *Channel* dispute between France and the U.K. in 1976-77, the *Maritime Delimitation* case between Guinea and Guinea-Bissau in 1985 and the *Taba* dispute between Egypt and Israel in 1988).

Obviously the composition of the arbitration commission is crucial, since both sides must trust all members. Arbitration can be delayed if one party refuses to cooperate by, for example, not nominating its member of the commission. Terms of reference and procedure need to be agreed by both sides. These may be based on the provisions set out in the 1899 and 1907 Hague Conventions, recommendations of the International Law Commission, and the rules and procedures of the ICJ or other international body. Of great importance is that the arbitration commission keeps to the scope and terms of reference of the dispute.

An arbitration commission may reach its decision on a case with reference to international law, or some other basis. Arbitrators may be asked to use particular considerations such as principles of equity in a territorial dispute, a flexible concept that gives the arbitration commission room for manoeuvre. The arbitration commission therefore may not be simply an adjudicator, but may become a legislator, creating law for a particular case. Arbitration is therefore flexible.

An arbitral award is binding but not necessarily final. Appeals can be made against a decision, but these must be expressly granted and, since both parties go to arbitration to resolve a dispute, appeals are relatively rare. Interpretation, involving the clarification rather than the correctness of the award, is more often allowed. However, an arbitration decision is only binding in international law if the commission has been properly constituted. A party may deny an award by invoking the doctrine of nullity and arguing either that the arbitrator has exceeded his authority, that his authority is questionable, or that he has failed to give proper reasons for a decision. The success of arbitration therefore depends on responsible behavior on the part of states.

4.6 *Litigation*

Disputes may be referred to a permanent tribunal for a legally binding decision. Such tribunals may be of general or specialized jurisdiction.

A territorial dispute may be placed before the International Court of Justice (ICJ). Consent is required from both states. Examples of territorial disputes taken before the ICJ include the maritime boundary disputes between Libya and Tunisia,⁵ Libya and Malta,⁶ USA and

⁵ See *Continental Shelf (Tunisia/Libya Arab Jamahiriya)*, Judgement, (1982), I.C.J. Report.

Canada,⁷ and the land boundary between Burkino Faso and Mali.⁸

The Court is composed of 15 judges elected for a nine-year term by the Security Council and the General Assembly, and has judges from a wide range of national backgrounds so as to reflect the principle legal systems of the world. Though cases are generally heard by the full Court, ad hoc chambers composed of fewer judges can be established for particular cases. States may therefore have some control over the composition of the bench.

The ICJ will generally interpret cases according to public international law. Documentary evidence, including texts of treaties, official records, diplomatic correspondence, archive material, affidavits, maps, and film may be presented as evidence to the Court by the two parties. The Court's task is to evaluate this evidence. In disputes over maritime delimitations, the Court has tended to ignore elaborate evidence relating to geology or geomorphology and has concentrated on simpler material relating to the geography of a disputed area.⁹ Expert witnesses may be called by the Court to examine particular pieces of evidence.

The Court may broaden the basis for its decisions, adapting the law to special cases. Under Article 38(2) of its Statute, the Court may at the request of the parties give a decision *ex aequo et bono*. This provides great flexibility but uncertainty as to the criteria used to decide a case. However parties can modify the Court's function by indicating the principles it should apply.

Although there has been some debate as to the ability of the ICJ to judge cases that have a strong political dimension, litigation may be seen as a method of depoliticizing a dispute by submitting it to a third-party decision. However, success still relies on the acquiescence of both parties to the dispute. The Court will only intervene when expressly asked to resolve a particular dispute.

Submitting a case to the ICJ has other advantages. States do not need to go through the laborious task of establishing a new tribunal whenever a dispute arises. The ICJ, as a permanent court, has the ability to develop a consistent jurisprudence. The ICJ may also be trusted to be impartial by the two parties to a dispute than a tribunal established by them.

Though the ICJ has not managed to resolve all the disputes placed before it, litigation before the ICJ remains a very useful option for states wanting to resolve a dispute. The ICJ has

⁶ See *Continental Shelf (Libya Arab Jamahiriya/Malta)*, Judgement, (1985) I.C.J. Report.

⁷ See *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgement, (1984), I.C.J. Report.

⁸ See *Frontier Dispute*, Judgement, (1986), I.C.J. Report.

⁹ See J G Merrills, (1991) *International Dispute Settlement*, Grotius, Cambridge. p.131.

much experience in territorial disputes similar to the Kuril Islands. It has adjudicated some 22 cases involving boundaries and territory.

The various possible administrative regimes for the Kuril Island discussed in section three could be achieved peacefully by using one or more of the methods described. Where only Japan and/or Russia are involved in the final administration of the islands and the maritime zone surrounding them, negotiation between the two states may be used to resolve the dispute. However, if a third party is involved in the final administration regime, mediation, conciliation or some legal resolution is likely.

Mutual negotiation and agreement between Japan and Russia might be considered the most satisfactory method of resolution, since it is likely to build confidence quickly between the two states in what is strategically an important area for both. Negotiations might be helped by a third party (mediation). This is likely to be either the United Nations (in the form of an individual or group), a regional organization or a third state. In the Kuril Islands case, the selection of a third party might prove to be difficult. There is no third state lying immediately adjacent to the Kuril Island area, and many of the states in South East Asia which might act as mediators are suspicious of both Russian and Japanese intentions, particularly as a resolution of the Kuril Islands dispute would have important implications for other island disputes in South East Asia and the western Pacific ocean (for example the Spratly Islands). It may be that the only realistic third party involvement would be United Nations or a state with no direct involvement in the region.

The importance of the islands to both states suggests that the only third party that might take control of the islands, whether on a temporary or permanent basis would be the United Nations. Neither side is likely to allow a third state to take control of the islands, and the relative political immaturity and weakness of regional organizations in Asia (for example ASEAN) means that their involvement is unlikely. Forced intercession by a third party is also very unlikely since the dispute has not led to conflict between Japan and Russia.

Negotiations between Japan and Russia about the Islands are likely to continue either on a formal or informal diplomatic level. There are many imaginative ways of developing these discussions before a third party need be brought into the proceedings. Discussions between local authorities could be encouraged, a joint commission on the islands could be established by the two states, and different aspects of administration and development of the disputed area could be discussed separately by the two governments. Confidence building measures similar to the Argentina - U.K. *Interim Reciprocal Information and Consultation System* could be developed.

Both states are likely to wish to continue communicating; Japan because of its wish to regain control of the islands by peaceful means, and Russia because of its need of Japanese investment. This provides a good basis for negotiations between the two states to be developed, even if a final administrative regime is not achieved for some time. A third party, whether mediator or legal tribunal, will not be used unless expressly asked for by the two states.

The Status of the People Living on the Kuril Islands

Of crucial importance to a satisfactory resolution to this dispute will be the status of the people who live on the Kuril Islands, as well as those who were forcibly moved off them to Japan after 1945. The ethnic violence that has occurred in former Yugoslavia and parts of the former Soviet Union, as well as in a number of cases where island populations have been forcibly moved or had their status changed (for example Diego Garcia, East Timor), highlights the need for a regime that will preserve the rights of the inhabitants of the islands. There is however a complication in the Kuril Island case - there are a significant number of ethnic Japanese who were moved from the Kuril Islands after 1945 and who wish to return.

The status of the local population is a fundamental question that needs to be resolved, for a durable solution to be found for the Kuril Island dispute. Our case studies have illustrated a wide-ranging coverage of what has actually happened to the indigenous population in various disputed islands and territories. Several examples highlight the maltreatment of the indigenous population. Diego Garcia showed the island being progressively depopulated with a forced removal of people from the island by the United States. In the case of East Timor, the indigenous population lost rights to self government and were also brutally suppressed by the Indonesian military; many atrocities (for example the Dili Massacre in 1991) have taken place.

Other examples illustrate the choices a local population may have, following the resolution of an island/territorial dispute. In the case of Hong Kong, British citizens in this territory are able, under the agreed arrangements, to continue living in the Hong Kong Special Administrative Region, post 1997, or apply for residence in the United Kingdom, which is likely to be a highly selective process.

Where disputes have been unresolved, and the *status quo* is being maintained, the status of the indigenous population tends to remain the same. This is illustrated by Ceuta, the Spanish enclave in Morocco, which has a predominantly Spanish population. Even though the territory is part of the Moroccan mainland, it is still remaining under Spanish sovereignty, and therefore the population's status remains unchanged. Other case studies illustrate the active involvement of the local population in producing a resolution to a particular dispute. In Mayotte, for example the people decided by referendum, to remain part of France instead of becoming part of the independent Comoros. In Bahrain, popular consent called for independence and helped to terminate Iran's claim to the island. In all these cases, as well as in the Falklands, the local population have decided to remain citizens of the country that exercises sovereignty over the territory or islands, with no resettlement being conceded.

It must also be noted, that several case studies were examined, including Liancourt Rocks, Rockall, Senkaku Island and the Spratlys are largely uninhabited, and therefore the question of the population status does not arise.

Finally, the Trust Territories of the Pacific illustrate a possible solution to the Kuril dispute. With regard to the status of the population, the people have been free to decide their political status, by plebiscite, either opting for independence (Northern Marianas Islands) or retaining Trustee status (Palau). Also in the Northern Marianas Islands, the people opted for self government, whilst retaining their United States citizenship. It is apparent that there are a wide range of choices for

local populations to make in regard to their citizenship. Mechanisms for achieving a particular status may vary; for example by treaty or referendum. The range of possible citizenship options for a "resolved Kuril dispute" can be summarized as such:

- (i) Citizens are allowed to stay on in territory after reversion of sovereignty, and retain citizenship of Russia, with special residence provisions for Japanese people. They do not become Japanese citizens (cf Hong Kong).
- (ii) Population offered dual citizenship of Russia and Japan.
- (iii) Offered a choice, either citizens of Japan, and leave islands, or citizenship of Russia, and remain on islands.
- (iv) Choice given, with those who opt for Russian citizenship asked to return to Russia *with* or *without* compensation.
- (v) Population totally transferred from Kurils to Russia with or without compensation.
- (vi) Russian administration, allows them to stay on Kurils with Russian citizenship.
- (vii) Japanese administration, allows them to retain Russian citizenship and seek special residence provisions in Japan.
- (viii) Special "International" citizenship given to Kuril Islands, under third party arrangement.

Special Arrangements

As part of any final resolution to the dispute, or before a complete agreement is achieved, special arrangements could be developed for particular aspects of the dispute. These may be seen as integral parts of any solution and as confidence building measures between the parties.

The strategic value of the Kuril Islands is particularly important to Russia because of the islands' position commanding access between the Sea of Okhotsk and the Pacific Ocean. The large Russian Pacific fleet must pass through the region when sailing from Vladivostok to the Pacific. If the status of the islands were to change, consideration would need to be given to this issue.

There are several examples of special arrangements negotiated in disputed regions with respect to military bases. The rights to maintain bases on former colonial territory as part of the independence settlement is best illustrated in the case of Cyprus, where the United Kingdom was granted full sovereignty over two substantial military bases in 1960 (see section two).

More frequently, a state is given rights to such bases for an agreed time period as in the cases of U.S. troops in the Panama Canal Zone (see section two) and the progressive disengagements agreements that attended the Israeli relinquishment and Egyptian reoccupation of Sinai (1979 - 82). Other such agreements include the US bases in the Philippines. The maintenance of strategic bases for a set time, perhaps with provisions for renewal, may well be a useful model for the Kuril Islands case in view of Russia's acute strategic concerns in the area. It should also be noted that Russian troops are undertaking a gradual withdrawal from bases in Eastern Europe and similar agreements whereby strategic sites are retained by Russian forces for a number of years are under negotiation with other former Soviet republics, in particular the Baltic States.

An alternative scenario might be the joint use of bases. Perhaps the best example of this is the lease arrangement between the United Kingdom and the United States concerning use of the strategic island of Diego Garcia in the Indian Ocean and the Island of Ascension in the Atlantic Ocean. In relation to the Kurils, however, such an arrangement must be considered unlikely, as the cooperation enjoyed by the parties in these two cases was only possible as a consequence of their long-standing close political and military relationship. The lack of such a Japanese-Russian relationship would make joint use of military bases very difficult. However, it could be a useful model for the development of other bases involved in less overtly military activities, such as fishery protection or air-sea rescue.

There are several examples of the demilitarization of a disputed region. The Åland Islands, Antarctica, Svalbard and the Neutral Zones in the Arabian Peninsula offer ample evidence as to the efficacy of demilitarization as a vital factor in reducing the threat of military conflict between the parties. Demilitarization of the Kuril Islands, combined with an arrangement for the secure passage of military vessels and aircraft through a defined area could be developed to reduce the likelihood of conflict. Examples of this include the Interim Reciprocal Information and Consultation System developed for the Falkland Islands by Argentina and the UK.

Fishing off the Kuril Islands is vital to the economy of the region, and is therefore of political as well as economic importance. Any final arrangement for the islands would have to give careful consideration to the management of fishing. Recent agreements between the Russian and South

Korean governments made in January 1992 for South Korean fishing off the coasts of the islands have been condemned by Japan, and have added to the general political tension in the area.

Arrangements could be made for the joint development of fishing resources, or other special rights for both parties within a defined area. An example of special fishing arrangements around disputed islands is the *Fishing Conservation Agreement* between the UK and Argentina. The joint development of minerals and other resources off coasts has been agreed by a number of littoral states, including Japan, which has agreed a joint maritime development zone with South Korea (see section one).

Other Confidence Building Measures that could be developed in the islands include easing travel arrangements between the Japanese and Russian mainland and the Kuril Islands, (easing visa restrictions). Overflight of the areas by reconnaissance aircraft from both states could be legitimized. This has been successfully implemented by Romania and Hungary along their international boundary by the "Open Skies" agreement between the states. Each country is able to overfly the other's territory at certain defined times in order to photograph the border zone.

Postscript

The main conclusion to be derived from this report must be left to those who have an overview of the Kuril Islands project. We hope it will prove useful in this respect. Nevertheless, we must emphasize that the following aspects require far more analysis than we were able to give in the short time available:

*** *Shipping Routes***

The use of passage through the Kurils, rights of passage, and special arrangements which might be made for security of shipping.

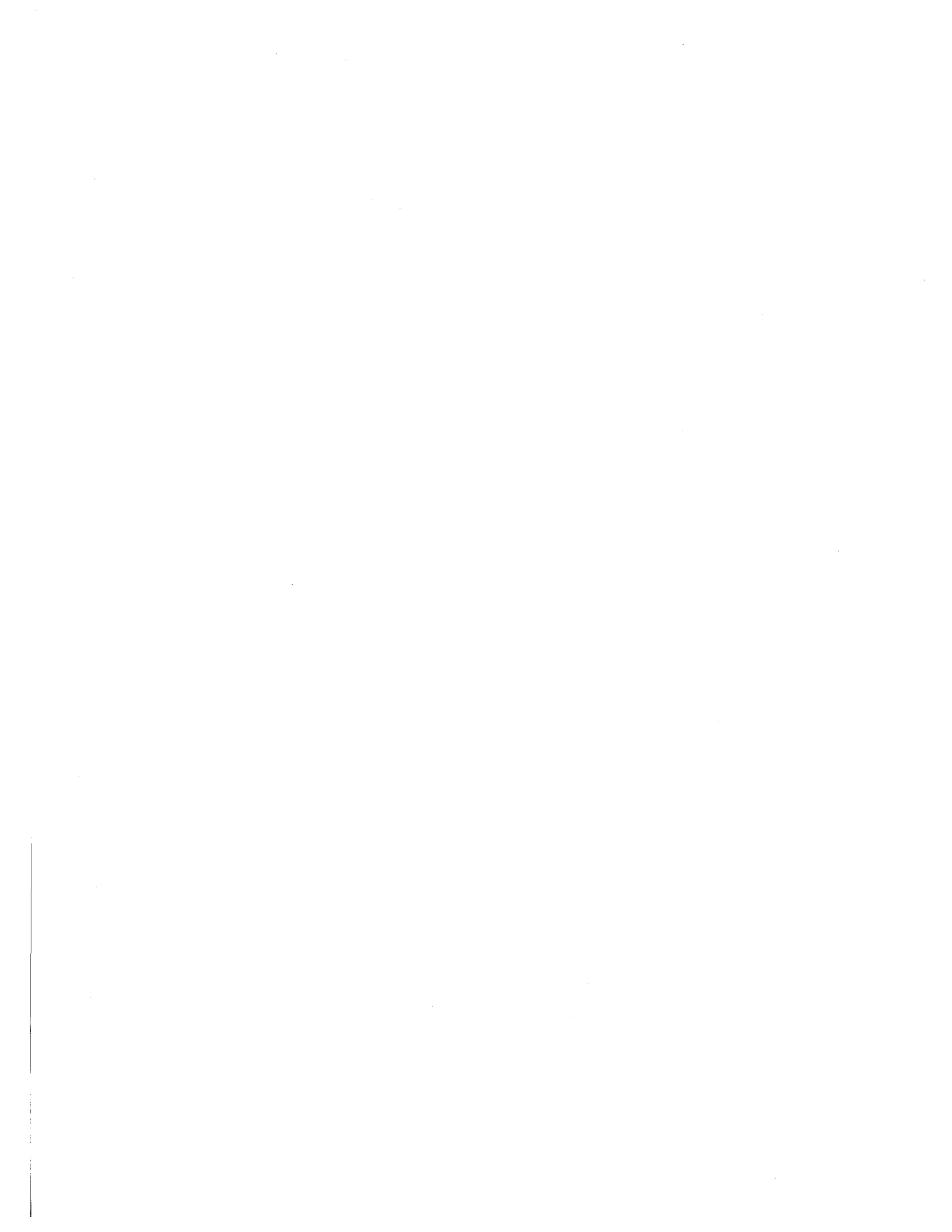
*** *Seabed Sovereignty***

More detailed examination of various types of shared zones offshore, and the institutional arrangements for their operation; other types of spatial compromise.

*** *Conflict Resolution***

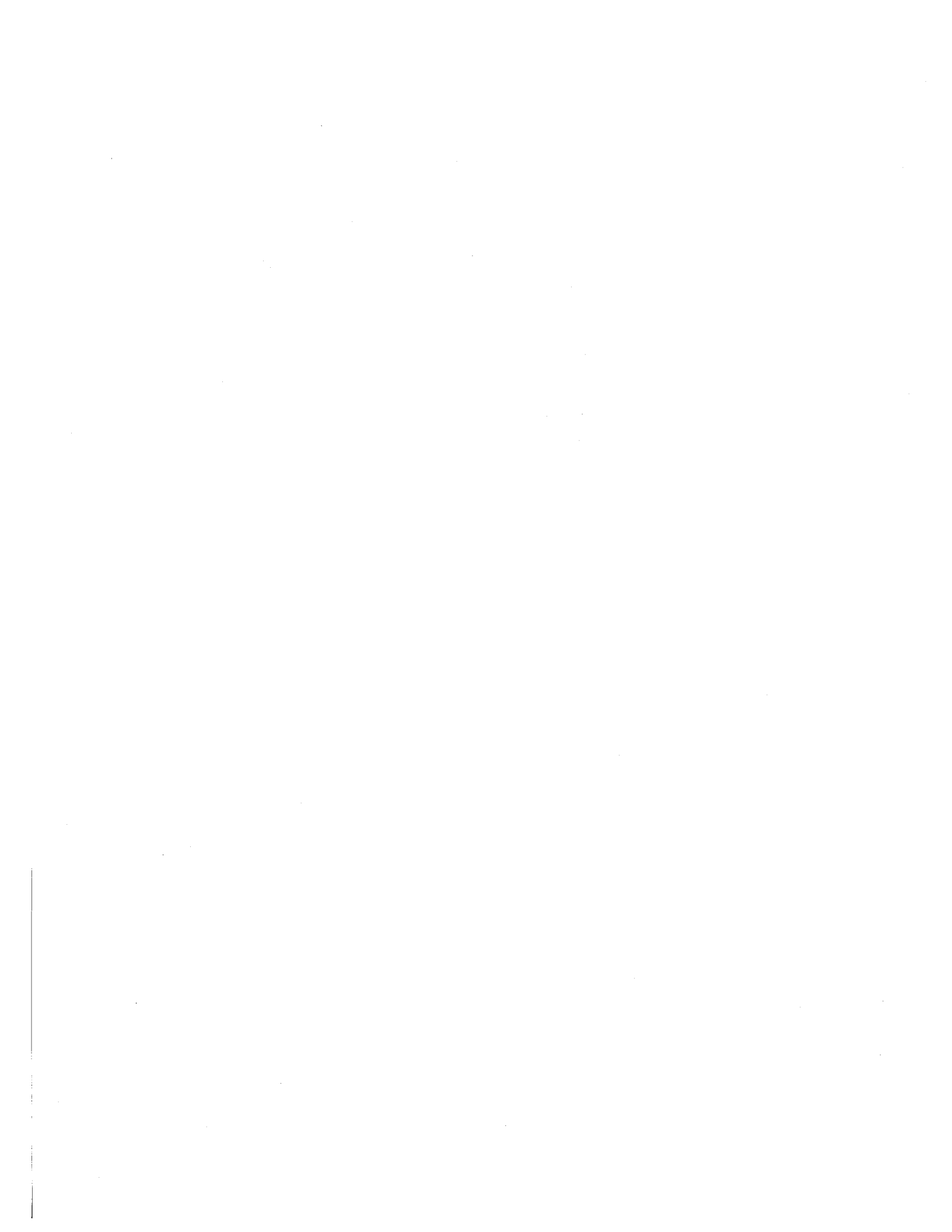
The processes and methods of conflict resolution briefly outlined in the case studies deserve more detail; a full set of documents of agreements etc would be desirable. Confidence-building measures such as those discussed for the Falkland islands should be studied.

APPENDICES



APPENDIX ONE

SVALBARD



they respect such rights and such jurisdiction, all States enjoy in the economic zone the freedom of navigation, the freedom of overflight, the freedom to lay submarine cables and pipelines, and the freedom to make other uses of the sea in conditions similar to those applicable to the high seas.

In response to the written statements submitted at the time of the signing of the United Nations Convention on the Law of the Sea at Montego Bay, the French Government wishes to refer to its statement of 12 May

1983, which it supplements with the following observations:

1. Vessels and aircraft of all States enjoy the same freedoms of navigation and of overflight in the economic zone as they do on the high seas and may carry out any manoeuvres and exercises related to those freedoms.

2. Uninhabited rocks which can sustain human habitation and an economic life of their own are entitled to an economic zone and a continental shelf, as provided for in the Convention.

The Treaty on Spitsbergen

Adopted at Paris 9 February 1920

The President of the United States of America; His Majesty the King of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Denmark; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; His Majesty the King of Sweden.

Desirous, while recognising the sovereignty of Norway over the Archipelago of Spitsbergen, including Bear Island, of seeing these territories provided with an equitable régime, in order to assure their development and peaceful utilisation.

Have appointed as their respective Plenipotentiaries with a view to concluding a Treaty to this effect:

Article 1

The High Contracting Parties undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North, especially West Spitsbergen, North-East Land, Barents Island, Edge Island, Wiche Islands, Hope Island or Hopen-Eiland, and Prince Charles Foreland, together with all islands great or small and rocks appertaining thereto.

Article 2

Ships and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters.

Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the reconstitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect, to the advantage of any one of them.

Occupiers of land whose rights have been recognised in accordance with the terms of Articles 6 and 7 will enjoy the exclusive right of hunting on their own land: (1) in the neighbourhood of their habitations, houses, stores, factories and installations, constructed for the purpose of developing their property, under conditions laid down by the local police regulations; (2) within a radius of 10

kilometers round the headquarters of their place of business or works; and in both cases, subject always to the observance of regulations made by the Norwegian Government in accordance with the conditions laid down in the present Article.

Article 3

The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and parts of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.

They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters and no monopoly shall be established on any account or for any enterprise whatever.

Notwithstanding any rules relating to coasting trade which may be in force in Norway, ships of the High Contracting Parties going to or coming from the territories specified in Article 1 shall have the right to put into Norwegian ports on their outward or homeward voyage for the purpose of taking on board or disembarking passengers or cargo going to or coming from the said territories, or for any other purpose.

It is agreed that in every respect and especially with regard to exports, imports and transit traffic, the nationals of all the High Contracting Parties, their ships and goods shall not be subject to any charges or restrictions whatever which are not borne by the nationals, ships or goods which enjoy in Norway the treatment of the most favoured nation: Norwegian nationals, ships or goods being for this purpose assimilated to those of the other High Contracting Parties, and not treated more favourably in any respect.

No charge or restriction shall be imposed on the exportation of any goods to the territories of any of the Contracting Powers other or more onerous than on the exportation of similar goods to the territory of any other Contracting Power (including Norway) or to any other destination.

Article 4

All public wireless telegraphy stations established or to be established by, or with the authorization of, the Norwegian Government within the territories referred to in Article 1 shall always be open on a footing of absolute equality to communications from ships of all flags and from nationals of the High Contracting Parties, under the conditions laid down in the Wireless Telegraphy Convention of July 5, 1912, or in the subsequent International Convention which may be concluded to replace it.

Subject to international obligations arising out of a state of war, owners of landed property shall always be at liberty to establish and use for their own purposes wireless

telegraphy installations, which shall be free to communicate on private business with fixed or moving wireless stations including those on board ships and aircraft.

Article 5

The High Contracting Parties recognise the utility of establishing an international meteorological station in the territories specified in Article 1, the organisation of which shall form the subject of a subsequent Convention.

Conventions shall also be concluded laying down the conditions under which scientific investigations may be conducted in the said territories.

Article 6

Subject to the provisions of the present Article, acquired rights of nationals of the High Contracting Parties shall be recognised.

Claims arising from taking possession or from occupation of land before the signature of the present Treaty shall be dealt with in accordance with the Annex hereto, which will have the same force and effect as the present Treaty.

Article 7

With regard to methods of acquisition, enjoyment and exercise of the right of ownership of property including mineral rights, in the territories specified in Article 1, Norway undertakes to grant to all nationals of the High Contracting Parties treatment based on complete equality and in conformity with the stipulations of the present Treaty.

Expropriation may be resorted to only on grounds of public utility and on payment of proper compensation.

Article 8

Norway undertakes to provide for the territories specified in Article 1 mining regulations which, especially from the point of view of imposts, taxes or charges of any kind, and of general or particular labour conditions, shall exclude all privileges, monopolies or favours for the benefit of the State or of the nationals of any one of the High Contracting Parties, including Norway, and shall guarantee to the paid staff of all categories the remuneration and protection necessary for their physical, moral and intellectual welfare.

Taxes, dues and duties levied shall be devoted exclusively to the said territories and shall not exceed what is required for the object in view.

So far, particularly as the exportation of minerals is concerned, the Norwegian Government shall have the right to levy an export duty which shall not exceed 1 % of the maximum value of the minerals exported up to 100,000 tons, and beyond that quantity the duty will be proportionately diminished. The value shall be fixed at the end of the navigation season by calculating the average free on board price obtained.

Three months before the date fixed for their coming into force, the draft mining regulations shall be communicated by the Norwegian Government to the other Contracting Powers. If during this period one or more of the said Powers propose to modify these regulations before they are applied, such proposals shall be communicated by the Norwegian Government to the other Contracting Powers in order that they may be submitted to examination and the decision of a Commission composed of one representative of each of the said Powers. This Commission shall meet at the invitation of the Norwegian Government and shall come to a decision within a period of three months from the date of its first meeting. Its decisions shall be taken by a majority.

Article 9

Subject to the rights and duties resulting from the admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.

Article 10

Until the recognition by the High Contracting Parties of a Russian Government shall permit Russia to adhere to the present Treaty, Russian nationals and companies shall enjoy the same rights as nationals of the High Contracting Parties.

Claims in the territories specified in Article 1 which they may have to put forward shall be presented under the conditions laid down in the present Treaty (Article 6 and Annex) through the intermediary of the Danish Government, who declare their willingness to lend their good offices for this purpose.

The Present Treaty, of which the French and English texts are both authentic, shall be ratified.

Ratifications shall be deposited at Paris as soon as possible.

Powers of which the seat of the Government is outside Europe may confine their action to informing the Government of the French Republic, through their diplomatic representative at Paris, that their ratification has been given, and in this case, they shall transmit the instrument as soon as possible.

The present Treaty will come into force, in so far as the stipulations of Article 8 are concerned, from the date of its ratification by all the signatory Powers; and in all other respects on the same date as the mining regulations provided for in that Article.

Third Powers will be invited by the Government of the French Republic to adhere to the present Treaty duly ratified. This adhesion shall be effected by a communication addressed to the French Government, which will undertake to notify the other Contracting Parties.

In witness whereof the abovenamed Plenipotentiaries have signed the present Treaty.

Done at Paris, the ninth day of February, 1920, in duplicate, one copy to be transmitted to the Government of His Majesty the King of Norway, and one deposited in

the archives of the French Republic: authenticated copies will be transmitted to the other Signatory Powers.

APPENDIX TWO

ABU MUSA

APPENDIX VII

DOCUMENTS ON THE UNDERSTANDING CONCERNING THE ISLAND OF ABU MUSA¹

'MEMORANDUM OF UNDERSTANDING' BETWEEN IRAN AND SHARJAH, NOVEMBER 1971.

Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognise the other's claim. Against this background the following arrangements will be made:

1. Iranian troops will arrive in Abu Musa. They will occupy areas the extent of which have been agreed on the map attached to this memorandum.
2. (a) Within the agreed areas occupied by Iranian troops, Iran will have full jurisdiction and the Iranian flag will fly.
(b) Sharjah will retain full jurisdiction over the remainder of the island. The Sharjah flag will continue to fly over the Sharjah police post on the same basis as the Iranian flag will fly over the Iranian military quarters.
3. Iran and Sharjah recognise the breadth of the island's territorial sea as twelve nautical miles.
4. Exploitation of the petroleum resources of Abu Musa and the sea bed and subsoil beneath its territorial sea will be conducted by Buttes Gas & Oil Company under the existing agreement, which must be acceptable to Iran. Half the governmental oil resources hereafter attributable to the said exploitation shall be paid direct by the Company to Iran and half to Sharjah.
5. The nationals of Iran and Sharjah shall have equal rights to fish in the territorial sea of Abu Musa.
6. A financial assistance agreement will be signed between Iran and Sharjah.

APPENDIX THREE

FALKLAND ISLANDS

A. AGREEMENT BETWEEN ARGENTINA AND THE UNITED KINGDOM
ESTABLISHING AN INTERIM RECIPROCAL INFORMATION AND
CONSULTATION SYSTEM, 1990

Both parties agree to establish an Interim Reciprocal Information and Consultation System for movements of units of their Armed Forces in areas of the South West Atlantic. The aims of this system are to increase confidence between Argentina and the United Kingdom and to contribute to achieving a more normal situation in the region without unnecessary delay. The system consists of the following provisions:

I. *Direct Communication Link*

A. A direct communication link will be established between the respective military authorities — under the supervision of both Foreign Ministries — in order to:

- reduce the possibility of incidents and limit their consequences if they should occur;
- increase common knowledge of activities in the South West Atlantic.

B. The respective military authorities will be:

British Authority: Commander British Forces Falkland Islands (Malvinas).

Argentine Naval Authority: Commandante del Area Naval Austral (Ushuaia).

Argentine Air Authority: Jefe de la Novena Brigada Aérea (Comodoro Rivadavia).

C. It is agreed to establish a direct radio link between the respective authorities which will include voice and/or telex transmissions. The link will be manned on a 24 hour basis and will be tested at least once a week. Technical information relating to equipment, frequencies and modalities of use will be exchanged through diplomatic channels.

D. It is agreed to establish a communications plan for radio links between units and stations of the parties. Technical information will be exchanged through diplomatic channels.

II. *Definition of Units*

A. Ship:

Any ship belonging to the naval forces of the parties bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the governments and whose name appears in the naval list, and manned by a crew who are under regular naval discipline, and British Fleet Auxiliaries.

B. Aircraft:

Any aircraft belonging to the Armed Forces of the parties, manned by a military crew who are under regular Armed Forces discipline.

C. Combatant Units:

Any ship or aircraft equipped with weapons systems, or means of offensive power or offensive projection capabilities (naval examples: aircraft carriers, cruisers, destroyers, frigates, corvettes, submarines, fast patrol boats, amphibious ships or ships carrying troops; aircraft examples: strike aircraft, fighters, bombers, missile or troop-carrying aircraft).

III. *Reciprocal Information about Military Movements*

1. Reciprocal written information will be provided through diplomatic channels, not less than 25 days in advance, about:

A. Movements of naval forces involving four or more ships;

B. Movements of aerial forces involving four or more aircraft;

C. Exercises involving more than 1000 men or more than 20 sorties by aircraft;

D. Amphibious or airborne exercises involving more than 500 men or more than 20 sorties by aircraft.

The areas of application of this measure are:

For British Forces: the area south of parallel 40°S, west of meridian 20°W and north of 60°S.

For Argentine Forces: within rhumb lines joining the following geographical coordinates in the specified order: - 46S 63W, 50S 63W, 50S 64W, 53S 64W, 53S 63W, 60S 63W, 60S 20W, 46S 20W, 46S 63W.

Each party will accept the presence of an observer ship from the other party in the vicinity of naval forces involving four or more ships engaged in manoeuvres within the relevant area of application.

2. Reciprocal notification of identity, intended track and purpose will be given, not less than 48 hours in advance, of a ship or an aircraft that intends to approach closer to coasts than 50 miles by sea or 70 miles by air.

When specific movements of the kind described in this paragraph are intended to be carried out by combatant units and might cause political difficulty to the Argentine Government or to the British Government, the notifying party will be informed immediately and mutual agreement will be necessary to proceed.

IV. *Verification*

Verification of compliance with the reciprocal information arrangements in provision III above will be by national means, by observer ships (as provided for in III. 1), and by consultations through the direct communication link. If disagreement should persist, the parties shall have recourse to the diplomatic channel.

V. *Reciprocal Visits*

Reciprocal visits to military bases and naval units may be agreed through the diplomatic channel on a case by case basis.

VI. *Applicability of International Practice*

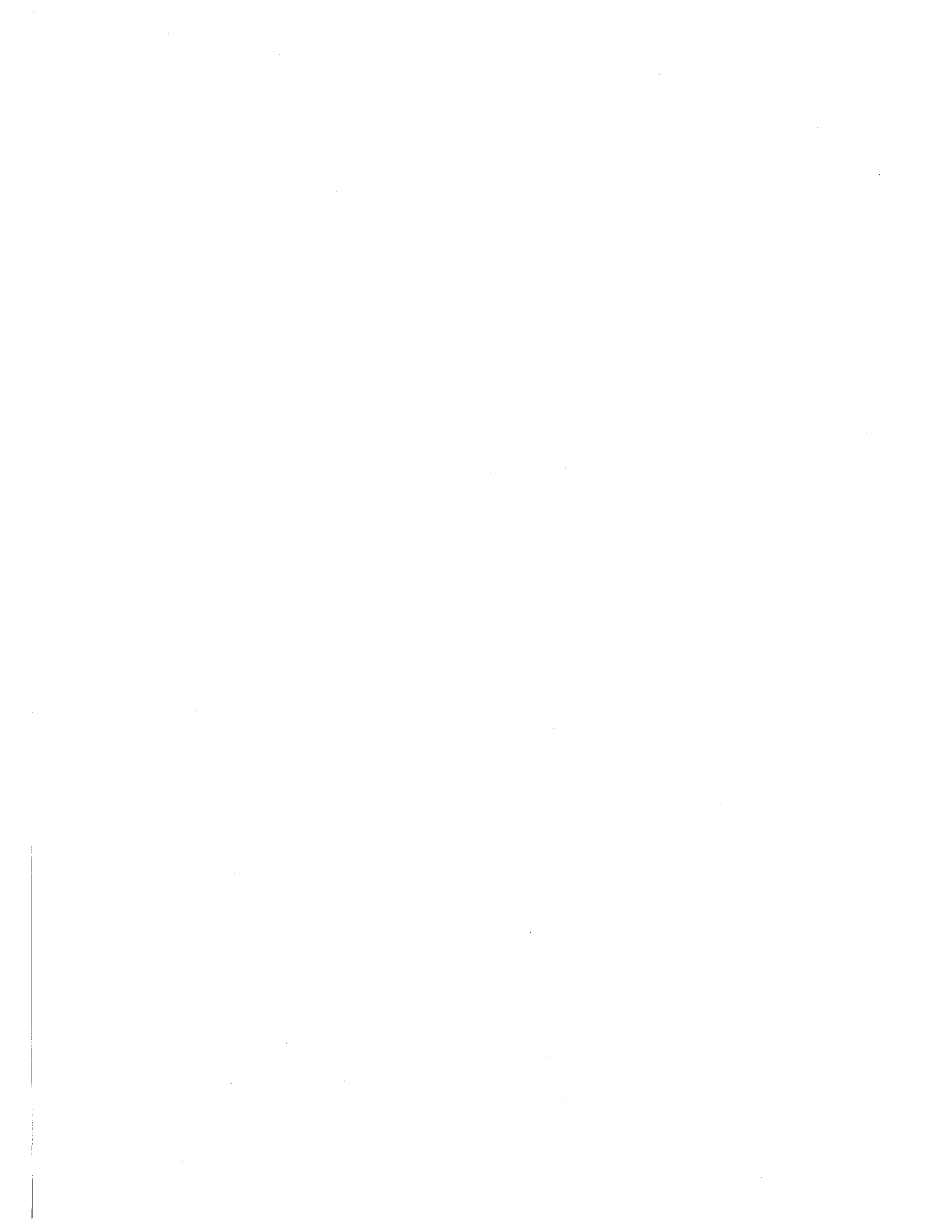
In situations not specifically covered above, it is understood that normal international practice will be applied on a reciprocal basis.

APPENDIX

VII. *Duration*

This system, including the reciprocal information measures, shall be reviewed at regular diplomatic-technical meetings. The first of these meetings shall take place within one year after the entry into force of the system and shall be convened at a date to be agreed through the diplomatic channel.

[Source: Falkland Islands Department, Foreign and Commonwealth Office, February 1990]



BOUNDARY BULLETIN

number 2

July 1991

Edited by
Carl Grundy-Warr and Greg Englefield

- Internal crisis in Yugoslavia: new boundaries?
- UN and the Kurds
- Border conflicts in the USSR
- Falkland Islands Fishing Zone
- Kuwait-Iraq: Is the problem solved?
- US-Mexico: The Free Trade Agreement

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Fisheries Conservation: A Basis for a Special Anglo-Argentine Relationship?

At present 1992 is viewed primarily in terms of either its European significance or the quincentennial of Columbus' voyages to the New World. But next year will also witness the tenth anniversary of the Falkland's War, even if the islanders themselves prefer to forget the invasion of 1982, as demonstrated by their plans to celebrate yet another event, the 400th anniversary of John Davis' alleged discovery of the Falkland Islands.⁽¹⁾

Building bridges between London and Buenos Aires

The 1982 war was followed by a period when the continuing impasse over sovereignty and the absence of diplomatic relations rendered it difficult for Argentine and Britain to make any progress even on practical matters. Successive British governments, rejecting Argentine claims to what they call the Islas Malvinas, stressed sovereignty's non-negotiable character alongside a commitment 'to defend the Falkland Islanders' right to live in peace and security under a government of their own choosing'.⁽²⁾

The resulting non-relationship was suddenly transformed at the close of the 1980s, when the new Argentine President, Carlos Menem, sought to build bridges for the sake of improved relations with Europe.

He thereby confounded British pessimism prompted by his Peronist affiliations and strident election pronouncements on the dispute. In August 1989 the two governments, meeting at New York, accepted a 'sovereignty umbrella' protecting their respective legal positions regarding the Falkland Islands, South Georgia and the South Sandwich Islands. This formula provided a basis for the Joint Statements agreed at Madrid on 19 October 1989 and 15 February 1990 enabling the restoration of diplomatic relations, the withdrawal of the post war Protection Zone, and the commencement of meaningful discussions on urgent practical questions, most notably, the conservation of fish stocks in the South-West Atlantic.

Although most international attention in November 1990 focused upon the domestic. European and Gulf relevance of Margaret Thatcher's departure, Argentineans were preoccupied with its implications for Anglo-Argentine relations in general and the Malvinas question in particular. This speculation acquired an added significance from the manner in which it coincided with a somewhat difficult phase - the Argentine press referred to '*la guerra del calamar*' ('squid war') - in the ongoing Anglo-Argentine fishing negotiations held at Rio de Janeiro (4-5 September) and Madrid (12-14, 23-24 November).⁽³⁾ These talks, having almost foundered just prior to Mrs Thatcher's resignation, were saved by the personal intervention of the Argentine and British Foreign Ministers, Domingo Cavallo and Douglas Hurd respectively, who cleared the way for the acceptance of the Joint Statement on the Conservation of Fisheries on 28 November 1990.

Fishing in the South West Atlantic

It is easy to treat South-West Atlantic fishing as a practical topic capable of being considered separately from more sensitive and intractable political and legal issues. However, Argentina and Britain soon realised not only the difficulty of making progress, even under the sovereignty umbrella, on seemingly non-controversial matters but also the consequent risk of undermining their recent rapprochement. The continued absence of agreed maritime boundaries meant that the fishing problem provided a microcosm of the fundamental sovereignty dispute.

The South-West Atlantic remained one of the least exploited fisheries until the early 1980s, when it emerged rapidly to become a major fishing ground for squid and finfish.⁽⁴⁾ Approximately 50-60 per cent of the region's catch of *Illex* squid, the most commercially valuable stock, are caught around the Falkland Islands, where the total annual catch since 1987 has averaged 354,650 tonnes, and included *Illex* squid (48 per cent), *Loligo* squid, blue whiting, hoki and hake.

By 1986 over 600 fishing vessels from Iberian, Far Eastern and East European countries were active annually in one of the last unregulated fisheries in the world. Evidence of over-fishing prompted the Argentine, British and the Falkland governments to advocate conservation measures for shared fish stocks on the Patagonian Shelf, even if the prospects for a bilateral approach were undermined by the absence of

diplomatic relations, and particularly by Argentina's conclusion of the fishing agreements (July 1986) with Bulgaria and the Soviet Union covering its Exclusive Economic Zone (EEZ). The perceived urgency of the problem in conjunction with escalating pressure from the islanders and the belief that Argentina was more concerned about sovereignty than conservation, led the British government to announce that on 1 February 1987 a 150-mile Interim Conservation and Management Zone (FICZ) would be established around the Falklands. Britain's legal entitlement to a 200-mile limit, though placed on record, was not implemented to avoid overlap with the Argentine EEZ.

Balancing economics and conservation

During the 1980's fishing became a vital issue for the Falkland Islanders, whose traditional wool-based monocultural economy was often interpreted as being in a state of irreversible decline. The FICZ brought about a sudden transformation, and after 1987 the small community of some 1,900 people experienced one of the highest economic growth rates in the world. The impact of revenue derived from fishing licences and related activities proved both immediate and dramatic: thus, the first season's yield of £11.8m explained the sudden rise of per capita income from £6,132 (1985-86) to £15,700 (1986-87). The government (FIG) budget of £19.6m contrasted with the previous year's figure of £7m. Recent FIG budgets of about £40m have relied upon fishing for some 60-70 per cent of revenue.

Fishing wealth funded the diversification of the economy (e.g. tourism, hydroponic market gardening, fishing services) as well as various agricultural and infrastructure improvements (e.g. schools, roads, swimming pool, telephonic communications and housing). Nevertheless, a history of fluctuating wool prices fostered an awareness of the potential instability of the substantial and vital income accruing from fishing. A fear that the South West Atlantic, like other fisheries, would be over-exploited, explained the islanders' constant efforts to balance conservationist against economic considerations.

The annual life cycle of *Illex* squid, which die soon after spawning, raises special conservation problems. The prime management objective is to avoid the risk of a stock renewal failure, and particularly to ensure good spawning through the maintenance of an adequate 'escapement rate' (i.e. the proportion surviving fishing). The introduction of the FICZ was followed by a large and immediate reduction in fishing, since only one third of the number of vessels active in 1986 were awarded licenses. The profitable nature of fishing within the FICZ means that the demand for licences has always exceeded supply, and increasingly their issue has been determined by an applicant's willingness to agree to a voluntary restraint agreement (VRA) limiting fishing on the high seas outside the FICZ. Excessive catches led to the season's early closure in both 1989 and 1990. Policy matters related to licensing and the length of the fishing season are guided by expert scientific advice furnished by the Renewable Resources Assessment Group (RRAG) of Imperial College, University of London. By 1990 the islanders, influenced by the RRAG's advice and

an anxiety to preserve fishing's long term viability, pressed the 'extreme urgency' of further measures, most notably, a 50-mile extension of the FICZ to cover the so-called 'doughnut', the term used in fishing parlance to describe the area between the FICZ and the 200-mile limit.⁽⁵⁾

In addition, the post -1982 period witnessed a major change in the islanders 'mind-set'. The prosperity engendered by fishing meant that a more enterprising attitude replaced the inertia and dependency identified by the 1976 and 1982 Shackleton Reports. A new sense of identity and purpose gave the islanders confidence about current and future possibilities and a feeling of control over their destiny, as highlighted by the options outlined in 1988 by ERL's Development Strategy Report. Their 'future' was interpreted to mean an ability to live independently of Argentina. Speaking at the UN in August 1990, Lewis Clifton stated that:

'Islanders have no desire to seek any political, cultural, educational or commercial relationship with that country.'⁽⁶⁾

This attitude was reinforced by experience in running their own affairs. In particular, fishing management posed a wide range of demands upon the islanders, whose role involved monitoring the stocks, making decisions about the safe level of fishing activity in the light of RRAG advice, negotiating VRA's and licence arrangements with foreign fishing associations (e.g. in Japan, August 1990), policing the zone with patrol ships and aircraft, and dealing with infringements through fines on unlicensed vessels or the revocation of licences (e.g. two licences were withdrawn in 1990).

The 1990 Fishing Conservation Agreement

The fishing question was treated as a priority matter after the resumption of diplomatic relations. Argentine and Britain appreciated the prudence of a bilateral ecosystem-based approach towards shared fish stocks migrating across the Patagonian Shelf area between 45 S and 60 S in and out of both the FICZ and the Argentine EEZ. RRAG, advising that 'the current level of effort is not sustainable in the long term' and reporting low Illex squid escapement rates of 9-10 per cent for 1988-89, identified a target rate of 40 per cent as a conservation imperative in order to minimise the risk of a stock failure within the next 5-10 years.⁽⁷⁾

The Argentine, British and Falkland governments, though agreed on the need for conservation in the South-West Atlantic, were divided about the way to reach the agreed goal. On the one hand, the islanders believed that Argentina should be deprived of any role in 'Falklands waters':

'If it's one with Argentine involvement in our waters, we shall have none of it. They stay in their economic zone and we shall stay in ours.'⁽⁸⁾

Eventually, a grudging acceptance of the fact that location in the same marine ecosystem caused a common interest in the responsible management of shared fish stocks moderated their initial hostility. On the other hand, Argentine, interpreting the South-West Atlantic as 'our waters' adjudged it vital to 'ensure an appropriate

control of Argentine waters under our country's effective jurisdiction'.⁽⁹⁾ The Argentine claim to the Malvinas meant that 'our waters' could be interpreted as covering the seas in both the Argentine EEZ and around the Falklands.

Inevitably, the working group on fishing was unable to avoid the sovereignty issue, especially as Argentine interpreted any proposal to extend the FICZ for allegedly 'conservationist' reasons as really an attempt to extend the area of British jurisdiction. During 1986-87 these sovereignty-related difficulties could not be bridged, as evidenced by the Argentine and British resort to the unilateral fishing strategies outlined earlier. By 1990 changed conditions and the 'sovereignty umbrella' rendered it possible to contemplate a bilateral approach towards a shared stock. In any case, both governments were forced to face the fact that - to quote John Beddington of RRAG - 'squid and fish know no boundaries' and could not care less about their respective claims.⁽¹⁰⁾

On 28 November 1990 the conclusion of a Joint Statement on Conservation of Fisheries in the South West Atlantic waters between 45 S-60 S promised 'to open the way for cooperation in this field on an ad hoc basis, in accordance with guidelines established in paragraph 7 of the Joint Statement issued at Madrid in February 1990'. Argentine and Britain, though continuing to disagree about territorial sovereignty and maritime boundaries, agreed upon the introduction of a 'temporary total prohibition of commercial fishing' subject to annual review, in the 'doughnut' between the FICZ and the 200 mile FOCZ (Falklands Outer Zone) with effect from 26 December 1990. The FIG implemented the ban in the Governor's Proclamation of 20 December 1990 and the Fisheries (Outer Zone) Ordinance of 5 January 1991.

A South Atlantic Fisheries Commission (SAFC) composed of representatives from both governments is to be established and required to meet at least twice a year, alternately in each country, beginning at Buenos Aires in May 1991. The FIG will be represented on the British delegation. The SAFC will consider conservation questions for the waters between 45 S-60 S: assess information provided by both governments on fleet numbers, catches, and stocks; make recommendations by mutual agreement; formulate conservation measures in international waters; propose joint research work; and monitor the implementation of the prohibition.

One imponderable concerns the FIG's ability to monitor and enforce both the ban in the 'doughnut' and the VRAs covering the high seas, particularly as it has already encountered difficulties caused by both the extent of the area and the deliberate obscuring of vessel call signs and names.⁽¹¹⁾ However, one immediate benefit of the agreement was to persuade Taiwanese fishing interests, which had previously refused to accept VRAs as a licence condition for the 1991 season, to change their position in order to be allowed to fish in the FICZ.

Fisheries management depends also on adequate information. The introduction of FICZ brought about a rapid improvement in the quality and quantity of data for

these waters, but merely highlighted the gaps in Argentine information on such aspects as the amount, place and timing of catches in their waters. Perhaps it is going too far to repeat the uncomplimentary remarks made by the islanders about the 'rubbish' allegedly emanating as 'data' from Buenos Aires, but the SAFC's success will depend in part upon an enhanced Argentine research effort.⁽¹²⁾

A practical step in collaboration

John Major formally took office as Prime Minister on the very day that the fishing agreement was concluded. Argentine commentators might regard this coincidence as a happy omen for the future, partly because of their critical perception of Mrs Thatcher and partly because the first Madrid Joint Statement was concluded during Mr Major's brief sojourn at the Foreign and Commonwealth Office in 1989 when he stated that:

'We believe it will be in our interest to talk to the Argentines about conservation in the South Atlantic and we now have a framework in which we can do this.'⁽¹³⁾

The November 1990 agreement consolidated the recent rapprochement and represented a major achievement for the new 'framework'.

The fishing talks, albeit threatened occasionally by legal complications, offered 'a successful example' - to quote Cavallo - of the two governments finding an agreed way forward without having to confront the sovereignty issue.⁽¹⁴⁾ The agreement not only preempted the possibility of a unilateral British extension of FICZ to 200 miles liable to undermine the improving Anglo-Argentine relationship, but it also employed the sovereignty umbrella to protect their respective legal positions. This practical step in functional cooperation accommodated the British desire to keep sovereignty off the agenda as well as the Argentine preference for a 'step-by-step' strategy according to which 'both sides may eventually find themselves in a position to overcome this issue as a whole'.⁽¹⁵⁾ Nevertheless, the fluctuating fortunes of the talks offered a sharp reminder of the sensitive nature of the sovereignty issue, including its ability to cause serious problems for all aspects of the Anglo-Argentine relations.

Further progress can be expected on other topics, but can the central issue of sovereignty be avoided indefinitely? At present the British refusal to discuss sovereignty is paralleled by an Argentine acceptance of the view that 'the time for discussion of the sovereignty dispute has not arrived ... we are not in a hurry'.⁽¹⁶⁾ It is difficult to predict how long this consensus will survive, especially as certain Argentine politicians, including Dante Caputo (Foreign Minister, 1983-89) and Jose Bordón (Governor of Mendoza), have asserted recently that the sovereignty umbrella should never be interpreted as an indefinite arrangement.⁽¹⁷⁾ Significantly, domestic political criticism concentrated upon the

assertion that the fishing agreement impugned Argentine sovereignty.⁽¹⁸⁾

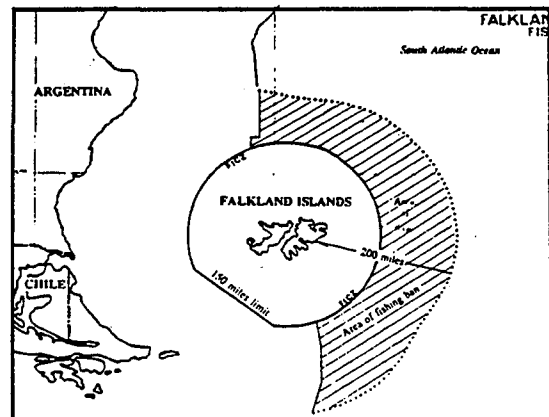
Of course, some readers might have a sense of *deja vu*. During the 1970's oil and communications agreements concluded in accordance with a sovereignty umbrella provided the basis for Anglo-Argentine cooperation. In the event, the focus on functional topics became merely a substitute for talking about sovereignty and failed not only to moderate the islanders' hostility towards Argentine but also to prevent the drift to war.

The position of the islanders

The FIG though reluctant to establish close links with Argentina, welcomed the agreement as 'a move towards the conservation of the region as a whole'.⁽¹⁹⁾ John Barton, the FIG's Director of Fisheries, expressed a typical reaction:

'Anything that brings about an improvement in conservation must be good for all parties - for us, the Argentines and the people who have an interest in fishing in the area.'⁽²⁰⁾

The foreseeable future holds the prospect of relative prosperity for the Falkland Islands, as illuminated in April 1991 by the air of optimism characterising the Falkland Islands Association's seminar, 'The Falkland Islands in the 1990's', held at Cambridge University. The process of demographic and economic decline has been reversed (the March 1991 census is expected to show a population well in excess of 2,000), even if wool and philatelic sales remain depressed.⁽²¹⁾ Recent conservation measures render it more likely that fishing will prove a source of long-term wealth, taking the islands towards a greater degree of self-sufficiency, except for defence. Agricultural diversification will also be important. Perhaps offshore oil exploration lies just beyond the horizon, as suggested by continuing preparations for the relevant legislation.⁽²²⁾ However, the recent Cambridge seminar was made aware of the problems rather than of the opportunities relating to minerals. Difficulties arising from the lack of relevant geological research are compounded by conservationist and economic considerations.



A sketch map to illustrate the fishing-ban area defined in the Joint Statement on the Conservation of Fisheries, 28 November 1990.

In December 1990 John Major, continuing Margaret Thatcher's practice of broadcasting a Christmas message to the Falklands, drew an analogy between the 1982 war and the contemporary Gulf crisis:

'Our armed forces are there to help recover the liberty and independence of a small country, precisely as they did for the Falklands in 1982.'⁽²³⁾

He moved on to offer the islanders reassurance:

'We achieved these agreements with Argentina without in any way compromising our position on British sovereignty. You need be in no doubt that we will continue to honour our commitments to you.'

The significance of this promise was accentuated by Argentine irritation at the Gulf analogy - Mr Major's comments were adjudged *'not in line with the existing climate of Argentine-British relations'* - and consequent reaffirmation of its claim to the Malvinas. Inevitably, the islanders remain uncertain, and Sir Rex Hunt, the Falklands Governor during 1982, articulated their fears that the measure *'will be interpreted by the Argentines as a weakening of our resolve on the sovereignty issue'*.⁽²⁴⁾ Individual islanders feared that the fishing agreement represented the 'thin end of the wedge' placing them on yet another slippery slope towards Argentina.⁽²⁵⁾ Strong suspicions dating back to the oil and communications agreements of the early 1970's are harboured about Argentine motives. Indeed one islander asked:

'Can you name any agreement which Argentina has not used and abused to further her own ends?'⁽²⁶⁾

The future course of relations between the islanders and Argentina remains uncertain. Inevitably, continuing manifestations of Argentine instability (e.g. the military rebellion of December 1990) are interpreted by the islanders as justifying their determination to avoid any contact with that country. They remain unimpressed by evidence of the alleged strength of the democratic process in Argentina, while periodic economic crises (e.g. in January 1991) foster unfavourable contrasts with their recent experience.

Sovereignty and a special relationship

During 1990 the restoration of Anglo-Argentine relations helped *'make the South Atlantic a more peaceful and stable area'*, while reinforcing recent moves towards the creation of a South Atlantic Zone of Peace.⁽²⁷⁾ The fishing agreement was soon followed on 11 December by an Agreement for the Promotion and Protection of Investments, which aimed to stimulate the flow of trade and investment between Argentina and Britain, safeguard investments, and ensure the repatriation of profits and dividends.⁽²⁸⁾ The level of trade is growing rapidly, albeit largely in Argentina's favour: thus, British imports from and exports to Argentina during 1990 amounted to £144.2m and £36m respectively. In future the focus of Anglo-Argentine discussions will move towards economic, scientific, technical, environmental and cultural matters. Agreements on drug trafficking and air transportation are expected soon, while the first Argentine visit to war graves on the Falklands took place in March 1991.

During the 1980's it became easy to highlight the divisive nature of the Anglo-Argentine relationship. However, after 1989 a series of developments reflected the fact that relations between Argentina and Britain were not only - to quote Cavallo - 'very good' but also founded upon shared interests in several spheres, as highlighted in October 1990 when Tristan Garel-Jones, speaking on fishing as Minister of State at the Foreign and Commonwealth Office, stated that *'we expect to reach agreement because we both have a common interest.'*⁽²⁹⁾ Whether or not Argentina and Britain are on track towards what Mario Campora, the first Argentine Ambassador in London since the war, has described as *'a new special relationship'* remains a matter for debate.⁽³⁰⁾

Although Margaret Thatcher was often perceived as a prime obstacle to improved Anglo-Argentine relations, her resignation was interpreted in both countries as bringing no alteration in British policy. In fact, the Anglo-Argentine detente occurred during the last year or so of her premiership. In December 1990 John Major explicitly identified himself with Mrs. Thatcher's 'close commitment' to the interests of the islanders, and both Menem and Cavallo have echoed these no-change sentiments, at least in public.⁽³¹⁾ Nevertheless, the islanders proved anxious and like Sir Rex Hunt, saw her departure as *'a tragedy for the Falklands'*.⁽³²⁾ William Fullerton, the current Governor, attempted to alleviate their fears:

'The pledge made to the Falklands in its dispute with Argentina came from the British government and not from Mrs. Thatcher personally, and I don't see any change in policy from Her Majesty's Government.'⁽³³⁾

The place of the islanders in relation to the improving Anglo-Argentine relationship has yet to be clarified, as shown by the manner in which the FIG though regularly consulted, was not represented in the fishing negotiations. The islanders, having become accustomed after 1982 to a close and exclusive link with Britain, became somewhat disoriented because of a need to adjust to the new situation. But recent developments have done little to soften their determination to *'Keep the Falklands British'*:

'We simply want to live our lives without pressure from Argentine sovereignty claims ... Falkland Islanders do not wish to see a change of British sovereign status ... For so long as Argentina pursues her sovereignty claims, islanders will be ever more determined to maintain the status quo.'⁽³⁴⁾

The South-West Atlantic fishing question offers various insights into the whole Falklands/Malvinas dispute, even if it has provided more questions than answers. How far can the two governments proceed on practical questions without raising troublesome political and legal issues liable to infringe the sovereignty umbrella and threaten the Anglo-Argentine relationship? Will fishing offer a window of opportunity for meaningful functional cooperation or prove a source of controversy? Will the habit of working together on fishing help to dissolve, even resolve, 'step by step' the fundamental causes of

dispute? Hitherto, sovereignty has proved the master rather than the servant of events in the South-West Atlantic, and Britain's stress upon popular sovereignty continues to confront Argentine territorial ambitions, as Sir Geoffrey Howe reminded us during his recent thoughtful reappraisal of the concept of sovereignty:

'Sovereignty is not some pre-defined absolute, but a flexible, adaptable organic notion that evolves and adjusts with circumstances ... (and) constitutes a resource to be used, rather than a constraint that inhibits or limits our capacity for action.'⁽³⁵⁾

The successful outcome of the fishing talks, and particularly the sovereignty umbrella, cannot obscure the fact that time is required before the Falklands question is likely to satisfy these criteria.

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3. Claren, 18 November 1990: *Financial Times*, 18 November 1990: La Nacion 23 November 1990: *Buenos Aires Herald*, 23 November 1990.
4. Peter Willetts. 'Fishing in the South-West Atlantic'. *South Atlantic Council Occasional Papers*, No. 4 (1988): J. Csirke. *The Patagonian fisher resources and the offshore fisheries in the South-West Atlantic* (Rome: UNFAO, 1987): G.A. Tingley, M. Basson, A.A. Rosenberg, J. Anderson and J.R. Beddington, *1989 Annual Report on the Falkland Island Fishery* (London: Renewable Resources Assessment Group, Imperial College 1990). pp 2-3 19.
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9. Mario Campora, 'A Special Relationship between Argentina and the United Kingdom: Is it Possible?', Lecture at Club Argentino, London, 14 November 1990, p.87
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Joint Statement on the Conservation of Fisheries (28/11/90)

1. The Government of the Argentine Republic and the Government of the United Kingdom of Great Britain and Northern Ireland agreed that the following formula on sovereignty, contained in the Joint Statement issued at Madrid on 19 October 1989, applies to this statement and its results:
 - (1) *Nothing in the conduct or content of the present meeting or of any similar subsequent meetings shall be interpreted as:*
 - (a) *a change in the position of the United Kingdom with regard to sovereignty or territorial control and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;*
 - (b) *a change in the position of the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;*
 - (c) *recognition of or support for the position of the United Kingdom or the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.*
 - (2) *No act of activity carried out by the United Kingdom, the Argentine Republic or third parties as a consequence and in implementation of anything agreed to in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or Argentine Republic regarding the sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.*
 2. In order to contribute to the conservation of fish stocks, the two Governments agreed to open the way for cooperation in this field on an *ad-hoc* basis; this will be done:
 - a) by means of the establishment of the "South Atlantic Fisheries Commission", composed of delegations from both states, to assess the state of fish stocks in the South Atlantic in accordance with paragraph 7 of the Joint Statement issued at Madrid on 15 February 1990;
 - b) by means of the temporary total prohibition of commercial fishing by vessels of any flag in the maritime area defined in the Annex to this Joint Statement, for conservation purposes.
- The two Governments further agreed to review this Joint Statement annually, in particular the duration of the total prohibition.
3. The Commission will be composed of a delegation from each of the two states, and will meet at least twice a year, alternately in Buenos Aires and London. Recommendations shall be reached by mutual agreement. In accordance with paragraph 7 of the Madrid Joint Statement of 15 February 1990, the maritime area which the Commission will consider in relation to the conservation of the most significant off-shore species will be waters between latitude 45°S and latitude 60°S.
 4. The Commission will have the following functions:
 - a) In accordance with paragraph 7 of the Joint Statement issued in Madrid on 15 February 1990, to receive from both States the available information on the operations of the fishing fleets, appropriate catch and effort statistics and analyses of the status of the most significant off-shore species. Both Governments will provide such information in the form recommended by the Commission.
 - b) To assess the information received and to submit to both Governments recommendations for the conservation of the most significant off-shore species in the area.
 - c) To propose to both Governments joint scientific research work on the most significant off-shore species.
 - d) In accordance with international law, to recommend to both Governments possible

actions for the conservation in international waters of migratory and straddling stocks and species related to them.

- e) To monitor the implementation of the prohibition and make recommendations in this regard to both Governments.
5. The prohibition in paragraph 2(b) will take effect on 26 December 1990; both Governments agreed to cooperate in order to implement it.
 6. Each Government will take the appropriate related administrative measures in accordance with this Joint Statement.

ANNEX

The area referred to in paragraph 2(b) is the one encompassed by the lines of the type specified in the second column, joining points in the first column defined to the nearest minute of arc on WGS 72 Datum by coordinates of Latitude and Longitude in the order given.

Coordinates of Latitude and Longitude	Line Type
1. 47°42'S, 60°41'W	1-2 rhumb line along meridian.
2. 49°00'S, 60°41'W	2-3 parallel of latitude.
3. 49°00'S, 60°55'W	3-4 rhumb line along meridian.
4. 49°20'S, 60°55'W	4-5 arc of the circle which has a radius of 150 nautical miles and its centre at Latitude 51°40'S, Longitude 59°30'W, moving clockwise.
5. 54°02'S, 58°13'W	5-6 rhumb line.
6. 54°38'S, 58°02'W	6-7 meridian.
7. 55°30'S, 58°02'W	7-8 rhumb line.
8. 56°14'S, 58°31'W	8-9 a line drawn anti-clockwise along the maximum limit of jurisdiction over fisheries in accordance with international law.
9. 47°42'S, 60°41'W	

The area mentioned above is described for the sole purpose of the total prohibition in paragraph 2(b) of this Joint Statement and, in particular, the formula on sovereignty in paragraph 1 of this Joint Statement applies to it.

APPENDIX FOUR

CYPRUS

CYPRUS

PART I

INTRODUCTORY

1. Following the Agreement concluded at the London Conference on Cyprus on the 19th February, 1959 (Cmnd. 679) and in accordance with measures agreed at the Conference, action was taken both in Cyprus and in London to prepare for the transfer of sovereignty.

JOINT (CONSTITUTIONAL) COMMISSION

2. In Cyprus a Joint Commission was established with the duty of completing a draft Constitution for the independent Republic of Cyprus, incorporating the Basic Structure agreed at the Zurich Conference (Document II (a) of Cmnd. 679). This Commission completed its work on the 6th April, 1960, when the draft Constitution was signed at Nicosia. Her Majesty's Government in the United Kingdom were not represented on the Joint Commission. The text of the Constitution has, however, been made available to Her Majesty's Government who have informed the other parties that they have no comments on it. Her Majesty's Government, as parties to the Treaty of Guarantee, are guarantors, together with Greece and Turkey, of the provisions of the Basic Articles of the Constitution. It is under certain Articles of the Constitution that guarantees are given for the protection of fundamental human rights, for the interests of the smaller religious groups, and for the protection of the interests of members of the public services, in accordance with paragraph B (2) of the Declaration by the Government of the United Kingdom (Document III of Cmnd. 679).

TRANSITIONAL COMMITTEE

3. A Transitional Committee was established in Cyprus with responsibility for drawing up plans for adapting and reorganising the Government machinery in preparation for the transfer of authority to the independent Republic. This Transitional Committee has met with the Governor's Executive Council as a Joint Council. Greek Cypriot and Turkish Cypriot members of the Council assumed certain ministerial responsibilities, including those of bringing forward policy proposals to the Joint Council and carrying out its decisions. The purpose has been to build up a Cabinet system and a system of Ministerial responsibility. During this transitional period, however, the Governor has remained head of the Executive with full legislative powers.

4. Progress has been made in the reorganisation of the public services. Cypriot officers have taken over responsibility for all but a few posts in the public service and officers have been designated to fill the remaining posts on independence.

5. Elections were held in December 1959. Archbishop Makarios and Dr. Kutchuk were returned as President- and Vice-President-elect of the Republic. Legislation has been passed and administrative arrangements made

for the holding of elections to the House of Representatives and the two Communal Chambers. As envisaged in the draft Constitution these elections will be held before independence.

NEGOTIATIONS IN LONDON AND CYPRUS

6. In London a Committee was set up, known as the London Joint Committee, on which the three Governments and the two Cypriot communities were represented, with the duty of preparing drafts of the final Treaties giving effect to the conclusions of the London Conference. The Secretary of State for Foreign Affairs invited the Foreign Ministers of Greece and Turkey and Archbishop Makarios and Dr. Kutchuk to a conference in London on the 16th January to review the work of the London Joint Committee and to aim at reaching final decisions on outstanding questions. The Governor took part in the discussions. The conference was not however able to complete consideration of all outstanding matters and, at the request of the Greek Cypriot delegation, and with the agreement of the Turkish Cypriot delegation, the date for independence was postponed for one month to the 19th March, 1960. On the 4th February Mr. Julian Amery, Parliamentary Under-Secretary of State for the Colonies, visited Cyprus to discuss the situation with the Governor, and while there had talks with the leaders of the two communities. On the 8th February it was announced in Cyprus that the necessary legislation could not be passed through Parliament in time for the Republic to attain independence by the 19th March. Mr. Amery returned from Cyprus on the 9th February. Explanatory discussions continued between the Governor and the Cypriot leaders until the 16th February. On the 23rd February Mr. Amery returned to Cyprus to continue negotiations with the Cypriot leaders. These negotiations continued until the 1st July, 1960, when agreement was reached on all points.

7. The Treaties and other documents are annexed to this Paper. It is the intention of Her Majesty's Government to execute these documents, where appropriate, when Parliament has signified its consent to the Cyprus Bill and as soon as the Republic of Cyprus has come into being, on a date to be designated by Order in Council made under Clause 1 of the Bill. The intention is that the Treaties and other documents should be signed in Nicosia on Independence Day.

PART II

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PART III

NOTES ON DOCUMENTS ANNEXED

SOVEREIGN BASE AREAS

1. Article 1 and Annex A to the draft Treaty of Establishment deal with the definition and demarcation of the land boundaries of the two areas to be retained under British sovereignty and of their territorial waters. The areas are shown on Maps Nos. 1 and 2 at Appendix V to this Paper.

Boundaries

2. The land boundaries are defined in Section 1 of Annex A. Section 2 and Appendix H to this Paper provide for their demarcation on the ground by a Boundary Commission composed of representatives appointed by the United Kingdom and by the Republic. Provision is made for the settlement by an independent expert of any question of the correct interpretation of the maps and other material defining the boundaries. In addition the Commission may, if both sides agree, make minor amendments to the boundaries to take account of local administrative conditions. Section 3 defines the territorial waters of the Sovereign Base Areas.

Dhekelia Power Station

3. This power station, situated on Republican territory, will supply power both to the Republic and to the Sovereign Base Areas. Section 4 of Annex A will allow the service authorities, in the circumstances set out in this section, to provide staff, labour and equipment if adequate supplies of power are not maintained.

United Kingdom Defence Rights and Facilities

4. The rights and facilities in the Republic of Cyprus to be enjoyed by the United Kingdom Government were outlined in the Annex to the Declaration of the United Kingdom Government of February, 1959 (Annex to Document III of Cmnd. 679). Article 2 and Annex B to the draft Treaty of Establishment deal with the rights secured to the United Kingdom Government in the Republic of Cyprus. Article 4 and Annex C deal with the status of forces in the territory of the Republic and in the Sovereign Base Areas.

Sites

5. Sections 1, 2 and 3 of Part II of Annex B to the draft Treaty secure for the United Kingdom authorities the use of a number of Sites in the territory of the Republic of Cyprus. These Sites are shown on Map No. 3 at Appendix V to this Paper. The Sites are in four Schedules. The United Kingdom will have the right to use, without restriction or interference, the Sites listed in Schedules A and B. For the Sites listed in Schedules C and D less extensive rights will be sufficient. Those listed in Schedules A and C are for permanent retention; those in Schedules B and D will be released as soon as practicable.

Facilities

6. The following are some of the facilities secured to the United Kingdom by the same Annex. Section 4 deals with freedom of movement in the Republic and the right for military aircraft to overfly the territory of the Republic. The United Kingdom authorities, under Section 5, will have the right to use the ports and harbours of the Republic. The United Kingdom authorities will also have the right to install and operate communications systems and postal services (Section 6), to employ Cypriot nationals (Section 7) and to undertake surveys (Section 8). Provision is made in Section 8, 3 for the establishment of a Committee to keep under review questions relating to water supplies affecting on the one hand the Sovereign Base Areas and the United Kingdom sites and other installations, and on the other hand the Republic. Section 9, 4 deals with the extension of facilities to Commonwealth forces.

Land

7. Part III of Annex B to the draft Treaty concerns the rights of the United Kingdom authorities to acquire and own immovable property (including land) in the Republic, and to dispose of immovable property if it is no longer needed. The provisions include arrangements for payments to be made in certain circumstances and for disputes about the amounts of such payments to be settled by arbitration.

Training Facilities

8. Part IV of Annex B to the draft Treaty makes provision for the United Kingdom Government to have training facilities in the territory of the Republic; specified areas will be used for manoeuvres, field-firing, engineer training, artillery ranges, amphibious warfare, naval bombardment, parachute dropping and airborne exercises. There will be facilities for air training in specified areas, including an air to ground firing range, a high level bombing range and an instrument flying area. Provision is made (Section 8) for the payment of compensation where appropriate. The areas to be used for training purposes are shown on Map No. 3 at Appendix V to this Paper.

Nicosia Airfield

9. Part V of Annex B to the draft Treaty provides for the joint use of Nicosia airfield for civil and military purposes. Sections 1 and 2 define the part of the airfield exclusively for the use of the United Kingdom, and other parts, notably the runways, designated as joint user areas. The existing civil terminal area will be under the control of the Republic of Cyprus until a new civil terminal has been constructed. Her Majesty's Government have undertaken to pay £500,000 for the construction of this terminal.

10. The Republic of Cyprus will be responsible for all purely civil aviation matters; under Section 2 the United Kingdom will have such facilities as they consider necessary for the operation of military aircraft in peace and war. Under Section 7 the Republic of Cyprus will provide air traffic control within the Cyprus Flight Information Region. There will be single and undivided approach and aerodrome control. This approach control, at present

exercised by the United Kingdom, will become the responsibility of the Republic of Cyprus as soon as they have the qualified staff to exercise it, but the United Kingdom will have the right to provide staff to assist and to exercise exclusive control in emergency.

11. The United Kingdom will be responsible for the maintenance of existing joint user facilities (Section 5), and will make freely available to the Republic of Cyprus such meteorological, fire, crash, search and rescue facilities as are provided for the operation of military aircraft (Section 9). Financial arrangements are set out in Section 12.

12. The areas of the airfield and its surroundings which are to be used exclusively by the United Kingdom and which are to be used jointly with the Republic of Cyprus are shown on Map No. 4 at Appendix V to this Paper.

Payments

13. Part VI of Annex B to the draft Treaty specifies items in respect of which payments will be made by the United Kingdom.

Status of Forces

14. The status of forces in the island is dealt with in Article 4 and Annex C to the draft Treaty. The provisions are reciprocal and will apply both to United Kingdom forces in the Republic and to Cypriot forces in the Sovereign Base Areas. Among the more important provisions is that concerning jurisdiction which generally follows Article VII of the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty, Cmd. 9363 (Section 8). Broadly speaking, Service Courts will normally exercise criminal and disciplinary jurisdiction over servicemen, the civilian component and their dependents for offences involving United Kingdom personnel and property only, offences committed on official duty and offences committed solely within the Sites. The Republic's Courts will normally exercise jurisdiction for other offences. Special arrangements are made for the settlement of claims arising from injury or damage caused by members of the forces (Section 9). Section 11 deals with customs arrangements.

CITIZENSHIP

15. Article 6 and Annex D to the draft Treaty make provision for determining the nationality of persons affected by the settlement.

16. Section 2 defines the persons who, by reason of their connexion with and residence in Cyprus, will automatically become citizens of the Republic of Cyprus as from the establishment of the Republic. Section 3 provides that, as from a date six months after the date of the Treaty all the persons with the qualifications specified in Section 2, 2 shall lose their citizenship of the United Kingdom and Colonies but excepts from such loss certain categories of persons who possess a connexion with the United Kingdom and Colonies. These categories are set out in Section 3, 2. Such persons will for the time being possess dual citizenship, but will be able to renounce either their citizenship of the United Kingdom and Colonies or their citizenship of Cyprus.

17. Section 4 makes provision by which certain categories of persons resident outside Cyprus may, by application to the authorities of the Republic

of Cyprus, be granted citizenship of Cyprus. By Section 4, 14 any person thus granted citizenship of Cyprus will thereupon lose his citizenship of the United Kingdom and Colonies. Section 5 makes provision whereby persons naturalised or registered as citizens of the United Kingdom and Colonies in Cyprus, and their descendants in the male line, may obtain citizenship of Cyprus on application made within 12 months of the establishment of the Republic; by Section 5, 5 persons who thus become citizens of the Republic will cease to be citizens of the United Kingdom and Colonies.

18. Section 6 gives an entitlement to certain married women to acquire citizenship of the Republic on the strength of their husband's status under the terms of the Annex. Section 7 enables persons who lose citizenship of the United Kingdom and Colonies under Section 3 to re-acquire it within two years of the establishment of the Republic on the same terms as if they were British subjects other than citizens of the United Kingdom and Colonies. (The normal conditions for such acquisition of citizenship, as laid down in Section 6 (1) of the British Nationality Act, 1948, are that the person shall be ordinarily resident in the United Kingdom and Colonies on the date of the application and shall have been so resident for the immediately preceding 12 months.) Section 8 requires the Republic of Cyprus to give to citizens of the Republic who also possess another nationality or citizenship the right to renounce their citizenship of the Republic; a corresponding right for citizens of the United Kingdom and Colonies is already provided for by Section 19 of the British Nationality Act, 1948.

ASSETS, LIABILITIES AND THE RIGHTS OF CERTAIN PUBLIC OFFICERS

19. Annex E to the draft Treaty and Appendices L and S to this Paper cover certain financial and administrative arrangements consequent on the transfer of power.

20. Section 1 deals with transfer of property of the Government of the Colony of Cyprus to the Government of the Republic. Section 2 provides for the assumption by the Government of the Republic of legal liabilities and obligations of the Government of the Colony.

21. The arrangements concerning the pensions and other rights of certain public officers who retired as a consequence of the impending transfer of power and the conditions of service and other rights of certain officers who continue in the service of the Republic are set out in Section 5 and the Schedule thereto, read in conjunction with the relevant Articles of the Constitution.

CUSTOMS ARRANGEMENTS BETWEEN THE REPUBLIC AND THE SOVEREIGN BASE AREAS

22. Part I of Annex F to the draft Treaty and Appendix M to this Paper set out the customs arrangements between the Republic and the Sovereign Base Areas which follow from the recognition that customs barriers between them should be avoided. Section 8 provides for a committee to be established to keep customs arrangements under review.

MOST-FAVoured-NATION TREATMENT

23. Part II of Annex F to the draft Treaty and Appendix N to this Paper deal with most-favoured-nation treatment for the United Kingdom, Greece and Turkey.

ADMINISTRATION OF THE SOVEREIGN BASE AREAS

24. Her Majesty will continue to exercise sovereignty and jurisdiction over the two Sovereign Base Areas.

25. The Air Officer Commanding-in-Chief, Middle East Air Force, Royal Air Force, will be appointed Administrator of the Areas, and will be responsible to the Secretary of State for Air. The Administrator will be empowered to make laws for the peace, order and good government of the Areas. The costs of administration will be borne by Air Votes.

26. Her Majesty's Government have undertaken to make a declaration regarding the administration of the Sovereign Base Areas. The terms of the declaration are at Appendix O to this Paper.

CYPRUS AND THE COMMONWEALTH

27. In the course of their discussions in London in January, 1960, the President- and Vice-President-Elect of the Republic of Cyprus called twice on the Secretary of State for Commonwealth Relations to discuss what continuing links the new Republic might have with the Commonwealth after Independence.

28. After their second meeting on 20th January, an agreed statement was issued to the Press in the terms set out in Appendix F to this Paper.

THE SMALLER RELIGIOUS GROUPS

29. The Armenians, Maronites and Latins constitute three separate religious groups in the island. A statement by Her Majesty's Government on constitutional safeguards for these groups in accordance with paragraph B (2) (i) of the United Kingdom Declaration made at the London Conference of February, 1959 (Document III of Cmnd. 679) is at Appendix E to this Paper. This statement has been accepted by Archbishop Makarios and Dr. Kutchuk.

BRITISH RESIDENTS

30. The special interests of the British Community in the island are to be safeguarded by the exchange of notes set out at Appendix T to this Paper. The British residents will have the right to remain citizens of the United Kingdom and Colonies. They will enjoy the fundamental rights and liberties provided in Part II of the Constitution (Appendix D to this Paper) for all persons, but only those who become citizens of the Republic will be enfranchised.

APPENDIX A

**DRAFT TREATY CONCERNING THE ESTABLISHMENT OF THE
REPUBLIC OF CYPRUS**

The United Kingdom of Great Britain and Northern Ireland, the Kingdom of Greece and the Republic of Turkey of the one part and the Republic of Cyprus of the other part;

Desiring to make provisions to give effect to the Declaration made by the Government of the United Kingdom on the 17th of February, 1959, during the Conference at London, in accordance with the subsequent Declarations made at the Conference by the Foreign Ministers of Greece and Turkey, by the Representative of the Greek Cypriot Community and by the Representative of the Turkish Cypriot Community;

Taking note of the terms of the Treaty of Guarantee signed to-day by the Parties to this Treaty;

Have agreed as follows:—

ARTICLE 1

The territory of the Republic of Cyprus shall comprise the Island of Cyprus, together with the islands lying off its coast, with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom. These areas are in this Treaty and its Annexes referred to as the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area.

ARTICLE 2

(1) The Republic of Cyprus shall accord to the United Kingdom the rights set forth in Annex B to this Treaty.

(2) The Republic of Cyprus shall co-operate fully with the United Kingdom to ensure the security and effective operation of the military bases situated in the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area, and the full enjoyment by the United Kingdom of the rights conferred by this Treaty.

ARTICLE 3

The Republic of Cyprus, Greece, Turkey and the United Kingdom undertake to consult and co-operate in the common defence of Cyprus.

ARTICLE 4

The arrangements concerning the status of forces in the Island of Cyprus shall be those contained in Annex C to this Treaty.

ARTICLE 5

The Republic of Cyprus shall secure to everyone within its jurisdiction human rights and fundamental freedoms comparable to those set out in Section I of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, and the Protocol to that Convention signed at Paris on the 20th of March, 1952.

ARTICLE 6

The arrangements concerning the nationality of persons affected by the establishment of the Republic of Cyprus shall be those contained in Annex D to this Treaty.

ARTICLE 7

The Republic of Cyprus and the United Kingdom accept and undertake to carry out the necessary financial and administrative arrangements to settle questions arising out of the termination of British administration in the territory of the Republic of Cyprus. These arrangements are set forth in Annex E to this Treaty.

ARTICLE 8

(1) All international obligations and responsibilities of the Government of the United Kingdom shall henceforth, in so far as they may be held to have application to the Republic of Cyprus, be assumed by the Government of the Republic of Cyprus.

(2) The international rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of their application to the territory of the Republic of Cyprus shall henceforth be enjoyed by the Government of the Republic of Cyprus.

ARTICLE 9

The Parties to this Treaty accept and undertake to carry out the arrangements concerning trade, commerce and other matters set forth in Annex F to this Treaty.

ARTICLE 10

Any question or difficulty as to the interpretation of the provisions of this Treaty shall be settled as follows:—

- (a) Any question or difficulty that may arise over the operation of the military requirements of the United Kingdom, or concerning the provisions of this Treaty in so far as they affect the status, rights and obligations of United Kingdom forces or any other forces associated with them under the terms of this Treaty, or of Greek, Turkish and Cypriot forces, shall ordinarily be settled by negotiation between the tripartite Headquarters of the Republic of Cyprus, Greece and Turkey and the authorities of the armed forces of the United Kingdom.

- (b) Any question or difficulty as to the interpretation of the provisions of this Treaty on which agreement cannot be reached by negotiation between the military authorities in the cases described above, or, in other cases, by negotiation between the Parties concerned through the diplomatic channel, shall be referred for final decision to a tribunal appointed for the purpose, which shall be composed of four representatives, one each to be nominated by the Government of the United Kingdom, the Government of Greece, the Government of Turkey and the Government of the Republic of Cyprus, together with an independent chairman nominated by the President of the International Court of Justice. If the President is a citizen of the United Kingdom and Colonies or of the Republic of Cyprus or of Greece or of Turkey, the Vice-President shall be requested to act; and, if he also is such a citizen, the next senior Judge of the Court.

ARTICLE 11

The Annexes to this Treaty shall have force and effect as integral parts of this Treaty.

ARTICLE 12

This Treaty shall enter into force on signature by all the Parties to it.

ANNEX A

(NOTE.—The large-scale maps, air photographs and descriptions referred to in this Annex are not printed. Copies will be made available in the Libraries of both Houses and an authenticated set will be deposited in the Commonwealth Relations Office during the passage of the Bill through Parliament.

Small-scale illustrative maps, however, corresponding to Maps A and B₁ referred to in Section 1 of this Annex, are contained in Appendix V to this Paper as maps numbers 1 and 2.)

SECTION 1

The Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area shall comprise the two areas which are approximately indicated in red on Map A and Map B attached to this Annex.

2.—(a) The land boundaries of the Akrotiri Sovereign Base Area shall be as defined in the maps, air photographs and description contained in Schedule A to this Annex.

(b) The land boundaries of the Dhekelia Sovereign Base Area shall be as defined in the maps, air photographs and description contained in Schedule B to this Annex.

3. The maps, air photographs and descriptions in Schedules A and B to this Annex shall be interpreted in accordance with the Introductory Notes to those Schedules.

SECTION 2

1. The boundaries of the Akrotiri Sovereign Base Area and of the Dhekelia Sovereign Base Area provided for in Section 1 of this Annex shall be marked clearly and effectively on the ground by a boundary Commission composed of representatives appointed by the United Kingdom and by the Republic of Cyprus.

2. The Commission shall be appointed and begin its work immediately upon the entry into force of this Treaty, and shall complete it as soon as possible and in any case within a period of nine months.

3. Subject to paragraph 5 of this Section, the Commission shall adhere strictly to the boundaries provided for in Section 1 of this Annex.

4. Any question as to the correct technical interpretation of the maps, air photographs or descriptions upon which the Commission may be unable to agree may be referred by either the United Kingdom or the Republic of Cyprus for decision to an independent expert to be selected by agreement between the United Kingdom and the Republic of Cyprus. His decision shall be final and binding.

5. The Commission may, if the Commissioners of the United Kingdom and of the Republic of Cyprus agree, make minor deviations from the boundaries provided for in Section 1 of this Annex in order to take account of local administrative conditions and may mark the boundaries accordingly. If the Commissioners are unable to agree, the boundaries provided for in Section 1 of this Annex shall be marked as the boundaries.

SECTION 3

1. The Republic of Cyprus shall not claim, as part of its territorial sea, waters lying between Line I and Line II as described in paragraph 2 of this Section, or between Line III and Line IV as described therein.

2. The lines for the purposes of paragraph 1 of this Section shall be as follows:—

Line I: From the position on the low-water line lying in a 163° direction from Point No. 57D/1, as defined in Schedule A to this Annex, in a 163° direction for 6·85 miles; then in a 207° direction for 3 miles; and then in a 204° direction.

Line II: From the position on the low-water line lying in a 108½° direction from Point No. 59A/5, as defined in Schedule A to this Annex, in a 108½° direction for 7·8 miles; and then in a 136° direction.

Line III: From the position on the low-water line lying in a 170° direction from Point No. 41B/10, as defined in Schedule B to this Annex, in a 170° direction for 3·8 miles; then in a 136° direction for 3·1 miles; and then in a 156° direction.

Line IV: From the position on the low-water line lying in a 103° direction from Point No. 42B/3, as defined in Schedule B to this Annex, in a 103° direction for 0·9 miles; then in a 150° direction for 6·3 miles; and then in a 176° direction.

3. In paragraph 2 of this Section, the distances quoted are in sea miles reckoned at 1,852 international metres to one sea mile, and the bearings are referred to the True North and are given in degrees reckoned clockwise from 000° (North) to 359°.

SECTION 4

1. Notwithstanding that the Dhekelia Power Station will stand on territory of the Republic of Cyprus, if the Power Station fails, by reason of absence or insufficiency of staff, labour or equipment, to provide adequate supplies of power to the United Kingdom authorities, authorised service organisations, United Kingdom personnel and their dependents, and contractors, the United Kingdom may in consultation with, or in cases of urgency on notification to, the authorities of the Republic of Cyprus, provide their own staff, labour and equipment to ensure the provision of such supplies so long as the deficiency continues.

2. For the purposes of this Section, "United Kingdom authorities", "authorised service organisations", "United Kingdom personnel", "dependents" and "contractors" have the same meanings as these expressions have for the purposes of Annex B to this Treaty.

ANNEX B

PART I

1. For the purposes of this Annex :—

- (a) "United Kingdom military aircraft" means aircraft used by the land, sea and air armed services of the United Kingdom, and aircraft under the control of or under charter for the purposes of those armed services;
- (b) "Authorised service organisation" means any one of the organisations listed in the Schedule to this Part of this Annex or a person acting on its behalf;
- (c) "United Kingdom authorities" means the United Kingdom Government Departments or other governmental authorities or organisations of the United Kingdom or any one of them or any person acting on behalf of any of them;
- (d) (a) "United Kingdom personnel" means—
- members of the land, sea and air armed services of the United Kingdom,
 - persons in the service of or engaged in duties on behalf of any United Kingdom authority duly authorised and identified as such by a United Kingdom authority,
 - authorised service organisations of the United Kingdom and persons employed by them;
- (b) Save for the purposes of paragraph 5 of Section 2 and paragraph 1 of Section 4 of Part II of this Annex, persons who are nationals of the Republic of Cyprus shall not be regarded as United Kingdom personnel unless they are members of the land, sea or air armed services of the United Kingdom;
- (e) "United Kingdom property" means property owned by or in the occupation, possession or control of any United Kingdom authority or authorised service organisation;
- (f) "Sites" means sites which the Government of the United Kingdom is entitled to use pursuant to Section 1 of Part II of this Annex;
- (g) "Installation" includes any building or structure, whether permanent or temporary, and includes any installation whether on land or in the sea;
- (h) "Territory" includes the territorial sea adjacent to a territory, and reference to any territory shall be construed accordingly;
- (i) "Dependent" of a person means—
- the wife or husband of that person,
 - any other person wholly or mainly maintained by or in the custody or charge of that person, and
 - any other person (not being a national of nor ordinarily resident in the Republic of Cyprus) who is in domestic employment in the household of that person;

- (j) "United Kingdom vessels" means vessels used by the land, sea and air armed services of the United Kingdom and vessels under the control of or under charter for the purposes of those armed services;
- (k) "Contractors" means undertakings and persons, and persons employed by undertakings and persons, who execute work or perform services in the Island of Cyprus for United Kingdom authorities under contracts made with those authorities; provided that, except in relation to "United Kingdom property" and for the purposes of Section 7 of Part II of this Annex, this definition shall not apply to undertakings whose ordinary place of business is in, or to persons who ordinarily reside in, or are nationals of, the Republic of Cyprus;
- (l) "Sutlers" means persons, not being nationals of the Republic of Cyprus nor ordinarily resident therein, who are licensed by the United Kingdom authorities to accompany their land, sea and air armed services in the Island of Cyprus in order to perform services for members of those services.

2. References to "the United Kingdom" in this Annex shall be understood as including a reference to any territory for the international relations of which the Government of the United Kingdom is responsible.

SCHEDULE

Authorised Service Organisations

- Navy, Army and Air Force Institutes (NAAFI)
Army Kinema Corporation (A.K.C.)
Royal Air Force Cinema Corporation (R.A.F.C.C.)
Malcolm Clubs
Services Central Book Depot
British Red Cross Society which includes—
The Order of the Knights of St. John and
The St. Andrew's Ambulance Association
Soldiers', Sailors' and Airmen's Families Association (S.S.A.F.A.)
Council for Voluntary Welfare Work (C.V.W.W.) and its constituent Members—
- Young Men's Christian Association (Y.M.C.A.)
 - Young Women's Christian Association (Y.W.C.A.)
 - Catholic Women's League Services Club Committee
 - Salvation Army
 - Church Army
 - Church of Scotland Committee on Hut and Canteen Work for Her Majesty's Forces
 - Methodist and United Board Churches
 - Toc H

APPENDIX FIVE

HONG KONG

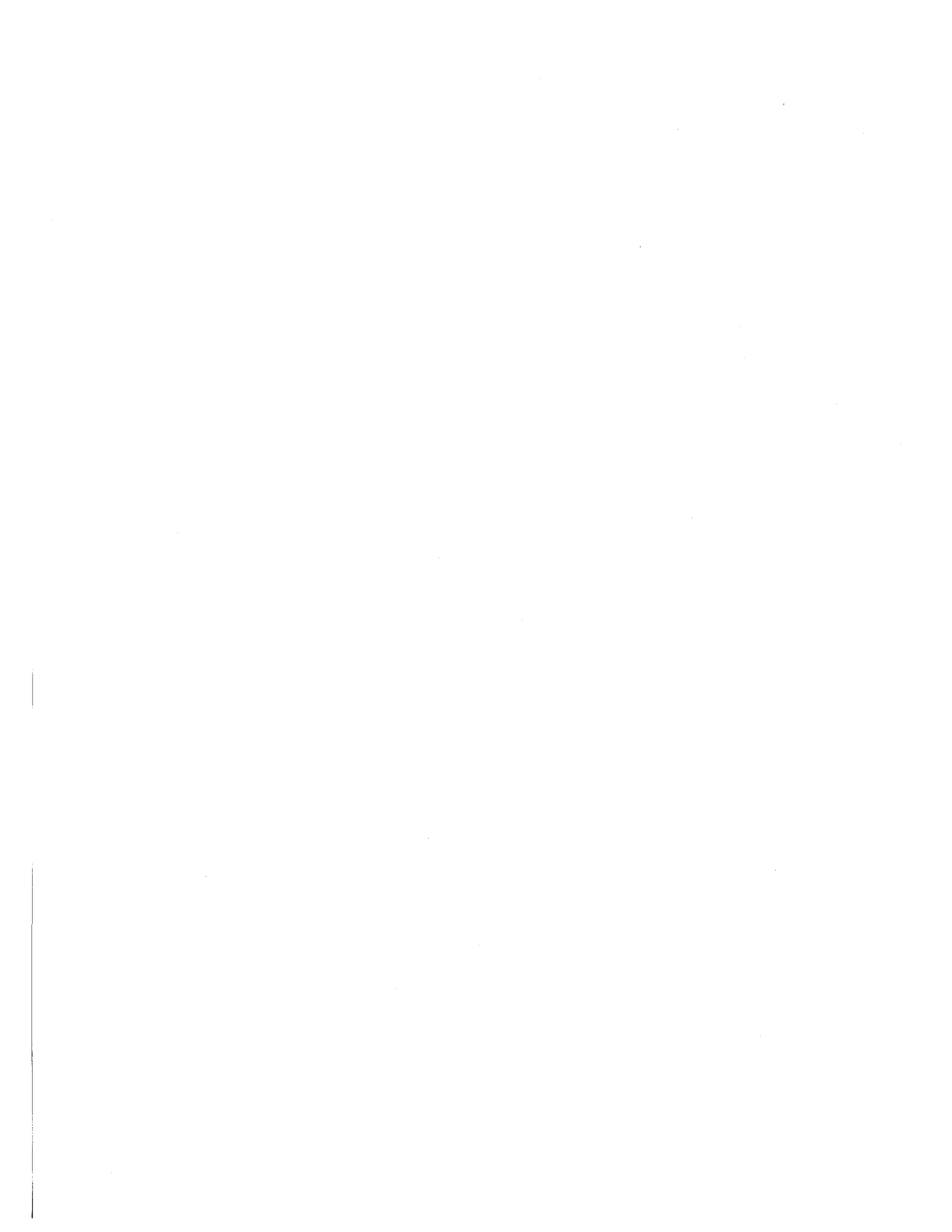


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**This White Paper
reproduces the text of the White Paper
published by Her Majesty's Government in London
on 26 September 1984**

INTRODUCTION

1. On 26 September 1984 representatives of the Governments of the United Kingdom and of the People's Republic of China initialled the draft text of an agreement on the future of Hong Kong. The agreement, contained in the second part of this White Paper, consists of a Joint Declaration and three Annexes. There is an associated Exchange of Memoranda. These documents are the outcome of two years of negotiations between the two Governments, undertaken with the common aim of maintaining the stability and prosperity of Hong Kong.

2. The purpose of this White Paper is to explain the background to the last two years' negotiations and their course, and to present the documents in their proper context. The text of this White Paper is also being published in Hong Kong by the Hong Kong Government, and the people of Hong Kong are being invited to comment on the overall acceptability of the arrangements which it describes. Thereafter the matter will be debated in Parliament.

History

3. During the nineteenth century Britain concluded three treaties with the then Chinese Government relating to Hong Kong: the Treaty of Nanking¹, signed in 1842 and ratified in 1843 under which Hong Kong Island was ceded in perpetuity; the Convention of Peking² in 1860 under which the southern part of the Kowloon peninsula and Stonecutters Island were ceded in perpetuity; the Convention of 1898³ under which the New Territories (comprising 92 per cent of the total land area of the territory) were leased to Britain for 99 years from 1 July 1898. It was the fact that the New Territories are subject to a lease with a fixed expiry date which lay behind the decision by Her Majesty's Government to seek to enter negotiations with the Government of the People's Republic of China (referred to hereafter as "the Chinese Government") on Hong Kong's future.

4. The Chinese Government has consistently taken the view that the whole of Hong Kong is Chinese territory. Its position for many years was that the question of Hong Kong came into the category of unequal treaties left over from history; that it should be settled peacefully through negotiations when conditions were ripe; and that pending a settlement the status quo should be maintained. The Chinese Government made its view of Hong Kong's status clear in a letter to the Chairman of the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in March 1972. This maintained that the settlement of the question of Hong Kong was a matter of China's sovereign right and that consequently Hong Kong should not be

¹ British State Papers Vol. 30, p. 389

² British State Papers Vol. 50, p. 10

³ British State Papers Vol. 90, p. 17

included in the list of colonial territories covered by the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The Background to the Negotiations

5. In the late 1970's, as the period before the termination of the New Territories lease continued to shorten, concern about the future of Hong Kong began to be expressed both in the territory itself and among foreign investors. In particular there was increasing realisation of the problem posed by individual land leases granted in the New Territories, all of which are set to expire three days before the expiry of the New Territories lease in 1997. It was clear that the steadily shortening span of these leases and the inability of the Hong Kong Government to grant new ones extending beyond 1997 would be likely to deter investment and damage confidence.

6. Her Majesty's Government had by this time, following a detailed examination of the problem conducted in consultation with the then Governor, concluded that confidence would begin to erode quickly in the early to mid-1980's if nothing was done to alleviate the uncertainty caused by the 1997 deadline. Accordingly, when the Governor of Hong Kong visited Peking in March 1979 at the invitation of the Chinese Minister of Foreign Trade, an attempt was made, on the initiative of Her Majesty's Government, to solve the specific question of land leases expiring in 1997. These discussions did not result in measures to solve the problem.

7. In the course of the next two years there was increasing awareness of the need to remove the uncertainty which the 1997 deadline generated. The importance of the issue was publicly stressed by the senior Unofficial Member of the Executive Council in May 1982. In January 1982 Sir (then Mr) Humphrey Atkins, Lord Privy Seal, visited Peking and was given significant indications of Chinese policy towards Hong Kong by Chinese leaders, which confirmed the view of Her Majesty's Government that negotiations should be opened with the Chinese Government.

The Prime Minister's Visit to China

8. Against this background Her Majesty's Government decided that the Prime Minister's visit to China in September 1982 would provide an opportunity to open discussions with the Chinese Government on the future of Hong Kong. It was evident that the Chinese Government had reached the same conclusion, and substantive discussions took place during the visit. Following a meeting between the Prime Minister and Chairman Deng Xiaoping on 24 September 1982 the following joint statement was issued:

"Today the leaders of both countries held far-reaching talks in a friendly atmosphere on the future of Hong Kong. Both leaders made clear their respective positions on this subject.

They agreed to enter talks through diplomatic channels following the visit with the common aim of maintaining the stability and prosperity of Hong Kong."

The Course of the Negotiations

9. The Prime Minister's visit was followed by the first phase of negotiations conducted by Her Majesty's Ambassador in Peking and the Chinese Foreign Ministry. These consisted of exchanges between the two sides on the basis on which the negotiations would be conducted, and on the agenda. On 1 July 1983 it was announced that the second phase of the talks would begin in Peking on 12 July. The pattern of negotiation in the second phase, which was continued until the end of the negotiations, was for formal rounds of talks to be held between delegations led by Her Majesty's Ambassador in Peking and a Vice or Assistant Minister of the Chinese Foreign Ministry, supplemented as necessary by informal contacts between the two delegations. The Governor of Hong Kong took part in every round of formal talks as a member of the British delegation.

10. In the course of the negotiations Her Majesty's Government explained in detail the systems which prevail in Hong Kong and the importance for these systems of the British administrative role and link. Following extensive discussion, however, it became clear that the continuation of British administration after 1997 would not be acceptable to China in any form. After full consultation with the Governor and the Executive Council of Hong Kong, Her Majesty's Government therefore proposed that the two sides discuss on a conditional basis what effective measures other than continued British administration might be devised to maintain the stability and prosperity of Hong Kong and explore further the Chinese ideas about the future which had at that stage been explained to them, in order to see whether on this basis arrangements which would ensure lasting stability and prosperity for Hong Kong could be constructed. The Chinese Government was told that, if this process was successful, Her Majesty's Government would consider recommending to Parliament a bilateral agreement enshrining the arrangements. Her Majesty's Government also undertook in this event to assist in the implementation of such arrangements. Following this, Her Majesty's Government sought to explore with the Chinese Government the implications of the Chinese Government's concept of Hong Kong as a Special Administrative Region of the People's Republic of China. In response, the Chinese side further elaborated its policies and ideas.

11. In April 1984 the two sides completed initial discussion of these matters. There were a number of outstanding unresolved points, but it was by then clear that an acceptable basis for an agreement might be possible. At the invitation of the Chinese Government the Secretary of State for Foreign and Commonwealth Affairs visited Peking from 15 to 18 April. During his meetings with Chinese leaders the two sides reviewed the course of the talks on the future of Hong Kong, and further progress was made. In Hong Kong on 20 April Sir Geoffrey Howe made a statement on the approach of Her Majesty's Government to the negotiations. He said that it would not be realistic to think of an agreement that provided for continued British administration in Hong Kong after 1997: for that reason Her Majesty's Government had been examining with the Chinese

Government, now it might be possible to arrive at arrangements that would secure for Hong Kong, after 1997, a high degree of autonomy under Chinese sovereignty, and that would preserve the way of life in Hong Kong, together with the essentials of the present systems. He made it clear that Her Majesty's Government were working for a framework of arrangements that would provide for the maintenance of Hong Kong's flourishing and dynamic society, and an agreement in which such arrangements would be formally set out.

12. After Sir Geoffrey Howe's visit in April 1984 negotiations continued. A working group was established on 21 June 1984 to meet full-time in Peking and consider documents tabled by both sides. From 27 to 31 July 1984 the Secretary of State for Foreign and Commonwealth Affairs again visited Peking. The visit was devoted almost entirely to the future of Hong Kong. Sir Geoffrey Howe announced in Hong Kong on 1 August that very substantial progress had been made towards agreement on the form and content of documents which would set out arrangements for Hong Kong's future with clarity and precision, in legally binding form.

13. Sir Geoffrey also announced on the same occasion that the two sides had agreed to establish a Sino-British Joint Liaison Group which would come into being when the agreement came into force and continue until the year 2000. It would meet in Peking, London and Hong Kong. It was agreed that the Group would not be an organ of power. Its functions would be: liaison, consultation on the implementation of the agreement, and exchange of information. It was agreed that it would play no part in the administration of Hong Kong. Her Majesty's Government would continue to be responsible for the administration of Hong Kong up to 30 June 1997.

14. Following Sir Geoffrey Howe's visit the negotiations continued on the remaining unresolved issues and three further rounds of plenary talks took place. A further ad hoc working group was established in Peking on 24 August. By 18 September negotiators on both sides had approved the English and Chinese texts of the documents that make up the agreement and the associated Exchange of Memoranda. These were submitted to British Ministers and Chinese leaders for final approval. The texts were initialled by the two delegation leaders on 26 September.

Consultation with the People of Hong Kong

15. From the beginning of the negotiations Her Majesty's Government have been conscious that the negotiations concerned the interests and future of the five and a half million people of Hong Kong. It has been the consistent position of Her Majesty's Government that any agreement with the Chinese Government on the future of the territory should be acceptable to the people of Hong Kong as well as to the British Parliament and the Chinese Government.

16. The negotiations had to be conducted on a basis of confidentiality. This was crucial to their success, but the maintenance of confidentiality also caused much

concern and anxiety among the people of Hong Kong who were understandably anxious to know what was being negotiated for their future. All members of the Executive Council, as the Governor's closest advisers, were kept fully informed on the negotiations and consulted on a continuing basis throughout the period. The Unofficial Members of the Executive and Legislative Councils (UMELCO) provided invaluable advice to the Governor and to Ministers on the course of the negotiations and on the attitude of the people of Hong Kong.

17. At a number of crucial points in the negotiations the Governor and Unofficial Members of the Executive Council visited London for consultations with the Prime Minister and other Ministers. British Ministers also paid a series of visits to Hong Kong, to consult the Governor, the Executive Council and the Unofficial Members of the Executive and Legislative Councils and to keep in touch with opinion in the territory. The Secretary of State for Foreign and Commonwealth Affairs was able to describe the approach of Her Majesty's Government to the negotiations in his statement in Hong Kong on 20 April 1984, and to fill in more details of what might eventually be included in an agreement in a further statement in the territory on 1 August 1984. In the course of the negotiations, and in particular since the statement of 20 April, numerous individuals and groups in Hong Kong have made specific proposals on what should be included in an eventual agreement. The Legislative Council of Hong Kong has debated aspects of the future of the territory on a number of occasions. Her Majesty's Government have paid close attention to these expressions of opinion which the Hong Kong Government have relayed to Ministers, and to views about the future expressed through a variety of channels—by and through UMELCO, through the press, through individual communications addressed to Her Majesty's Government or the Hong Kong Government. In this way Her Majesty's Government have sought to take into account the views of the people of Hong Kong to the maximum extent possible during the negotiations.

18. In the same way the maintenance of confidentiality has made the task of consulting Parliament on the negotiations more difficult. Despite this there were debates on Hong Kong in October and November 1983 and in May 1984, and part of the Foreign Affairs Debate in March 1984 was also devoted to Hong Kong. Members of Parliament have kept in close touch with the people of Hong Kong, both through visits to the territory and through meetings with Hong Kong delegations visiting the United Kingdom.

Introduction to the Agreement

19. The full text of the draft agreement is included in the second part of this White Paper. It consists of a Joint Declaration and three Annexes. Each part of the agreement has the same status. The whole makes up a formal international agreement, legally binding in all its parts. An international agreement of this kind is the highest form of commitment between two sovereign states.

20. The Joint Declaration consists in part of linked declarations by Her Majesty's Government and the Chinese Government. In paragraph 1 the Chinese Government declares that it will resume the exercise of sovereignty over Hong Kong on 1 July 1997. In paragraph 2 Her Majesty's Government declare that they will restore Hong Kong to the Chinese Government from that date. In paragraph 3 the Chinese Government sets out its policies towards Hong Kong after 30 June 1997. In paragraph 4 the two Governments jointly declare that Her Majesty's Government will remain responsible for the administration of Hong Kong up to 30 June 1997. Paragraphs 5 and 6 deal with the Joint Liaison Group and land. Paragraph 7 constitutes the important link between the declarations by the two parties; it has the effect of making the Joint Declaration and the Annexes to it legally binding in their entirety on the two Governments. Paragraph 8 provides for the agreement to enter into force on ratification. Ratification will take place before 30 June 1985.

21. The agreement sets out clearly the relationship between the provisions which it contains and the future Basic Law of the Hong Kong Special Administrative Region, to be promulgated by the National People's Congress of the People's Republic of China. Paragraph 3(12) of the Joint Declaration provides that the basic policies in the Joint Declaration and the elaboration of them in Annex I will be stipulated in the Basic Law. They will remain unchanged for 50 years.

22. Annex I contains an elaboration of Chinese policies for the Hong Kong Special Administrative Region. The Annex deals in detail with the way Hong Kong will work after 1 July 1997, and describes the extent of the autonomy and continuity which will prevail then. The subjects dealt with in the various sections of this Annex are:

- (I) constitutional arrangements and government structure;
- (II) the laws;
- (III) the judicial system;
- (IV) the public service;
- (V) the financial system;
- (VI) the economic system and external economic relations;
- (VII) the monetary system;
- (VIII) shipping;
- (IX) civil aviation;
- (X) culture and education;
- (XI) external relations;
- (XII) defence, security and public order;
- (XIII) rights and freedoms;
- (XIV) right of abode, travel documents and immigration.

23. Annex II sets out the provisions concerning the establishment of a Sino-British Joint Liaison Group. The Joint Liaison Group will be established on the entry into force of the agreement and will meet in Peking, London and Hong

Kong. From 1 July 1988 it will be based in Hong Kong, although it will also continue to meet in Peking and London. It will continue its work until 1 January 2000. The Annex includes terms of reference which clearly indicate that the Group will be a forum for liaison only and not an organ of power. It will neither play a part in the administration of Hong Kong nor have any supervisory role.

24. Annex III deals with land leases. It covers leases that have already been issued by the Hong Kong Government, leases to be issued between the entry into force of the agreement and 1997, certain financial arrangements, and arrangements for the establishment of a joint Land Commission.

25. Associated with the agreement is a separate Exchange of Memoranda on the status of persons after 30 June 1997 who at present are British Dependent Territories citizens, and related issues. The Memoranda will be formally exchanged in Peking on the same day as the signature of the Joint Declaration.

26. The last part of this White Paper contains further explanatory notes on the text of the Annexes to the Joint Declaration and the Exchange of Memoranda.

Views of Her Majesty's Government on the Agreement

27. As recorded in paragraph 10 above, Her Majesty's Government have sought to see whether on the basis of proposals put forward by the Chinese Government arrangements could be constructed which would ensure lasting stability and prosperity for Hong Kong. They have negotiated energetically and they believe successfully to secure an agreement which meets the needs and wishes of the people of Hong Kong. The negotiations have been hard and long. Taking the agreement as a whole Her Majesty's Government are confident that it does provide a framework in which the stability and prosperity of Hong Kong can be maintained after 1997 as a Special Administrative Region of the People's Republic of China.

28. The text of the agreement has been initialled by both sides. This represents a certification by the negotiators that it represents accurately the outcome of the negotiations. However, as is normal with international agreements negotiated between nations there is no realistic possibility of amending the text. The agreement must be taken as a whole.

29. Her Majesty's Government have a duty to make clear beyond any possibility of misunderstanding the alternative to acceptance of the agreement set out in this White Paper. In their view, there is no possibility of an amended agreement. The alternative to acceptance of the present agreement is to have no agreement. In this case the Chinese Government has made it plain that negotiations could not be reopened and that it would publish its own plan for Hong Kong. There is no guarantee that such a unilateral plan would include all the elements included in the draft agreement, nor would it have the same status as a legally binding agreement between the two countries. Whether or not there is an agreement between Her Majesty's Government and the Chinese

Government the New Territories will revert to China on 1 July 1997 under the terms of the 1898 Convention. The remainder of Hong Kong (Hong Kong Island, Kowloon and Stonecutters Island) would not be viable alone. Hong Kong, including the New Territories, has since 1898 become an integral whole and Her Majesty's Government are satisfied that there is no possibility of dividing the New Territories which revert to China on 1 July 1997 from the remainder. The choice is therefore between reversion of Hong Kong to China under agreed, legally binding international arrangements or reversion to China without such arrangements. This is not a choice which Her Majesty's Government have sought to impose on the people of Hong Kong. It is a choice imposed by the facts of Hong Kong's history.

30. Her Majesty's Government believe that the agreement is a good one. They strongly commend it to the people of Hong Kong and to Parliament. It provides a framework in which Hong Kong as a Special Administrative Region of the People's Republic of China will be able to preserve its unique economic system and way of life after 1 July 1997. The agreement preserves Hong Kong's familiar legal system and the body of laws in force in Hong Kong, including the common law. The agreement gives Hong Kong a high degree of autonomy in which it will be able to administer itself and pass its own legislation. It will enable Hong Kong to continue to decide on its own economic, financial and trade policies, and to participate in international organisations and trade agreements such as the General Agreement on Tariffs and Trade (GATT). Her Majesty's Government are confident that the agreement provides the necessary assurances about Hong Kong's future to allow the territory to continue to flourish, and to maintain its unique role in the world as a major trading and financial centre.

The Agreement and the People of Hong Kong

31. Her Majesty's Government have consistently stated that an agreement on the future of Hong Kong must be acceptable to the people of Hong Kong as well as to Parliament. In his statement on 20 April 1984 in Hong Kong the Secretary of State for Foreign and Commonwealth Affairs stated that the people of Hong Kong would need to have time to express their views on the agreement, before it was debated by Parliament. The people of Hong Kong will now have this opportunity.

32. The text of this White Paper is also being published in Hong Kong by the Hong Kong Government and will be circulated through a wide variety of channels in the territory. An Assessment Office has been set up in Hong Kong under the charge of a senior official of the Hong Kong Government, directly responsible to the Governor. This office will provide Her Majesty's Government and Parliament with an analysis and assessment of opinion in Hong Kong on the draft agreement. Two monitors, Sir Patrick Nairne and Mr Justice Simon Li, have been appointed by Her Majesty's Government to observe the work of the Assessment Office and to report independently to the Secretary of State for Foreign and Commonwealth Affairs on whether they are satisfied that

the Assessment Office has properly, accurately and impartially discharged its duties. In the light of these two reports Her Majesty's Government will decide what recommendation to make to Parliament.

33. The people of Hong Kong are now invited to comment on the overall acceptability of the draft agreement on Hong Kong negotiated between Her Majesty's Government and the Chinese Government, against the background set out in this White Paper.

**JOINT DECLARATION
OF THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
ON THE QUESTION OF HONG KONG**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.
2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.
3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:
 - (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.
 - (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.
 - (3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

- (4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.
- (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.
- (7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.
- (8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.
- (9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.
- (10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.
- The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.
- (11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.
5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.
6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.
7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.
8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on _____ 1984 in the English and Chinese languages, both texts being equally authentic.

For the
Government of the United Kingdom
of Great Britain and Northern Ireland

For the
Government of the
People's Republic of China

ANNEX I

ELABORATION BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong as follows:

I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the

Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.

III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government depart-

ments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong Dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil

aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;
- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and
- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.

The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;
- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;
- designate such airlines under the above Air Service Agreements and provisional arrangements; and
- issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields,

including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the

Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be able to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

ANNEX II

SINO-BRITISH JOINT LIAISON GROUP

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the United Kingdom and the Government of the People's Republic of China have agreed to continue their discussions in a friendly spirit and to develop the cooperative relationship which already exists between the two Governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two Governments have agreed to set up a Joint Liaison Group.

3. The functions of the Joint Liaison Group shall be:

- (a) to conduct consultations on the implementation of the Joint Declaration;
- (b) to discuss matters relating to the smooth transfer of government in 1997;
- (c) to exchange information and conduct consultations on such subjects as may be agreed by the two sides.

Matters on which there is disagreement in the Joint Liaison Group shall be referred to the two Governments for solution through consultations.

4. Matters for consideration during the first half of the period between the establishment of the Joint Liaison Group and 1 July 1997 shall include:

- (a) action to be taken by the two Governments to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory, and in particular to ensure the maintenance of Hong Kong's participation in the General Agreement on Tariffs and Trade, the Multifibre Arrangement and other international arrangements; and
- (b) action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong.

5. The two Governments have agreed that in the second half of the period between the establishment of the Joint Liaison Group and 1 July 1997 there will be need for closer cooperation, which will therefore be intensified during that period. Matters for consideration during this second period shall include:

- (a) procedures to be adopted for the smooth transition in 1997;
- (b) action to assist the Hong Kong Special Administrative Region to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organisations.

6. The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role

over that administration. The members and supporting staff of the Joint Liaison Group shall only conduct activities within the scope of the functions of the Joint Liaison Group.

7. Each side shall designate a senior representative, who shall be of Ambassadorial rank, and four other members of the group. Each side may send up to 20 supporting staff.

8. The Joint Liaison Group shall be established on the entry into force of the Joint Declaration. From 1 July 1988 the Joint Liaison Group shall have its principal base in Hong Kong. The Joint Liaison Group shall continue its work until 1 January 2000.

9. The Joint Liaison Group shall meet in Beijing, London and Hong Kong. It shall meet at least once in each of the three locations in each year. The venue for each meeting shall be agreed between the two sides.

10. Members of the Joint Liaison Group shall enjoy diplomatic privileges and immunities as appropriate when in the three locations. Proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides.

11. The Joint Liaison Group may by agreement between the two sides decide to set up specialist sub-groups to deal with particular subjects requiring expert assistance.

12. Meetings of the Joint Liaison Group and sub-groups may be attended by experts other than the members of the Joint Liaison Group. Each side shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-group in accordance with the subjects to be discussed and the venue chosen.

13. The working procedures of the Joint Liaison Group shall be discussed and decided upon by the two sides within the guidelines laid down in this Annex.

ANNEX III

LAND LEASES

The Government of the United Kingdom and the Government of the People's Republic of China have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Hong Kong and other related matters shall be dealt with in accordance with the following provisions:

1. All leases of land granted or decided upon before the entry into force of the Joint Declaration and those granted thereafter in accordance with paragraph 2 or 3 of this Annex, and which extend beyond 30 June 1997, and all rights in relation to such leases shall continue to be recognised and protected under the law of the Hong Kong Special Administrative Region.
2. All leases of land granted by the British Hong Kong Government not containing a right of renewal that expire before 30 June 1997, except short term tenancies and leases for special purposes, may be extended if the lessee so wishes for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent shall be charged from the date of extension equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line. Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.
3. From the entry into force of the Joint Declaration until 30 June 1997, new leases of land may be granted by the British Hong Kong Government for terms expiring not later than 30 June 2047. Such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.
4. The total amount of new land to be granted under paragraph 3 of this Annex shall be limited to 50 hectares a year (excluding land to be granted to the Hong Kong Housing Authority for public rental housing) from the entry into force of the Joint Declaration until 30 June 1997.
5. Modifications of the conditions specified in leases granted by the British Hong Kong Government may continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

6. From the entry into force of the Joint Declaration until 30 June 1997, premium income obtained by the British Hong Kong Government from land transactions shall, after deduction of the average cost of land production, be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government, including the amount of the above mentioned deduction, shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The Hong Kong Special Administrative Region Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong in accordance with the provisions of paragraph 7(d) of this Annex.

7. A Land Commission shall be established in Hong Kong immediately upon the entry into force of the Joint Declaration. The Land Commission shall be composed of an equal number of officials designated respectively by the Government of the United Kingdom and the Government of the People's Republic of China together with necessary supporting staff. The officials of the two sides shall be responsible to their respective governments. The Land Commission shall be dissolved on 30 June 1997.

The terms of reference of the Land Commission shall be:

- (a) to conduct consultations on the implementation of this Annex;
- (b) to monitor observance of the limit specified in paragraph 4 of this Annex, the amount of land granted to the Hong Kong Housing Authority for public rental housing, and the division and use of premium income referred to in paragraph 6 of this Annex;
- (c) to consider and decide on proposals from the British Hong Kong Government for increasing the limit referred to in paragraph 4 of this Annex;
- (d) to examine proposals for drawing on the Hong Kong Special Administrative Region Government's share of premium income referred to in paragraph 6 of this Annex and to make recommendations to the Chinese side for decision.

Matters on which there is disagreement in the Land Commission shall be referred to the Government of the United Kingdom and the Government of the People's Republic of China for decision.

8. Specific details regarding the establishment of the Land Commission shall be finalised separately by the two sides through consultations.

EXCHANGE OF MEMORANDA

(A) UNITED KINGDOM MEMORANDUM

MEMORANDUM

In connection with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the question of Hong Kong to be signed this day, the Government of the United Kingdom declares that, subject to the completion of the necessary amendments to the relevant United Kingdom legislation:

- (a) All persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories citizens (BDTCs) under the law in force in the United Kingdom will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom. This status will be acquired by such persons only if they hold or are included in such a British passport issued before 1 July 1997, except that eligible persons born on or after 1 January 1997 but before 1 July 1997 may obtain or be included in such a passport up to 31 December 1997.
- (b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong. No person born on or after 1 July 1997 will acquire the status referred to as being appropriate in sub-paragraph (a).
- (c) United Kingdom consular officials in the Hong Kong Special Administrative Region and elsewhere may renew and replace passports of persons mentioned in sub-paragraph (a) and may also issue them to persons, born before 1 July 1997 of such persons, who had previously been included in the passport of their parent.
- (d) Those who have obtained or been included in passports issued by the Government of the United Kingdom under sub-paragraphs (a) and (c) will be entitled to receive, upon request, British consular services and protection when in third countries.

Beijing,

1984.

Translation

MEMORANDUM

The Government of the People's Republic of China has received the memorandum from the Government of the United Kingdom of Great Britain and Northern Ireland dated 1984.

Under the Nationality Law of the People's Republic of China, all Hong Kong Chinese compatriots, whether they are holders of the "British Dependent Territories citizens' Passport" or not, are Chinese nationals.

Taking account of the historical background of Hong Kong and its realities, the competent authorities of the Government of the People's Republic of China will, with effect from 1 July 1997, permit Chinese nationals in Hong Kong who were previously called "British Dependent Territories citizens" to use travel documents issued by the Government of the United Kingdom for the purpose of travelling to other states and regions.

The above Chinese nationals will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above-mentioned British travel documents.

Beijing,

1984.

EXPLANATORY NOTES

Introduction

1. The following notes are intended to explain the material in the Annexes to the Joint Declaration and in the associated Exchange of Memoranda. They do not seek to be a comprehensive guide and do not include every point in the texts. They are designed to explain in simple terms, and to illustrate where appropriate, how the Annexes provide for the continuation of the essentials of Hong Kong's systems. Hong Kong is a highly developed industrial, commercial and financial centre and as such is a complex place. The Hong Kong Government, in consultation with Her Majesty's Government, are taking steps to ensure that further guidance and answers to detailed questions will be provided as may be necessary and appropriate.

Annex I: Elaboration by the Government of the People's Republic of China of its Basic Policies regarding Hong Kong

Section I: Constitutional Arrangements and Government Structure

2. When the People's Republic of China resumes the exercise of sovereignty over Hong Kong on 1 July 1997, Hong Kong will become a Special Administrative Region (SAR) of the People's Republic of China with a high degree of autonomy. A Basic Law to be enacted by the National People's Congress of the People's Republic of China will become the constitutional instrument for the Hong Kong SAR. The Letters Patent and the Royal Instructions, which have hitherto performed this function, will be revoked. As paragraph 3(12) of the Joint Declaration makes clear, the basic policies of the People's Republic of China as set out in the Joint Declaration and elaborated in this Annex will all be stipulated in the Basic Law.

3. This section of the Annex makes clear the important point that the Basic Law will stipulate that the socialist system and socialist policies practised in the rest of the People's Republic of China will not be extended to the Hong Kong SAR and that Hong Kong's capitalist system and lifestyle will remain unchanged for 50 years after the establishment of the SAR.

4. The Annex also states that, except in relation to foreign and defence affairs, which are now the overall responsibility of Her Majesty's Government, and will with effect from 1 July 1997 become the overall responsibility of the Central People's Government of the People's Republic of China, the Hong Kong SAR will enjoy a high degree of autonomy, including executive, legislative and independent judicial power. The SAR will also have authority to conduct its own external affairs in appropriate areas (including those relating to economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting matters) as amplified in section XI of this Annex, which deals with

external relations. The SAR will enjoy a significant degree of autonomy in the maintenance and development of its air transport system as set out in section IX of this Annex, which deals with civil aviation.

5. The section of the Annex which deals with constitutional arrangements and government structure provides that the Hong Kong SAR will be under the direct authority of the Central People's Government. The SAR will therefore not be under the authority of any provincial Government.

6. This section of the Annex lays down the main elements of the structure of government in the Hong Kong SAR. It also states that the Government and legislature of the SAR will be composed of local inhabitants. The chief executive will be selected by election or through consultations held locally and be appointed by the Central People's Government. Officials of the rank equivalent to Secretaries will be nominated by the chief executive and appointed by the Central People's Government. The legislature will be elected.

7. Furthermore the Annex indicates that the executive authorities will be required to act in accordance with the law and will be accountable to the legislature; that both Chinese and English languages may be used in government and in the courts; and that, apart from the national flag and national emblem of the People's Republic of China, the SAR may use a regional flag and emblem of its own.

Section II: The Laws

8. This section of the Annex, which describes how the Hong Kong SAR will have its own system of laws, provides continuity of Hong Kong law beyond 1997. The law of the SAR will include the common law and laws passed by the legislature of the SAR. It will remain, as now, capable of adapting to changing conditions and will be free to take account of developments in the common law elsewhere. That this is so is reinforced by specific provisions in section III of this Annex providing that the courts of the SAR will be able to refer to precedents in other common law jurisdictions, that judges of the SAR may be recruited from other common law jurisdictions and that the SAR's court of final appeal may invite judges from other common law jurisdictions to sit on it.

9. Hong Kong laws and those enacted after 1 July 1997 by the legislature of the Hong Kong SAR will be valid unless they contravene the Basic Law. The policies stated in the Joint Declaration and in this Annex will be stipulated in the Basic Law.

10. Laws enacted in the Hong Kong SAR will, as now, have to be passed by the legislature, or under its authority in the form of delegated legislation. Such laws may amend the laws of Hong Kong carried over in 1997 so long as the provisions of the Basic Law are not transgressed. After enactment, laws will have to be reported to the Standing Committee of the National People's Congress of the People's Republic of China for the record.

Section III: The Judicial System

11. The courts of Hong Kong consist of the Supreme Court, the District Courts, the Magistrates' Courts, and various statutory tribunals. The courts are at the heart of Hong Kong's legal system, which plays an important role in maintaining the stability and prosperity of Hong Kong. The Annex contains the very important provision for continuity of the judicial system.

12. The Annex indicates that the main change in the judicial system which will take place is the abolition of the system of appeal to the Privy Council and the substitution of arrangements for the final adjudication of disputes by a court of the Hong Kong SAR.

13. The independent exercise of judicial power and the obligation of the courts to decide cases in accordance with the law are both provided for in this section of the Annex. It also provides that the appointment of judges in the Hong Kong SAR will be subject to the recommendation of an independent commission similar to the existing Judicial Service Commission. The independence of the judiciary is protected by the provisions that judges of the SAR may only be removed from office on the grounds of inability or misbehaviour, and then only on the recommendation of a tribunal of judges of the SAR.

14. The Annex provides that the essentials of the system of appointment and removal of judges will remain unchanged, but the appointment and removal of judges of the highest rank will require the endorsement of the legislature of the Hong Kong SAR and have to be reported for the record to the Standing Committee of the National People's Congress.

15. At present the decision whether or not to prosecute in any particular case is the responsibility of the Attorney General. That responsibility is exercised independently free from government interference. The Annex provides that the responsibility will continue to be exercised in the SAR in the same independent way.

16. The Annex provides that local lawyers and also lawyers from outside Hong Kong, who contribute greatly both to the strength of the present legal system and to the success of Hong Kong as a commercial and financial centre, will continue to be able to practise law in Hong Kong. Provision is also made to enable arrangements to be continued whereby, for example, judgments obtained in Hong Kong may be enforced in foreign states, and evidence may be obtained overseas for use in proceedings in Hong Kong.

Section IV: The Public Service

17. This section of the Annex provides for the continuation in Hong Kong of an impartial, stable and effective public service. This is an essential factor in ensuring Hong Kong's future stability and prosperity.

Under the provisions of this section of the Annex, retiring officers will be able to continue in employment with the Hong Kong SAR Government on terms and conditions, including pay and pensions, no less favourable than before 1 July 1997. Special commissions dealing with pay and conditions of service will be retained. In addition, appointments and promotions will be made on the recommendations of a public service commission and on the basis of qualifications, experience and ability.

19. The Annex states that the Hong Kong SAR may employ foreign nationals in a number of capacities, namely as public officers (except at the highest levels), as advisers and in professional and technical posts.

20. It is explicitly provided that all pensions and other benefits due to those officers leaving the public service before or after 1 July 1997 or to their dependants will be paid by the Hong Kong SAR Government.

Section V: The Financial System

21. This section of the Annex provides for continuity in that the Government of the Hong Kong SAR will determine its own fiscal policy and manage and dispose of its financial resources, in accordance with Hong Kong's own needs. There will be no requirement to remit revenue to the Central People's Government. The Annex also makes clear that the predominant authority of the legislature in financial matters, and the system for independent and impartial audit of public accounts, will continue unchanged.

Section VI: The Economic System and External Economic Relations

22. The Annex deals together with these two subjects, which are both important for Hong Kong's export-oriented economy. Hong Kong's prosperity is heavily dependent on securing continued access to its principal export markets in the developed world. This section of the Annex provides reassurance both to the community at large in Hong Kong and to its trading partners that the basis for Hong Kong's flourishing free market economy will continue. It also ensures that Hong Kong's distinct position within the international trading community, on the basis of which Hong Kong enjoys its present rights of access, will continue.

23. The Annex provides for:

- (a) Hong Kong's right to continue to determine its economic policies, including trade policy, in accordance with its own needs;
- (b) the continuation of the free enterprise system, the free trade policies and the free port, which are the essentials of Hong Kong's consistent and successful economic policies;
- (c) the continuation of individual rights and freedoms in economic matters, notably the freedoms of choice of occupation, of travel and of movement of capital, and the rights of individuals and companies to own and dispose of property.

All these essential requirements are met in this section of the Annex, read in conjunction with the appropriate paragraphs of section XIII, which deals with rights and freedoms. The right of the future Hong Kong SAR to decide its own economic policies is an essential part of the "one country, two systems" concept.

24. Hong Kong's participation in the General Agreement on Tariffs and Trade (GATT), through which it enjoys most favoured nation treatment in its major markets, has been an important element in its success as an exporter. Even in textiles and clothing, where the free trade principles of the GATT have been modified by the Multi-Fibre Arrangement (MFA) which is a negotiated derogation from the normal GATT rules, Hong Kong is able to develop its trade within the MFA and the bilateral agreements negotiated under its provisions. What is even more important, Hong Kong plays an active role in the GATT and the MFA. The continuation of Hong Kong's participation in the GATT and the MFA (if the latter is extended beyond 1986, in which year it expires) is, therefore, of prime importance; and that too is provided in this section of the Annex.

Section VII: The Monetary System

25. A freely convertible currency and the right to manage the Exchange Fund, which provides the backing for the note issue and is used to regulate the exchange value of the currency, are the essential elements of Hong Kong's monetary system. This section of the Annex clearly stipulates that these essential elements shall be maintained.

26. This section of the Annex also provides for the continuation of the arrangements by which currency is issued locally by designated banks under statutory authority.

27. The changes to the designs of bank notes and coins provided for in this section are a logical consequence of the fact that Hong Kong will become a Special Administrative Region of the People's Republic of China on 1 July 1997.

Section VIII: Shipping

28. A major factor in Hong Kong's trading success is its well-developed deep water port and the capacity to handle cargoes by up to date methods. Hong Kong's position as a major shipping centre will be preserved by this section of the Annex, which provides that systems of shipping management and shipping regulation will continue. Private shipping businesses and shipping-related businesses, including container terminals, may continue to operate freely.

29. The Annex states that the Hong Kong SAR will have its own shipping register and will issue certificates in the name of "Hong Kong, China".

30. The Annex also provides that merchant shipping will have free access to the ports of Hong Kong under the laws of the SAR.

Section IX: Civil Aviation

31. This section of the Annex makes clear that Hong Kong will continue as a major centre of regional and international air services, and that airlines and civil aviation related businesses will be able to continue operating.

32. Under the provisions of the Annex the Central People's Government of the People's Republic of China will negotiate agreements concerning air services from and to other points in China through the Hong Kong SAR. However there is also a provision that in dealing with such arrangements the Central People's Government will consult the SAR Government, take its interests into account and include its representatives in delegations to air service consultations with foreign governments. By virtue of section XI of the Annex, which deals with external relations, such representatives may also be included in delegations to appropriate international organisations. The Central People's Government will also consult the Hong Kong SAR Government about arrangements for air services between the SAR and other parts of China.

33. It is clearly provided that all scheduled air services touching the Hong Kong SAR which do not touch the mainland of China will be regulated by separate arrangements concluded by the SAR Government. For this purpose the SAR Government will be given specific authorisations from the Central People's Government to negotiate with foreign states and regions its own bilateral arrangements regulating air services. These will as far as possible maintain the rights previously enjoyed by Hong Kong. The SAR Government will also act under a general authority from the Central People's Government in negotiating all matters concerning the implementation of such bilateral arrangements and will issue its own operating permits for air services provided under these arrangements. The Annex also states that the SAR will have the authority to license local airlines, to keep its own aircraft register, to conduct the technical supervision of civil aviation and to manage airports in the SAR. In addition the general provisions in section II of the Annex, which deals with the laws of the SAR, provide for continuity of previously existing civil aviation laws beyond 1997.

34. Hong Kong's civil aviation industry will thus be able to continue to make an important contribution to the effective functioning of Hong Kong's economy in terms of servicing the needs of both business and tourism.

Section X: Culture and Education

35. This section of the Annex makes clear that Hong Kong's own system of education will be continued and that it will operate separately and differently from that in other parts of China. Although most of the funds for education in Hong Kong are provided by the Government, many educational institutes were founded and are run by community and religious organisations. Explicit provision is made for this system to be maintained.

36. This section also provides for continuity in the application of present educational standards, in the use of teaching materials from overseas and in the

freedom to pursue education outside Hong Kong. It therefore provides a sound basis for Hong Kong to continue to develop an educational system which will ensure that the population will have the skills and expertise required to enable Hong Kong to maintain and improve its position in the fiercely competitive economic and trading environment within which Hong Kong operates.

37. Hong Kong has come to enjoy a varied cultural and intellectual life. This and other sections of the Annex provide for the present unique mix of cultural and intellectual influences to continue. Provision is made in section XI of the Annex, which deals with external relations, for Hong Kong to continue to participate in international sporting events.

Section XI: External Relations

38. This section of the Annex provides that, subject to the principle that foreign affairs are the responsibility of the Central People's Government, the Hong Kong SAR will manage on its own certain aspects of its external relations, in particular those in the economic field. This is particularly important, since Hong Kong's access to its principal overseas markets in the industrialised world, which is crucial to Hong Kong's industry, depends upon recognition of the separate nature of these interests.

39. In keeping with the general provisions for Hong Kong to be a Special Administrative Region under Chinese sovereignty, overall responsibility for foreign affairs will lie with the Central People's Government, just as overall responsibility for these matters at present lies with Her Majesty's Government in the United Kingdom. At the same time the Hong Kong SAR will be able, under the provisions of this section of the Annex, to look after its own particular interests in certain areas by virtue of the power to be given to it to conclude agreements in appropriate fields and to be represented in the delegation of the People's Republic of China at negotiations of direct concern to Hong Kong.

40. The detailed method by which the provisions of the second paragraph of this section of the Annex, which deals with the application to the Hong Kong SAR of international agreements, will be implemented will have to be worked out during the transitional period and will be one of the matters to be considered by the Joint Liaison Group. There is a very large number of international agreements which apply to Hong Kong and whose continued application following the establishment of the Hong Kong SAR will need to be secured. This will require consultation with third countries.

41. The Annex provides for continuity of representation by all foreign states and organisations currently represented in Hong Kong, subject to the approval of the Central People's Government. Changes to the status of such missions may be required in order to take account of the existence or otherwise of formal relations between the People's Republic of China and a particular state. The United Kingdom will be represented in Hong Kong by a Consul-General after 1 July 1997.

withdrawn and the Central People's Government of the People's Republic of China will be responsible for the SAR's defence. This section of the Annex makes clear that the maintenance of public order in the SAR will be the SAR Government's responsibility. It is also stated that military forces sent by the Central People's Government to be stationed in the SAR for the purpose of defence will not interfere in its internal affairs, and that expenditure for these military forces will be borne by the Central People's Government.

Section XIII: Rights and Freedoms

43. This section of the Annex explains that basic rights and freedoms will be protected in the Hong Kong SAR. It covers this important subject without an extended description of the rights and freedoms concerned by providing:

- (a) that the rights and freedoms previously enjoyed under the laws of Hong Kong will be maintained by the SAR Government; and
- (b) that the provisions of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as they apply to Hong Kong, will continue to apply to the Hong Kong SAR.

44. It is thus made clear that persons in the Hong Kong SAR will enjoy the same protection of the law against infringements of their basic rights as they did before the establishment of the SAR.

45. While not restricting the range of rights and freedoms the text mentions specifically some of the more important rights and freedoms presently enjoyed under the law.

46. The Covenants are too lengthy to reproduce here but they are public documents¹. They apply to Hong Kong, with certain reservations, and, in accordance with this section of the Annex, will continue to do so after 30 June 1997. The Covenants were drafted by the United Nations Human Rights Commission and adopted by the United Nations General Assembly, and entered into force in 1976. They state a general consensus of nations on basic rights and identify in detail specific human rights and freedoms: including the right to work, to an adequate standard of living, to life and liberty, and freedom of expression, conscience, religion and association.

47. The reservations entered by the United Kingdom in respect of the application of the Covenants to Hong Kong, which are also public, took account of the realities of the social and economic conditions in Hong Kong: for example, in relation to Hong Kong the United Kingdom made reservations relating to immigration and to the deportation of aliens.

¹ Command 6702 Treaty Series No. 6 (1977)

48. This section concerns the right of abode in the Hong Kong SAR, the travel documents to be used by residents of the SAR, and immigration matters. It provides for a high degree of continuity in these areas consistent with the change in Hong Kong's status on 1 July 1997.

49. The first paragraph defines the categories of people who will have the right of abode (including the right to enter, re-enter, live and work) in the Hong Kong SAR. These include:

- (a) Chinese nationals who were born in Hong Kong or have lived there continuously for at least 7 years;
- (b) Chinese nationals born outside Hong Kong to Chinese nationals who have the right of abode in Hong Kong;
- (c) all non-Chinese nationals who have lived in Hong Kong continuously for at least 7 years and who have taken it as their place of permanent residence; and
- (d) any others who had the right of abode only in Hong Kong before 1 July 1997.

Non-Chinese nationals born in Hong Kong to parents who have the right of abode there also have the right of abode but will retain it after the age of 21 only if they have met the requirements of seven years' residence and of taking Hong Kong as their place of permanent residence. The SAR Government will issue permanent identity cards to all those with the right of abode in the SAR. These cards will state the holder's right of abode.

50. This section of the Annex states that Chinese nationals who have the right of abode in the Hong Kong SAR will be eligible for passports issued by the SAR Government. Other persons who have the right of abode, or are otherwise lawfully resident, in the SAR will be eligible for other travel documents issued by the SAR Government. Both these categories of persons may also use travel documents issued by the competent authorities of the People's Republic of China or by other governments to travel to and from the SAR: these include passports issued by the United Kingdom (see paragraphs 63 to 64 below).

51. The Annex makes clear that the right to leave the Hong Kong SAR for any purpose, e.g. business, study or emigration, will be maintained subject to the normal exceptions under the law. To facilitate entry by SAR residents into third countries, all travel documents issued to them will either include a reference to their right to return to the SAR or refer to the fact that they hold a permanent identity card as evidence of their right of abode in the SAR. The SAR Government will be assisted or authorised by the Central People's Government to conclude agreements with states or regions which provide for the mutual abolition of visa requirements.

ADDENDUM TO APPENDIX I

ADDENDUM TO APPENDIX I

REPORT OF THE INTERNATIONAL BOUNDARIES RESEARCH UNIT

University of Durham

In the following addendum, Professor Keith Highet discusses a number of important cases involving territorial disputes for those interested in the legal aspects of this report. Professor Highet expands the scope of the analysis offered in this report and the preceding *University of Durham Report*. The addendum offers additional insights into cases covered in the *Durham Report* and discusses the legal implications of other territorial disputes that were referred to third-party arbitration or adjudication in the International Court of Justice. Professor Highet is on the faculty of the Fletcher School of Law and Diplomacy at Tufts University.

Warbah and Bubiyan (*Durham Report*)

It goes without saying that the case of these Kuwaiti islands, claimed by Iraq since the early 1960's, bears somewhat ominous similarities to the situation of the Kurils. The Iraqi invasion of Kuwait in 1991 was directly related to Kuwait's retention of the islands in the face of a repeated assertion of Iraqi historical claims, both for revision of an earlier boundary and on the historical basis that Kuwait had once been part of the former province of Basra in the Ottoman Empire.

Following the Gulf War and the success of Operation "Desert Storm" Iraq withdrew from Kuwait and the islands, and a United Nations Boundary Demarcation Commission was established for the purpose of finalizing the boundary and attribution of these islands on a basis to be agreed to by Iraq. It would be inaccurate, however, to assert that a real "solution" acceptable to both parties was reached. It was, without question, imposed on Iraq as the losing party in the conflict. It remains to be seen how long this solution will last.

Cyprus (*Durham Report*)

The long-simmering case of Cyprus, now rendered into a State with partitioned territory, is of course an example of a situation that is both resolved and still in suspense. For our present purposes, however, it should be noted that 2.77 per cent. of the land mass of Cyprus (99 square miles) has been ceded in perpetuity to the United Kingdom for military bases.

The situation of Cyprus is sufficiently anomalous, including specifically the different ethnic and linguistic loyalties presented by the conflicting Greek and Turkish Cypriot communities, that not much of a useful lesson can be drawn from it.

Some, but not all, of the key elements for success are presented here: "good will," a shared resolve to settle the dispute, and the willingness to set aside an entrenched historical position. It can

only be said that the Greek and the Turkish communities have demonstrated a minimum of good will; yet they appear to share a perception that some form of solution is in the common interest. It is not clear whether either is prepared to compromise its long-held historical position; in fact the likely conclusion is otherwise.

This lack of consensus on the issues of solution means that the situation is a stalemate or a trade-off, guaranteed by the United Nations and supported by the relatively heavy British military presence on the island.

Abu Musa (*Durham Report*)

The de facto occupation of one-half of Abu Musa by Iran and the other by Sharjah has resulted in an effective partitioning and cooperative regime without either State pressing, or surrendering, its basic claim. Territorial claims remain outstanding as they once were; oil revenues have been shared; and the passage of workers and residents is assured. This has worked for approximately twenty years even though there has been no final or formal settlement of the problem.

Here the parties can be viewed as having demonstrated - at least informally - both good sense and good will; they appear to share a perception that a solution is in the interest of each; and both are prepared to shelve, although not to abandon, their historical positions.

Hawar Islands (*Durham Report*)

The Hawar Islands, close to the Qatar Peninsula, have long been asserted to be the territory of Bahrain. This claim of sovereignty has now been questioned (along with other territorial dispositions) in a case brought in the International Court of Justice by Qatar following years of unsuccessful mediation by the good offices of King Fahd of Saudi Arabia.

The case, brought by the court, is not the same as the type of case toward which both Qatar and Bahrain were negotiating under the Saudi good offices. Thus this matter can be seen as an instance of the breakdown of negotiations and the resort to judicial relief, unilaterally, by one of the parties.

Bahrain has filed preliminary objections to the jurisdiction and admissibility of Qatar's claim, and hearings are expected in early 1993. It is generally understood that even if Bahrain succeeds in challenging the Court's jurisdiction to hear Qatar's claim, it will nevertheless be prepared to return to the Court on these issues in a jointly-agreed proceeding instituted by bilateral agreement.

Gulf of Fonseca

In the current case before the International Court of Justice between El Salvador and Honduras (Land, Island and Maritime Frontier Dispute), Honduras has questioned El Salvador's sovereignty over one island and an islet in the Gulf of Fonseca. Extensive litigation of this matter in 1991 (in a case brought by a special agreement pursuant to the treaty of peace between the two countries following the " Soccer War ") saw the presentation of much historical "evidence" of title by both sides. El Salvador, however, almost exclusively provided extensive documentary and live evidence of effective administration and control over the island.

This case, in which a decision is imminent, should be a major precedent in the international law of territory. Whatever the outcome, the assignment of these sensitive questions to judicial resolution indicates most, if not all, of the prerequisites for the settlement of boundary and territorial claims.

The Chamizal Arbitration

The conclusion to this lengthy and intricate boundary dispute between the United States and Mexico, involves the disposition of tracts of land along the boundary that had been displaced by riverbed movement and shifting deposits. The conclusion was an award rendered in 1911 (the U.S. commissioner dissenting) which was deliberately defied, rejected and ignored by the United States until President Kennedy agreed to settle the matter in 1962.

Therefore, although the Chamizal case demonstrates that intricate boundary questions can be resolved by third-party adjudication or arbitration, it unfortunately also demonstrates that the first element of successful settlement - if absent - may render the entire process futile. Good will and the intention to execute the decision which the third party recommends are essential components of third-party dispute resolution.

Aves Island

In the Aves Island case of July 20, 1865, the Queen of Spain awarded this small, sandy island to Venezuela, and not to the Netherlands. Again, the arbitrator (the Queen) examined evidence of occupation and control as well as historical titles through the Spanish Empire. Curiously enough, however, the Queen also provided an indemnity to any Dutch (Antillean) fishermen who might be injured by the awarding of this island to Venezuela.

In order to resolve a dispute through arbitral proceedings, it is essential that the parties demonstrate three elements: good will, a shared goal to resolve the issue, and a mutual willingness to retreat from historical positions.

Las Palmas

In the Las Palmas (Miangas) arbitration (1928) between the United States and the Netherlands, Dr. Huber (the arbitrator) awarded this island between Indonesia and the Philippines to the Netherlands and not to the United States - the latter being unable to claim better title than that possessed by Spain (from which the United States had acquired, or thought it had acquired, the island).

One of the most important cases in the area of the international law of territory, the Las Palmas decision laid stress on the modern concept of occupation and control, and discounted the element of ancient and historical title. Obviously, again, the three key elements for resolution of territorial disputes were manifested by the arbitral process undertaken by the two governments.

Clipperton

A decision by King Victor Emmanuel III in a dispute between Mexico and France, in 1932, also examined the relative weights of the historical titles asserted by the parties. Clearly the three elements were present in this case. The award gave Clipperton (now of immense importance under the 1982 Law of the sea Convention) to France on the basis of evidence of relatively slender "occupation" by its representatives. Once more, however, the arbitration represents an agreed and peaceful disposition of conflicting territorial claims, for which the three prerequisite elements must be present.

Numerous other border disputes on dry land have been resolved by judicial or arbitral intervention. Important for the principles of conciliation and shared expectations, these cases are not specifically relevant to the study at hand. Nor are their facts necessarily analogous to those in the case of the Kurils. It is however worth mentioning that extremely important decisions have been rendered in numerous instances over the years by international tribunals, including:

- (i) *Temple of Preah Vihear (Cambodia v. Thailand) (Preliminary Objections)*, 1961 ICJ. REP. 17 (Judgment of May 26); (Merits), 1962 ICJ. REP. 6 (Judgment of June 15).
- (ii) *Palena Arbitration (Argentina/Chile)* (1966); 38 ILR 1969.
- (iii) *Indo-Pakistan Western Boundary (Rann of Kutch Case)* (1968) 50 ILR 2, 500.
- (iv) *Western Sahara*, 1975 ICJ REP. 12 (Advisory Opinion of October 16).
- (v) *Case Concerning the Frontier Dispute (Burkina Faso/Mali)*, 1986 I.C.J. REP. 554 (Judgment of Dec. 22).
- (vi) *Territorial Dispute (Libya/Chad)* (ICJ case now pending).

In addition, mention must be made of the great variety of maritime boundary cases that have been decided by the International Court and by international arbitral panels over the last 23 years. Each of these demonstrates the presence (and sometimes, perhaps, the absence) of the three essential factors of: good sense and good will; the perception that a solution is in the interest of each party; and the willingness of each to retreat from their historical positions.

These cases include:

- (i) *North Sea Continental Shelf Cases (Denmark/FRG; Netherlands/FRG)* 1969 ICJ REP. 3 (Judgment of Feb. 20).
- (ii) *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf*, Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978, London, HMSO Misc. No. 15 (1978), Cmnd. 7438).
- (iii) *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 ICJ REP. 18 (Judgment of Feb. 24).

- (iv) *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/U.S.), 1984 ICJ REP. 246 (Judgment of Oct. 12).
- (v) *Court of Arbitration for the Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau*, Award of 14 February 1985 [Translation from Official French Text], 25 ILM 252-307 (March 1986).
- (vi) *Continental Shelf* (Libyan Arab Jamahiriya/Malta), 1985 ICJ REP. 13 (Judgment of June 3).
- (vii) *Case Concerning the Delimitation of the Maritime Areas Between Canada and France* (St. Pierre and Miquelon), Decision of 10 June 1992 (not yet published).
- (viii) *Land, Island and Maritime Frontier Dispute* (El Salvador/Honduras, Nicaragua Intervening) (case pending).
- (ix) *Maritime Delimitation in the Area Between Greenland and Jan Mayen* (Norway v. Denmark) (case pending).



APPENDIX J

APPENDIX J

PAPER ON THE CONTEMPORARY SITUATION IN THE KURIL ISLANDS

Oleg Bondarenko

The present political situation on the islands is characterized by heightened nervousness. This is not the result of the revolutionary situation, nor of political instability; rather, there is a distinct nervousness shared by the entire society -- a nervousness reflected in a perpetual anxiety over one's fate, in rumors, in attempts to insure one's self by obtaining property on the mainland, and in a psychological loss of faith in tomorrow. However, the residents of the islands are accustomed to blaming themselves for their situation; they are conformists, and therefore their nervousness remains an internal dynamic and does not incite conflict with the administration, with the powers that be, with the mainland, etc.

The People of the Kurils: Political and Social Characteristics

On the purely external level the situation on the islands appears fully peaceful. The local leadership is very stable; the overwhelming majority of leadership positions are occupied by people who in various years were counted among members of the party nomenklatura under the former regime (for example, the chairmen of the South Kuril and Kuril Regional Soviets, the Mayor of the South Kuril Region, etc). To replace the political institutions with more democratic ones seems almost impossible, because over the years repeated practices have firmly entrenched these institutions (the experience of an election campaign, knowledge of how to psychologically influence the electorate, the means to create a favorable leadership in electoral circles).

On the other hand, a unique hierarchy structures the Kurils population. Several different castes exist, which formed over decades: castes of old-residents, military personnel, usual temporary residents, seasonal workers, visiting seamen, geologists and students. There are rural communes as well. Each of these estates lives in its own world and almost never deals with people from outside the framework of work relationships. This eases the work of local organs of power, in as much as it allows them to realize the principle "divide and conquer!" Some estates and castes have their own philosophy of life and a system of values. They practically never overlap with one another.

Therefore the general political situation on the islands seems to me to be sufficiently stable. The internal nervousness and anxiety are reflected little in it. They are but the outer manifestations of feelings of various castes and estates, which are competently restrained and directed from above. However, the majority of arrivals from the mainland do not understand this and for the moment are drawing inaccurate conclusions. I would be careful of judging the political life of the Kurils on the basis of publications in the central press.

In order to correctly evaluate the situation on the islands, it is necessary to have an idea of the social makeup of the residents. The overwhelming majority of them are composed of young

people -- a fairly inert social category when outside the strictures of a student body. Children compose 37%; there are very few young people from the ages of 16 to 24, since they all leave to study on the mainland. Elderly of more than 60 years compose 10%. The average age of a Kuril resident is just over thirty years. That segment of the Kuril population which has resided there for at least fifteen to twenty years (established residents) plays a decisive role in local society. The rest are accustomed to assuming a secondary role.

People who are extremely active by nature do not remain for long on the Kurils. They are "chased out," and return home to the mainland. Yearly migration ranges from 40%-60% per year. The remainder are usually morally prepared for life on the islands. They are fairly inert.

Single mothers compose an enormous proportion. The local leadership silently encourages this social category. First, women are the majority because the basic local specializations are traditionally women's: fish processing and packaging.¹ Second, an atmosphere of sexual emancipation in the form of a unique safety valve, a reward for political loyalty, has developed on the islands. It is not repressed by the political leadership. Therefore the traditional inertness of the residents has with time been complemented by some negative, secondary sociological manifestations: a broken gender balance; psychological and sexual discomfort (alcoholism, lesbianism); growth in juvenile crime. There is also a large instance of suicide and insanity on the islands.

In these conditions the political situation on the islands is characterized by inertness and potential apathy of the majority of residents to the basic questions of social life. Separation from the mainland, isolation from life, and the absence of current newspapers (due to reasons of transport) also have a very pronounced effect.

Do the islanders have any type of a value system? It developed spontaneously and is fairly unusual. For a long time the population processes on the islands were in the developmental stage, and were finally formed only towards the end of the 1980s. It was precisely during that period that the birth rate began to decline (to 11 per 1000 inhabitants, the average rate for Russia), the level of migration decreased, and some kind of balance was achieved on the islands. All of this had the effect of strengthening the population on the islands. As a result, the feeling of being "temporary," which constantly reigned earlier, eased.

Temporariness is the main criteria for evaluating the various aspects of Kuril life. From time immemorial people, people travelled to the islands only to make money and to return home. Therefore, people permitted things to a degree on the island which they would not have permitted on the mainland: thievery from the state, limited asceticism of life, indifference to nature. All of this determined the style of life.

Since people travelled to the Kurils from the entire country, with time a unique national and social conglomeration of people formed (85% are Russians; 10% Ukrainians, Byelorussians, Tatars, Caucasians, and Jews; people who have historically settled frequently and do not fear voyages). In its own way this has played both a positive and a negative role. It has been negative in the sense that the racial diversity of the society, and its clear "Americanism" as in a transitional period, are not conducive to the development of a particular moral-ethical constitution. For example, religious life is very weakly reflected on the islands, and there are no churches at all.

The Kurils, judging by the style and manner of life, are more like a large village, occupied

¹ According to official statistics, on the Kurils 47% of residents are women and 53% are men. This is due to a great number of young boys. There are usually far more women over thirty than there are men of a comparable age.

only with provincial concerns and fairly insignificant problems. Kuril residents usually hide their personal fears within themselves and only rarely manifest them externally.

A pronounced bureaucratization of the islands is also apparent, as evidenced by the increasing number of Kuril residents who do not want to pursue socially useful labor. This adds to the inertia. Today only 21 % of the population is involved in the fishing industry (compared with 40% in 1978), and the rest are military personnel, their families and servants, juveniles, and employees of the administrative apparatus. Unemployment has increased substantially. Today the production per resident is 2.5 times less than at the end of the 1970s.

On certain islands at various times dissatisfaction with the existing regime has arisen. In the fall of 1991 a protest meeting was held; people expressed their mistrust in the regional Soviet (local council). In the spring of 1992 seventy signatures were collected on a petition to remove the deputy chairman of the Soviet, Vladimir Kashpruk. However, nothing else occurred. The local authorities, knowing the character of Kuril residents, very competently dragged their feet on the issue, and the people in the end calmed down and capitulated.

The Kuril islands are the essential part of the Sakhalin Oblast, yet the relationship between the Kuril leadership and Sakhalin are strained and distant. The local apparat betray pretensions to determined separatism, or at least in the sphere of economics. Such a tendency is in general characteristic of many regional leaderships in Russia. The proposal to claim for Sakhalin jurisdiction over the Kuril Shelf was seriously and heatedly discussed, as was the retention of 30% of all production on the Kurils. These questions remain undecided today. The administration of Sakhalin is opposed to the economic independence of Kurils, since that would significantly reduce revenues to the oblast budget.

Residents of the Kurils are cool in their estimations of the Governor of Sakhalin, Valentin Fedorov. At one time his rating was extremely high on Sakhalin; there was even a unique "cult" of Fedorov. This popularity, however, basically never spread to the Kurils. The Kurils and Sakhalin are two completely different worlds. In September of 1991 the residents of Shikotan essentially booed down the governor during a rare appearance on the island. It is said that Fedorov uses the issue of the Kurils to increase his own personal popularity, but he does not take any practical steps to improve the economic situation of island residents.

The relationship of the Kurils with other regions of the Far East, in particular with Khabarovsk, remains undeveloped. Traditionally everything was confined to the level of Southern Sakhalin. Presently even Khabarovsk knows practically nothing about the Kurils or about the islanders.

Relations with Moscow are complicated, especially because up to now they have occurred only gradually, through the agency of South Sakhalin. There are no direct communications. Enmity characterizes the general mood of the islanders towards Moscow. First, because most people in Russia hate Moscow (as the center of the party apparat) and second, because the islanders absolutely cannot fathom Moscow's policy on the Kuril question, they see it in a distorted light, feeling themselves forgotten and sold out. Real information does not make it to the Kurils from Moscow.

When speaking about the contemporary mood of the islanders, it is impossible not to mention one interesting feature of their character: duality. People are constantly torn apart by contradictions, and take incompatible steps simultaneously. The reaction of the residents of the southern Islands to Christmas aid from the Japanese in December of 1990 illustrates this duality. On one hand, the Russians were outraged by the "Japanese pittance" and refused to accept it; on the other hand, they practically killed one another right up to the distribution of the last commodities. Everyone wanted a little more.

The history of this contradiction harkens back to the post-war years, when the Russian islanders saw one thing and propaganda told them another. This contradiction is felt literally in everything -- in the relationship to Japan, and in mutual relations with the army. Neither of the feelings takes precedence; they are as if equal. Kuril residents cannot precisely determine for themselves where there is more good, and where there is bad.

The People of the Kurils: Attitudes Towards Japan and Unification

It is therefore impossible to evaluate absolutely the reaction of the islanders to resolving the territorial question in favor of Japan. Such a reaction would be too complicated. Of course it goes without saying that the overwhelming majority of the islanders have been prejudiced to believe that Japan is bad, that all Japanese are enemies, poachers and samurai, and that there is nothing better than Russia. But at the same time it is clear that a huge number of people intuitively feel the inevitability of returning the islands and govern their behavior accordingly. Kuril islanders with time have become accustomed to the possibility of an obligatory change of government.

Almost every honest Kuril islander -- except the apparatchiki -- entertains two possibilities in his thoughts: leaving the Kurils as part of Russia, and transferring them to Japan. And being by nature a rural resident -- that is, pragmatic -- he tries to hedge his bets and gain some advantage from both outcomes. If financially feasible, he might look for property on the mainland -- that is, in Russia -- and at the same time work the land on the Kurils, purchasing it as private property "just in case."

These features are deeply characteristic. I have already spoken of how the local leadership attempts to restrain and direct the emotions of the islanders; this is true only to a certain degree. At a certain threshold, the instinct of self-preservation appears. Neither the leadership's nor the people's instincts dominate. Therefore a typical Kuril paradox develops. On the one hand, the political situation on the islands is stable, and the leadership can remain calm about its fate. On the other hand, the leaders will never be able to make the islanders jump through their hoops and do something that the people intuitively do not want to do.

This duality clearly manifests itself in the relationship between the islanders and local political parties. On the Kurils there are small, moderately-patriotic organizations, which proceed from the postulate of Russian supremacy. These include the society "Frigate" on Kunashir, the Shpanberg Society and the semi-formed society "Rodina" on Shikotan (each counting a few dozen members). There are opposite organizations as well -- the society "Zemliak" on Kunashir, with smaller groups on Shikotan and Iturup, set up for the purpose of transferring the Kurils to Japan. All of these parties are a bit operetta-like, but one must be careful not to underestimate them. The overwhelming majority of islanders identify with one or another of them, although due to their inertia they don't take active part in their activities.

Any kind of mass meetings on the Kurils are a rare phenomenon. They are organized, as a rule, either at the initiative of the leadership (this period, however, has already passed) or in conjunction with the arrival of some guest from Sakhalin or the mainland, something like a question and answer session. Openly extreme slogans, which reporters so love, are occasionally encountered at these meetings, but they are uncharacteristic for those permanent residents of the Kurils and are more often tributes made at the insistence of the party apparatus.

The islanders accept trips to Japan without a visa (and Japanese trips to the Kurils) immediately and without argument. A tendency to invite Japanese home with them has even

appeared. A line has suddenly appeared for official trips to Japan. Considerations of prestige and material needs have played their role here.

On Iturup the local leadership, which is fairly removed from its constituency, tried in the winter of 1991-92 to spoil relations with the Japanese by announcing its wish not to receive them. This produced a wave of displeasure and irritation on the part of the simple population. In the end the decision of the regional Soviet was amended.

According to a survey of public opinion, conducted March 17, 1991 on the day of the general referendum, 19% of Kunashir residents and 25% of Shikotan's residents are not opposed to union with Japan. More than 40% of residents of Iturup answered that they will remain, living under Japanese sovereignty, if this occurs. It seems that in the interim, judging by changes in the political atmosphere, the number who desire a change of government has increased (according to estimates of workers of the Yuzhno-Kurilsk Soviet, to perhaps 60%-90% during that winter.) However, the Sakhalin leadership has since clamped down and prevented any further surveys of the population, because these could only hurt their position.²

As far as separatist tendencies in the Russian Far East are concerned, the residents of the Kurils are practically not involved. Of course, much is heard today about separation from Russia and about the creation of an independent Far-Eastern Republic. This is fairly comical, since the market and commercial structures of the Far East only passively relate to the idea of independence; but in the future, if the Kuril question is not resolved and entrepreneurial circles remain in isolation from Japan and the Asia-Pacific countries, the situation may change.

However, on the Kurils themselves nothing is thought of in detail. The local leadership and "apparatus" -- especially on Iturup, where the regional Soviet is famous for its maximalism -- entertain some thoughts about entry into the ranks of the DVR or even about creation of their own Kuril government for "defense" against Japan. But no practical steps in that direction are taken. The average person is absolutely indifferent to all of this, since the population has a very low level of interest in politics. I heard such evaluations of the idea of "state independence of the Kurils:" "fanfare," "lies," "bull," etc.

What will happen if the Southern Kuril Islands are actually transferred to Japan? Most likely nothing. One has to keep in mind that the residents of the islands have already lived in a state of perpetual, tense insecurity now for several years; their nerves are shattered, and the majority of them only dream of one thing: to finally end this long psychological torment. Any outcome, as long as it is decisive, will be accepted with relief. In addition, a significant part of the Kuril islanders does not entertain any illusions regarding a Russian future for the Kurils; therefore even in the event of a transfer of them to Japan the residents will not experience any serious shock.

It is naive to assume that the people will "take to the hills with their guns" in protest, as Sakhalin propaganda would suggest. Such information is a false rumor and owes its origins to statements by the assistant chairman of the Kuril region's Soviet, V. Kashpruk, who distorted the meaning of speeches by workers of the Raydovskii fishplant (Iturup) at a meeting in the end of

² In the interim two more surveys of public opinion were conducted: in October of 1991 (the Primorskii social service Yuko-Sotsio under the direction of Vladimir Kazantsev with the cooperation of the Institute of History, Archeology and Ethnography of the Far East, Vladivostok) and in April of 1992 (Director of the Center for Study of Public Opinion at Moscow State University by Sergei Tumanov). The results of the surveys have not been published, despite requests by the Kuril islanders.

September 1991. First, the leadership will never be able to organize people for a partisan war; the instinct for self-preservation would engage, about which I wrote earlier, as would the well-seasoned inertia. Second, the leadership would never wish to do such a thing, since obviously they wish to enjoy the material advantages of the islands' return themselves. The local apparat is accustomed to making a lot of money on the side. Examples of their profit abound. The very same Kashpruk who forbade enterprises in Iturup to serve foreigners, himself is the co-owner of a family-firm "Voyage" which serves Japanese guests. Other leaders of the region own the small enterprise "Brig," which is the beneficiary of profitable orders. There are widespread ties on the island between the administration and outside firms from the mainland, which operate around current legislation.

The leadership of the Sakhalin Oblast also has its own private interests on the Kurils. For example, the joint-stock company "Habomai" has as its chartered purpose to develop the shelf of the islands. However, experts from Sakhalin are of the opinion that in the event of transfer of Habomai to Japan the stockholders will receive a huge sum of hard currency as compensation. It is thought that a controlling interest of the shares is held, through intermediary parties, by several of the leaders of Sakhalin.

Therefore it is logical to assume, that after transfer of the islands to Japan, the local apparat will engage themselves not with the "defense of the Kurils," but with profitable financial deals -- first of all with real-estate operations and speculation in land. This possibility is all the more realistic because Japan is considered a rich country from which much can be expected.

The simple people of the Kurils with time have also grown accustomed to the idea that a change of government will bring material advantages in the form of compensation, subsidies, foreign aid, etc. The number of people who associate transfer of the islands with an improvement in their material well-being is presently rising. But this is not a decisive factor, although it is one of the foremost. Among the other factors which serve as stimulants to switch citizenship I would cite the torment of ambiguity, about which I have already written (people do not believe in the future and merely want a more concrete situation) and worry over ecological destruction of the Kurils by Russia.

All in all, I think that on the islands conditions do not exist for the development of mass resistance. The situation on the Kurils cannot be compared, for example, with that of Moldova. The essential difference is in the neighbor itself (Japan), since the larger part of the Russian population of the islands regards her simultaneously with mistrust and respect. As the economic situation on the islands worsens, this inherent admiration is slowly manifesting itself. This is especially true of the younger generation, but the Kurils, as has already been mentioned, are not the edge of youth.

Outside the Kurils: Attitudes Towards Unification

Outside of the Kurils the situation is a bit different. For the Far East, and especially for Sakhalin, the atmosphere surrounding the Kurils has been artificially charged and has been marked by increasing national (anti-Japanese) hysteria. It is interesting to note that Sakhalin residents know practically nothing about residents of the Kurils; this is due to the fact that travel among the islands was until recently limited and information about everyday life did not make it from the Kurils. But I don't think that the residents of Sakhalin would seriously defend "the age-old Russian islands" -- the recent decline in the rating of Governor V. Fedorov among the people and the subsequent loss of ties with the population would obstruct it. He simply could not organize a purposeful, mass effort at defense. In the worst event the whole affair would be limited by dissatisfaction and the

disorganized agitation of the elderly in South Sakhalin. The leadership understands that. They also understand that the opportunities for propaganda today are not limitless. Fedorov tried a different approach -- with the goal of charging up the atmosphere, he roped the Sakhalin Cossacks into the fray.

The Organization of Sakhalin Cossacks is very wealthy. According to unofficial statistics (they have not been divulged) its charter fund includes 250 million rubles. Until recently, Gusev, a former Communist party leader from Okhi (from the city of Neftyanikov in the north of Sakhalin) headed the Cossacks. After an attempt by the Cossacks to interfere in events on Kunashir, a massive wave of protest rose among local residents. In April of 1992 in one day 1614 inhabitants of the southern Kurils (30% of the population of Yuzhno-Kurilsk) signed a letter refusing the "help" of the Sakhalin Cossacks and did not allow the latter to speak out on the island. The Kunashir leadership decided not to become involved.

Next on Kunashir a Cossack stanitsa (village) of 37 local Cossacks was established, which is distinguished by a greater moderation of views. Representatives of the Kunashir Cossacks even came out in South-Sakhalin against the Sakhalin Ataman Gusev due to "speculation on the Kuril issue." Gusev was removed from power and according to Cossack fashion was sentenced to 10 lashes.

The Cossacks on Kunashir and Shikotan no longer make much of a disturbance. True, the leaders of Sakhalin are trying to shift their focus to the third island, Iturup, the leadership of which is characterized by great extremism. There are several dozen Cossacks now on Iturup. The population relates to them coolly.

On the suggestion of peoples' deputy of the USSR Sergei Baburin, South Sakhalin celebrated, on June 6, 1992, the "Day of the Kurils," and did so with great pomp (meetings, telecasts, etc.). However, on the Kurils themselves it was essentially foiled. The local patriotic societies and Cossack organizations scheduled a program of meetings and entertainment, but people did not show up (only several dozen people did so). The local leadership was disappointed.

Economic Conditions in the Kuril Region

When speaking of the present economic situation on the islands, it is necessary to underline that it is extremely bad. Poverty was prevalent on the islands throughout the 1970s and 1980s, but was later offset by relatively significant bonuses (savings were usually spent during trips to the mainland, on vacation). Beginning with 1989-91, the standard of living declined noticeably, mainly due to a decline in the purchasing power of the ruble and the interruption of customary economic ties.

Provision of housing on the islands is poor as well. More than half of the population lives in poorly-built general barracks. For every 5000 inhabitants, the waiting list for an apartment typically includes about 1000 families and single adults. Sixty-five percent of the housing is decrepit and cannot be repaired. Only two to three apartment complexes are begun annually in each region.

The situation with heating is not important, since there are no deliveries of fuel. During the winter of 1991-92 the provision of fuel on Iturup was half that of previous years. There is no gasoline. There are frequent interruptions in the supply of electricity. Transport services are practically severed. On Kunashir the local airport Mendeleev is closed due to life-endangering conditions (for the next two to three years). There is now only water transport, but during the winter it practically does not function. In November 1991 the southern islands were for three weeks

deficiencies in stocks.³ In the region of the Kurils, an undisguised robbery of its marine wealth is occurring, sanctioned by Sakhalinribprom, Kamchatribprom, Primoribprom, and the Magadanribprom (these are the old titles; today they are associations and joint-stock companies). Only 2% of the entire catch actually remains at the disposal of the islands themselves.

In 1989, for example, in the region of Kunashir-Iturup in one fishery several hundred Okhotsk-Sea vessels were operating. The concentration of vessels reached an impermissible level. Once only "malomerki" remained on the sea (named for the fish molodniak, which is less than thirty centimeters) the Ministry of Fishing (Minribkhoz) of the USSR allowed fishing to continue. Foreigners, including Japanese vessels, which had licenses were denied permission and left the region of the fishery. Soviet vessels, however, did not.

In the estimation of the vice-governor of Sakhalin Oblast, V. Mukhin, fishery resources in the Okhotsk Sea are only sufficient for ten years. In the opinion of several specialists, in the future the coastal waters of the Kurils could turn into a desert.

Far-Eastern fishing circles know about this. They know also about the possibility of resolving the territorial question in favor of Japan. This urges them on and forces them to indulge in a feverish rate of fishing, so that they can, in their own estimation, "make it in time."

The islanders themselves seem fairly poor in this kingdom of fishing abundance. The vast majority of fish production is processed on the mainland. Kuril enterprises add only sixty to sixty-five million cans of fish preserves per year, which constitutes less than one and one half percent of all fish preserves in the CIS.

One of the most serious problems of the archipelago is ecological. Mass destruction of fish is leading to the pollution of the ocean and the shores, and crude processing (without cleaning) dirties the waters of the bay. On the islands, this system of a thoughtless relationship to nature has developed over a long history. There are no purification or filtration systems for water at all. Forest plantations have been practically neglected (these are wooded watersheds to protect runoff) except on Kunashir and to a very small degree. No sampling of the air and water is conducted, and therefore there is no exact data on the condition of the environment. The Soviet army causes much damage, dirtying the area with its fuel and oil effluents (which are shortsightedly sprayed on the roads, leading to soil erosion), and the destruction of wildlife (on the islands, for example, over a period of forty years wolves and wild mustangs have totally disappeared, and the number of bears has decreased by 50%, foxes by 66%, etc.).

The islanders are trying to stop this process and are printing ecological pamphlets. The leaders of Yuzhno-Kurilsk created a Provincial Park in 1991. But the system is neglected and works against the wishes of the residents. According to some ecologists on the Kurils, irreversible processes have begun that weaken the already plundered islands and increase in tempo every year. Residents of the islands are now very concerned about this destruction.

Today, during a sharp exacerbation of the territorial conflict, the necessity for moral calm and the creation of civilized living conditions is becoming important to the islanders. A government or regime that gives special attention to the Kurils and their residents will have an opportunity to gain the respect of the people. If I had to give a general assessment of the islanders (in one sentence), I would probably say that they are like children in need of warmth.

³ The general stocks of fish and seafood in the region of the Southern Kurils is estimated by specialists of the Sakhalin Institute TINRO at 250 billion rubles.

Addendum: Facts and Figures on the Kuril Islands

Geography:

- Number of Kuril Islands (including Northern, Central, Southern, and Little Kurils): 56, with small rocks up to 60 or 70.
- Total Southern and Lesser Kurils (Northern Territories): Approximately 12.
- Number of islands with urban settlements: 5.

Population:

- Total population in 1989: 43,000
 - Civilians: 30,500
 - Military Personnel: approx. 10,000
 - Border Guards: max. 2,500
- Additional temporary fisherman and seasonal labor (summer): 5,000-8,000
- Percent of population on the Northern Territories: 85%
- Total number of population centers along the chain: 25.
- Largest population centers (1989):
 - Yuzhno-Kurilsk, Kunashir: 6,500
 - Severo-Kurilsk, Paramushir: 5,300
 - Malokurilskoe, Shikotan: 3,100
 - Gornyi, Iturup: 3,100
 - Krabozaodskoe, Shikotan: 3,000
 - Kurilsk, Iturup: 2,700
 - Goriachie Kliuchi, Iturup: 1,900
 - Raidovo, Iturup: 1,600

Principle Industries and Organizations:

- Fish-kombinat "Ostrovnoi": Shikotan, 56 million cans of preserves in 1990, 3,000-4,000 workers.
- Yuzhno-Kurilsk Fish-Kombinat: Kunashir, 8 million cans of preserves, 800 workers.
- Severo-Kurilsk Seiner fleet base: Paramushir, 600,000 cans of preserves, 1,500 workers.
- Kurilskii Fishery: Iturup, Redfish and Caviar, 600 workers.
- Two state fishing farms: Kunashir, "Rodina," and Iturup, "Kurilskii Ribak," together with 20 vessels, approximately 1,000 workers.
- Two fish-processing plants: Iturup, 170 million caviar containers, several dozen workers.
- Suburban vegetable-growing farm "Sovkhoz Dalnii": Kunashir.
- Two forestries: Kunashir and Iturup, several dozen workers.
- Construction/assembly brigade: Shikotan.
- Several small-capacity electric power stations.
- Eight small port facilities.
- One nature reserve with staff ("Kurilskii" on Kunashir-Shikotan).
- Four comparatively large trade organizations: fish cooperatives, on each of the larger settled islands.
- Four hospitals: 400 beds.
- Two medical clinics: "Zheltiye Vodi" on Iturup and "Goriachii Pliazh" on Kunashir.
- One dozen schools.

Principle Statistics of Selected Islands, 1989

- Iturup: 11,000 civilians and approx. 7-8,000 military personnel; ten settlements; Kurilskii Fish plant (ribozavod), ribkolkhoz "Kurilskii Ribak," two fish processing plants, and the Burevestnik Airport.
- Kunashir: 7,700 civilians and approximately 1,500-2,000 military; eight settlements, Yuzhno-Kurilskii fish Kombinat, Ribkolkhoz "Rodina," Mendeleevo Airport.
- Shikotan: 6,200 civilians, 400 military and approximately 1,500 naval border guards; two settlements, and the fish Kombinat "Ostrovnoi."
- Paramushir: 5,300 people; one settlement, Severo-Kurilskaia Seiner Fleet Base
- Shumshu: 300 civilians and 100 military personnel; one settlement, Baikovo airport.
- Urup: 100 people including military personnel; two small settlements -- one military, and a seasonal camp for meteorologists.
- Simushir: (Population not available); one settlement of military personnel, a base for repair and servicing of submarines.
- Habomai: Not more than 200 border guards; no civilians; one seasonal seaweed processing plant on Zelenyi island (Sibotsu) with thirty workers.

Translated by the Strengthening Democratic Institutions Project

APPENDIX K

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THE APPROACH OF FOREIGN COUNTRIES TOWARDS THE NORMALIZATION OF JAPANESE-RUSSIAN RELATIONS: NEUTRALIZATION OF POSSIBLE NEGATIVE CONSEQUENCES OF THE NORMALIZATION IN THE INTERNATIONAL ARENA

Evgenii Bazhanov

The problem of Japanese-Russian relations stirs a significant amount of interest in most of the Asia-Pacific countries, as well as in countries all over the world (first of all in Germany). There is no single approach towards the issue of normalization of Japanese-Russian relations. Some countries are obviously not interested in the coming together of the two "giants," and their reaction to this might be very negative. In order to avoid such attitudes and other unfavorable political consequences and unwanted actions, we should analyze the approach of foreign states towards Japanese-Russian relations and identify the possible counter-measures that might be applied if necessary.

CHINA

Position: The official position of China on the issue of normalization of Japanese-Russian relations is positive and can be summed up as a policy of non-interference in the resolution of the territorial problem.

Beijing's real view on the issue, however, is not quite so simple. Very recently, until the normalization of Soviet-Chinese relations, China deliberately hindered the rapprochement between Tokyo and Moscow. It tried to use Japan as an instrument to deter Soviet hegemonism. The force of inertia in this problem has not been overcome yet. Radical improvement of relations between Japan and Russia causes concern in Beijing over a whole range of issues. The Chinese fear:

- Further deterioration of China's role in international relations in the Asia-Pacific Region, loss of interest in China on the part of Tokyo and Moscow, and loss of means of influencing Japan.
- Creation of a Japan-Russia-US triumvirate, which would politically dominate the region and exert ideological pressure on China and other Asian "socialist" countries.
- Diversion of a major part of Japanese financial-technological resources from the Chinese to the Russian market.

- Escalation of Tokyo's political and military ambitions (with Moscow's support, Japan would get a permanent seat in the UN Security Council; Japan would use Russian resources in order to increase its potential; Tokyo would lodge more claims to foreign territories, in particular to the island of Senkaku, which is an issue in the Chinese-Japanese dispute; Japan would ignore China's position on the issue of Taiwan; Japan would increase military preparations; Japan would actively try to hinder China's development).
- Increase in Japanese-US economic and political disagreements. The US would leave the region as a result of the destabilization of the situation in the Far East.
- Rebirth of Russia's strength (with the help of Japanese capital), and its political ambitions in the East.

At the same time Beijing recognizes that not all of its fears may be justified. The situation might develop differently, and more favorably for China. The Chinese government does not exclude the possibility that the normalization of Japanese-Russian relations may be beneficial in:

- Preventing the total disintegration of Russia, preventing civil war on the territory of the former Soviet Union (since China has common borders with the FSU, it is very interested in this problem).
- Decreasing international tension in the Far East.
- Causing decreases in Japanese and Russian military budgets.
- Deterring the hegemonic tendencies of the single superpower, the US.

Reaction: China's reaction to the Japanese-Russian rapprochement would probably include an increase of diplomatic activities with regard to Moscow, Tokyo, the US, both Koreas, and South-East Asia. This is a positive development in itself. In the case of the development of the tendencies mentioned above, however, Beijing might make attempts to destabilize the situation, to oppose Japanese or Russian influence (or both). It is also likely to emphasize its territorial claims on Russia (it will pose the following question: why does Russia make concessions to Japan, but does not want to act in a similar way with China?).

Counter-measures: In order to prevent a negative reaction from China, it is necessary to:

- Prevent the deterioration of relations between Japan, Russia, the US, and China.
- Declare it a strategic goal, and pursue in reality, the development of a partnership between the four powers mentioned above; cooperate in releasing points of tension (the Korean problem, Indo-Chinese resolution, etc.); develop a comprehensive mechanism for ensuring security in the Asia-Pacific Region (with the active participation of China).

- Prevent actions (especially joint actions) which would look like an attempt to destabilize the communist regime in China.
- Develop economic cooperation on a tripartite basis (China, Japan, Russia) and on a quadripartite basis (the same three with the US).
- Decrease the military potentials of Japan, Russia, and the US in the Far East (we should take into account China's interest in preserving some US military presence in the Asia-Pacific Region).
- Present the transfer of the four Kuril Islands to Japan not as a territorial concession, but as the demarcation of the state border, which has not been agreed upon earlier.

TAIWAN

Position: Similar to China, Taiwan's attitude towards the resolution of the territorial problem and the normalization of Japanese-Russian relations has different aspects. On one hand, such a development promises Taipei a number of benefits:

- Russia would become more deeply involved in the system of inter-relations in the anti-Communist world; the probability of the restoration of old Soviet policy in the Pacific would be reduced.
- The ideological and political gap between Moscow and Beijing would grow, which would bring Moscow and Taipei even closer on those issues.
- Japanese business would build strong bridges over which Taiwanese capital would be able to penetrate the potentially attractive but unstable Russian market with a lower risk.

On the other hand, Taiwan is worried that:

- Excited by the "success" with the Kurils, Japan will increase pressure on the issue of Senkaku.
- General ambition would grow, Japan would strive toward hegemony in the Asia-Pacific Region, it would dictate its conditions to Taiwan and other countries.
- Japan would develop the tendency of embellishing the past, forgetting Japanese aggression in WWII; new generations of Japanese would not realize Japan's responsibility for its actions.
- Having lost strategic interest in China, Tokyo would hinder the unification of the country, economic cooperation between China, Taiwan, and Hong Kong (because this "troika" may become a serious economic rival to Japan).

- After overcoming its internal crisis, Moscow, with the help of its new friends Tokyo and Washington, would renew its expansion in the Asia-Pacific Region.

Reaction: Summing up the Taiwanese mood, we can expect a positive reaction to the normalization of Japanese-Russian relations. As to Taiwanese fears, they are likely to come up later, if the development of the situation follows the worst scenario and the problems which worry Taiwan most come to the fore.

Counter-measures: In order to neutralize Taiwan's negative moods, Japan and Russia could:

- Confirm the commonly accepted evaluations of WWII in the Pacific, specifically Japan's responsibility for its militarist actions.
- Declare the fact that Japan and Russia have no territorial claims on their neighbors.
- Present a package of initiatives aimed at organizing collective efforts to create a new political and economic order in the Asia-Pacific Region, which would seek to overcome hegemonism.

SOUTH KOREA

Position: The predominant attitude of South Korea towards Russia's territorial concessions to Japan and towards the Japanese-Russian rapprochement is negative. Unofficially, South Korean representatives warn that the "softness" of the Kremlin would confirm Tokyo's view that it is necessary to resolve disputes from a position of strength. Japan's political and military appetites would grow, and that would bring Japan back to the road of militarism and revanchism.

These kind of declarations show that South Koreans are really worried about the development of negative tendencies in Japan's internal and foreign policies. Seoul also has other motives:

- South Korea is afraid of losing the "Russian card" in its political and economic competition with Tokyo. Japan will be even more unmanageable and arrogant with regard to Korea.
- Tokyo will push Seoul out of the most important Russian market, it will hinder Korea's access to Russian resources and technology.
- Moscow will lose interest in cooperation with South Korea.
- Russian diplomacy could be influenced by Japan on the Korean issue, the possibility of Korean unification will decrease (since the Japanese are against it).

Reaction: Normalization of Japanese-Russian relations will probably cause a dramatic increase in the political and economic activity of South Korea with regard to Russia (in order not to "lose" Moscow), as well as with regard to China and the US. It will make Seoul search for ways of reconciliation with Pyongyang.

Counter-measures: In normalizing Japanese-Russian relations it is important to agree on joint efforts by Moscow and Tokyo aimed at reducing tension on the Korean peninsula and at preparing the grounds for the rapprochement of the two Koreas. It would be useful to offer proposals on multilateral economic projects with the participation of Japan, Russia, and South Korea.

Initiatives aimed at the creation of a new security mechanism in the Asia-Pacific Region and disarmament initiatives in Moscow and Tokyo will also make a positive impression on Seoul.

NORTH KOREA

Position: Preservation of conflicts between Moscow and Tokyo is the only positive factor of international life in the region for North Korea. Resolution of these problems, according to the North Korean leaders, would squeeze North Korea into a hostile circle, consisting of the Japan, Russia, South Korea, and the US. These four would coordinate their actions aimed at the destruction of the "socialist regime in the Korean land." It would be easier for North Korea to influence its only friend in the East -- China.

Kim Il Sung and his entourage does not exclude that, having gained a serious concession from the great Russian state, Tokyo, as in 1905, will want to be the boss in the Pacific. Stronger tendencies of hegemonism and expansionism will develop in Japanese policy, which would be aimed at the establishment of control over Korea, at seizure of its lands.

Reaction: If North Korea gets a sense that its worst forecasts in regard to Japanese-Russian normalization are coming true, the North Korean government will concentrate even more on the creation of nuclear weapons and other actions aimed at deterring external threats.

Counter-measures: In order to dissolve the fears of Pyongyang, it would be necessary to:

- Negotiate and publicize a plan for Japanese and Russian participation in regulating affairs in Korea.
- Agree on joint efforts of Japan, Russia, and the US, aimed at the development of a dialogue with North Korea.
- Develop measures to organize multilateral economic cooperation in the Far East with the participation of North Korea.

- Take steps aimed at decreasing the military presence on territories bordering North Korea.
- Consult China on the Korean problem, using the Chinese connection in order to influence Pyongyang.
- Reach a mutual understanding between Japan, Russia, and the US on non-interference in North Korean affairs, and on the danger of the dramatic destruction of the North Korean communist regime.

COUNTRIES OF INDO-CHINA: VIETNAM, LAOS, CAMBODIA

Position: Normalization of Japanese-Russian relations should not cause negative emotions in the countries of Indo-China. As allies and friends of Moscow, these countries have supported the Soviet line, with all its changes and fluctuations, with regard to Japan for decades. That is why they should approve of the reconciliation between Japan and Russia -- even out of habit.

Besides, these Indo-Chinese countries have recently improved their relations with Japan and are now actively trying to attract Japanese capital, technology and goods to their markets. Anti-Japanese moods, which are still common in many Asian countries, are practically non-existent in Indo-China.

Reaction: We should consider the fact that the Indo-Chinese countries are involved in resolving their own internal problems -- from untying political and ideological knots to rebuilding economies destroyed by wars. Normalization of Japanese-Russian relations is unlikely to draw much attention from their side. If the Indo-Chinese governments are to evaluate these events, it will be an evaluation from the point of view of their internal problems. The effect could only be positive -- Indo-China is interested in peace and stability in the Asia-Pacific Region, and a Japanese-Russian normalization would facilitate that.

Counter-measures: In the process of normalization of Japanese-Russian relations, it would be useful to emphasize the readiness of the two sides to participate actively in the establishment of lasting peace in Indo-China, in the development of close, friendly relations with Indo-Chinese countries. It would also be useful to support relations with Indo-China and leave open the possibility of joining this organization.

THE ASEAN COUNTRIES

Position: The ASEAN countries see positive and negative aspects in the normalization of Japanese-Russian relations. Among the positive aspects are the following:

- A serious source of tension, inherited from the "Cold War" era, would be dissolved.

- Japanese capital will actively attack the Russian market, the business circles of ASEAN could join in this process (they do not want to risk investing their capital in Russia independently).
- There will be possibilities to form comprehensive structures for security and economic cooperation in the Asia-Pacific Region.

The negative aspects are the following:

- Diplomatic victory over Moscow will inspire Tokyo, its hegemonic ambitions in Asia may grow.
- Using the new Japanese connection, Russia may renew its political activity in the Pacific, the consequences of which are difficult to predict (taking into account Russia's instability, the vulnerability of the current Yeltsin government, etc.).
- Djakarta fears that the Kurils precedent will be used in order to exert pressure on Indonesia on the issue of Eastern Timor.

Reaction: The ASEAN countries will probably approve of the reconciliation between Moscow and Tokyo, but they will watch further development of events attentively.

Counter-measures: The ASEAN countries will approve of Japanese and Russian readiness to cooperate in establishing a new economic order in the Asia-Pacific Region, based on equal cooperation of all countries of the region. It would be useful to remind them that Moscow and Tokyo have no specific political ambitions in the Asia-Pacific Region.

AUSTRALIA

Position: Australia still remembers Japanese aggression in the Pacific Ocean and the USSR's expansionism and subversion during the "Cold War" era. At the same time Australia supports close contacts with Japan and a more visible political role for this country in the international arena, specifically, its participation in forming a new political order in Asia, in forming structures which would ensure peace, security, and economic development.

Canberra approves of Russian participation in regional affairs. Australia considers the conflict between Moscow and Tokyo to be an obstacle to the improvement of the situation in the Asia-Pacific Region.

Reaction: Normalization of Japanese-Russian relations would undoubtedly be supported in Australia and used for an energetic advertising of the idea of political-economic integration in the region. We should consider, however, that if a weakening of Japanese-US ties and a decrease in the American military presence in the region were a consequence of the normalization, Australia's reaction would

be very negative. Australia's defense is based on the alliance with the US. American departure, from the Australian point of view, would leave their country completely unprotected from regional threats (hegemonic desires of Djakarta, a potentially uncontrollable flood of refugees from Asia, etc.)

Counter-measures: In the process of normalization of Japanese-Russian relations, it would make sense to use Australia's positive attitude in order to ensure the support of other countries, in mobilizing joint efforts to form new political and economic mechanisms in the Asia-Pacific Region. It is necessary to:

- Emphasize in Japanese-Russian documents the importance of Australian initiatives aimed at the creation of a new political and economic order in the Asia-Pacific Region.
- Offer Canberra cooperation in the effective use of opportunities to radically improve the situation in the region which could occur as a result of Japanese-Russian normalization.
- Reassure Canberra that Moscow and Tokyo are interested in the US presence in the Asia-Pacific Region; suggest initiatives, which imply the participation of Japan, Russia, the US, and Australia.
- Cooperate with Canberra in the regulation of the Korean and Indo-Chinese problems.

INDIA

Position: It is unlikely that India will be very happy with the rapprochement between Japan and Russia. During the last few years Indian political circles have been observing with dissatisfaction the deep changes in the former Soviet Union, especially the changes in its foreign policy. Russia's denouncement of socialist ideas, its refusal to cooperate with developing countries on the basis of those ideals, Moscow's reorientation towards friendship with the West are perceived in India as a blow to Indian interests, as a misguided course doomed to failure.

The changes in the Kremlin's strategy and in the Russian situation force the Indian leadership to change their views and positions on the international arena. This process is very painful.

Reaction: Normalization of Japanese-Russian relations (with the transfer of the Kurils to Japan) will be yet another proof of the irreversibility of Moscow's new course. There will be forecasts of the unfavorable consequences of a Japanese-Russian reconciliation which would negatively affect Indian interests:

- Further exertion of influence on Russian policy by the developed countries (the West, Japan), separation of Russian interests from the interests of the "third world," specifically Indian interests.

- A new emphasis on the Far East in Russia's policy, instead of concentration on Southern Asia; loss of Russian interest in problems concerning India (relations with Pakistan, Afghanistan, China, American military presence in the Indian ocean, etc.)
- Escalation of Tokyo's economic and political expansion in the Asia-Pacific Region, the Indian ocean (with a favorable or neutral attitude from Moscow).
- Complications in the realization of Indian interests in the Asia-Pacific Region as a result of competition with China, Japan, and the US and the simultaneous loss of Russia as an ally;
- Diversion of large Japanese (and other developed Asia-Pacific countries) financial-technological resources to Russia, part of which would have otherwise gone to India.

Counter-measures: In the process of normalization of Japanese-Russian relations, India should be included in projects on the creation of new economic and political structures in the Asia-Pacific Region; Japan and Russia should declare their interest in the development of broad cooperation with India.

GERMANY

Position: Among the European countries, Germany is the most attentive observer of the dynamics of Japanese-Russian relations. Germany, as well as Japan, had to give up territories to the Soviet Union as a result of WWII. Germany considers that such territories as Kaliningrad belong to Germans. Currently, Bonn is not making claims on this city, but the interest in it is growing, especially among Germans whose families come from there.

Many German citizens visit the city. Some come as tourists, others search for business opportunities, yet others start to claim houses and property that used to belong to their families in Kaliningrad and its suburbs. Nationalistic groups are appealing to "reestablish historical justice."

Reaction: The transfer of a few Kuril Islands to Japan will reinforce these moods. With time, if Germany continues its successful development, and Russia still remains in a deep crisis, the question may be raised very firmly: "Isn't it time to put an end to the lording of stupid and incapable Russians on German soil, and to return Kaliningrad back to its not only legal but capable owners, who, by the way, suffer from lack of living space?" The Kuril precedent will be used as an example of a way to define the status of Kaliningrad.

Counter-measures: It is a difficult question, and if Russia is not planning to satisfy possible German claims, it is necessary to document the transfer of the Kurils to Japan in such a way that would not offer a precedent to the Germans or any other neighboring country.

The transfer of the four islands should not be described as the reestablishment of historical justice, as correction of Stalin's mistakes and crimes. It is better not to emphasize the concession on the issue of the islands, but to talk about the full normalization of Japanese-Russian relations, of the signing of a peace treaty between the two countries and the demarcation of the border, which has not been defined so far.

It should be explained to the Germans and to all the other interested parties (Finland, Mongolia and others) that the Japanese case is unique. It cannot be considered to be an example for cases in which relations between countries (Russia-Germany, Russia-Finland, etc.) are based on a firm agreement (which covers the issue of borders as well).

GENERAL CONCLUSIONS AND PROPOSITIONS

The international reaction to the transfer of the four Kuril Islands from Russia to Japan will vary. The normalization will provoke positive as well as negative emotions, fears, and even attempts to counteract events in many capitals of the world.

That is why it is necessary that the documents and practical actions of Japan and Russia after the normalization of relations emphasize the following:

1. The transfer of the islands to Japan should not be presented as a concession, the reestablishment of historical justice, etc. The two sides should emphasize that they have established the border, which has not been established before.
2. Japan and Russia do not have any superpower aspirations in the Asia-Pacific Region. They stand for equal cooperation with all the countries of the region; they are against imposing their views and rules on anyone.
3. Tokyo and Moscow actively participate in the resolution and prevention of all regional conflicts.
4. The two sides engage in the reduction of their military potential.
5. Japan and Russia suggest that all governments actively participate in the process of creating a new economic and political order in the Asia-Pacific Region; they come forward with appropriate initiatives.
6. Japan and other countries of the region are ready to participate in the development of the Eastern regions of Russia.

Translated by the Strengthening Democratic Institutions Project

APPENDIX L

APPENDIX L [PAPER 1]

POLITICAL ASPECTS AND MILITARY-STRATEGIC DECISIONS OF THE TERRITORIAL QUESTION IN JAPANESE-RUSSIAN RELATIONS

General Gelly Viktor Batenin

The unresolved problem of the "Northern Territories" creates a unique precedent in the practice of international relations. For almost a half century now two neighboring powers, which over the course of almost all of World War II were not in a state of war with one another, have not signed a peace treaty. During that time the "Cold War" began and ended, and the world communist system, with the Soviet Union as its leader, collapsed. A sovereign Russia arose, and the character of military-strategic relations between East and West changed fundamentally in the face of new threats to stability.

However, the territorial problem divides Japan and Russia as before. And if in the middle of the nineteenth century the Russian Emperor resolved the problem with one phrase, "Be it so enacted," in a document to General-Adjutant Putiatin to the benefit of both sides and in the interests of trade, then most twentieth-century politicians, diplomats and representatives of the military continue to weigh the problem on scales "which vanished in the age" of the historical epoch of "war and revolution" (in the words of V. I. Lenin).

Russia's new course to democratization, de-ideologization and de-militarization of foreign policy allows an escape from the impasse in which the political leaders of the past epoch of totalitarianism found themselves, due to their efforts to exclude the Kurils dispute from Soviet-Japanese peace negotiations.

In the twilight of his political career, former Soviet President M. S. Gorbachev made the first attempt since the joint Japanese-Soviet declaration of 1956 to escape this impasse by agreeing, in April of 1991, that "the peace treaty should become the ultimate document of post-war settlement, including the resolution of the territorial question."

Russian President B. N. Yeltsin put forward a concrete plan and his own position on the given problem, taking into consideration the objective fact that it had outgrown the parameters of Japanese-Russian relations and had obtained an international audience after the well-known Final Declaration of the Group of Seven in June of 1991 in London.

Highlighted in the Russian President's position, first of all, is the establishment of positive changes in the contemporary world, as a result of which a new international order has arisen, in which there are neither WW II victors nor vanquished. Also included is a declaration that Russia will resolve the territorial problem on the basis of law, justice, and humanism.

On the current agenda of Japanese-Russian relations, from the entire spectrum of official and semi-official approaches to resolving the territorial problem (from the most extreme and incompatible, such as the Russian "don't give away the islands" or the Japanese "get all four islands immediately,") two constructive approaches can be discerned, named for their sponsors: one being the Russian President's plan, the other well-known as "the five principles of Nakayama," who is a

Japanese political official.

Both of these approaches agree in principal on the main issue -- support for a gradual solution to the problem, with priority given to bilateral recognition of the validity of the Joint Declaration of 1956 (this would include the simultaneous denunciation of the memorable note from the government of the USSR to the Government of Japan in 1960, which contained a rejection by the Soviet side of the articles of the Declaration of 1956).

This point of contiguity between the Japanese and Russian positions is exceptionally important, because it offers to wrap up the problem not only of the two islands nearest to Japan, the so-called Lesser Kuril Chain, but also relative to the other two (Kunashir and Iturup), whose significance to the problem is much greater.

The essence of the matter is that recognition of the Joint Declaration of 1956, which established the obligation to return to Japan the two islands of the Lesser Kuril Chain (Habomai and Shikotan) after the conclusion of a peace treaty, allows the same formula for resolving the territorial question to be applied to the problem of jurisdiction over the islands of Kunashir and Iturup. There is, however, one essential difference: Russia is legally obligated to return the first two islands to Japan, but Russia reserves for herself the right to act only on the basis of justice with regard to the other two islands.

The difficult times which Russia confronts today do not create a favorable socio-political atmosphere for decisive government action that would satisfy Japan's hopes for the restoration of its sovereignty over the four islands.

Sociological surveys of the Russian population, especially those conducted near the Far East, show a generally negative attitude towards a Russian loss of the "Northern Territories." Forces in opposition to the Russian Government and President are trying to capitalize on these feelings; they hide behind populism and play on the feelings of people who grew up under a totalitarian system, which consistently pursued a policy of ideological and territorial expansion.

The contraction of the geostrategic expanse of the former Soviet Union, as an objective result of its collapse, is associated in certain military and political circles with territorial loss, especially when one looks at the western republics, now the sovereign states of Ukraine, Moldova, Byelorussia, and the Baltic countries. Therefore, it is unlikely that any other interpretation of the Kurils problem can be expected.

The Russian population of the Kurils manifests a heightened insecurity with regard to the territorial problem, which is natural when one considers the negative factors that have arisen with the sovereignty of the republics of the former Union, such as anti-Russian nationalism, discrimination against the Russian-speaking population, the appearance of refugees, and migration.

The complicated history of Japanese-Russian relations has produced a stereotypical mistrust of the Japanese and their "Asian treachery" in certain sectors of the Russian population. "Good-neighborliness and friendship" -- the main political slogan of reconciliation and normalization of bilateral relations -- has for the most part been discredited by Japan's obsessive and ultimatum-like official propaganda regarding the return of the four islands.

Tokyo's strategy of relations with Russia, based on the principle of "inseparability of politics and economics" has a negative effect on the socio-political opinion that has emerged around this problem. During the stage of post-war international relations, where the former Soviet government refused to recognize even the existence of a territorial problem with Japan, such a course was dictated by objective circumstances: it was necessary to nudge conservative Soviet foreign policy in the direction of acknowledging this problem in relations between these neighbors.

Now, this very same course has become conservative in its turn. In relation to the newly-democratic Russia, which has contributed to ending the Cold War, the implementation of such a policy as "indivisibility" is unjust and insulting. "The Five Principles of Nakayama" was the first attempt on the part of Japan to break the circle of conservative Japanese foreign policy, which is preventing the establishment of elements of trust between Japan and Russia. The Japanese treatment of these principles as formulas for "widening the balance between economics and politics" is clearly correct and timely, although there still needs to be a constructive follow-up.

First, the formula permits the development of mutual economic cooperation between the two countries, and allows them to embark on the creation of a mechanism for the penetration of Japanese capital into the Russian market, with the goal of supporting that market and giving it a civilized character and structure.

Second, it allows the Kurils dispute to be approached from an "economic point of view," removing the pall of political and psychological tension. The formula focuses society's attention on concrete examples of Japan's contribution to the resurrection and development of the Russian economy as a whole, and to the socio-economic infrastructure of the Kurils and the Far East in particular.

Third, Nayakama's plan aims for general principles for the resolution of the territorial problem, applying international "rules of the game" to that end and avoiding the extreme variants which are usually directed at satisfying the interests of only one side and disregarding the interests of the other.

Fourth, and especially important today, it allows trust between the two countries to be strengthened on all levels of socio-political structures: in the center as well as locally, for example between the populations of Hokkaido and the Russian Far East.

Fifth, in sum, it transfers the process of resolving the problem from the plane of "territorial conflict" to that of "territorial solution" on a civilized basis, which, in our opinion, corresponds with the declaration of the Russian President regarding "legality, justice, and humanism" as approaches to its resolution.

At one of the seminars conducted in Tokyo in early spring of this year under the aegis of IMEMO, RAN, and the Social Council for Security in Japan, the author of this analysis proposed a political solution to the territorial problem as the possible Russian position to be adopted at the first-ever state visit by the Russian President to Japan.

A modernized version of the five-stage plan formulated by B. N. Yeltsin in January of 1990 is the basis of the Russian position. The plan was modernized by combining two separate stages in the original plan: the conclusion of a peace treaty and resolution of the territorial question.

In other words, in the conception explained below, expressed in international legal language and in the form of two theses, a compromise is spelled out between the current Japanese and Russian positions on the peace treaty and its key element -- the territorial problem.

Thesis 1: A declaration on cessation of Russian sovereignty over the two islands of the Lesser Kuril Chain with a relatively short transition period for the political, socio-economic, military-strategic and psychological adaptation of the two peoples to the new situation.

Thesis 2: A declaration on the inclusion in a peace treaty of an article pertaining to the cessation of Russian sovereignty over the other two islands after "X" years, with a corresponding transition period for the conclusion of Russian, and the initiation of Japanese, sovereignty.

Relative to the time parameter and the object of sovereignty, the problem in this conception is divided into two parts: 1) "a relatively short" period for the transfer of sovereignty for the islands of Shikotan and Habomai; and 2) "X years" for the islands of Kunashir and Iturup.

Bearing in mind that this will be somewhat subjective, we will attempt to give a quantitative assessment of the four main factors: political, socio-economic, military, and psychological (the last being considered the decisive factor), which at the present time determine the degree to which the Russians are prepared to resolve the territorial question on the basis of the conception outlined above. We give a prognosis on a scale of zero to three, from "not prepared" to "prepared" in relation to the three factors mentioned above, which when summed up give an overall, definitive assessment of "psychological preparedness" (with a potential total of 9).

FACTORS	FIRST TWO ISLANDS (Shikotan, Habomai)	SECOND TWO ISLANDS (Kunashir, Iturup)
Political	3	1
Socio-Economic	1	0
<u>Military</u>	<u>2</u>	<u>0</u>
Psychological (Total)	6	1

As we can see, the differential is sufficiently large. To facilitate change of sovereignty over Kunashir and Iturup immediate measures are needed to encourage both sides to formulate socio-economic programs for the development of these islands and the adaptation of their population to new conditions, and also measures to compensate the military sphere for potential losses to Russian security in the Far East.

Let us examine three potential resolutions of the "Northern Territories" problem from the point of view of a qualitative analysis of the military-strategic situation arising from these, which will require the two sides to make compensatory efforts.

Scenario 1: None of the islands is transferred to Japanese sovereignty. In this case, the conclusion of a peace treaty in the foreseeable future is practically impossible. The territorial problem will remain an irritating factor in Japanese-Russian relations. Mistrust and uncertainty in the military-political sphere will remain and be intensified. This will prevent the demilitarization of the islands and corresponding measures being taken by Japan on its own territory, for example on the island of Hokkaido.

The general grouping of Russian forces in the Far East, however, will diminish naturally because of the reformulation of army and naval structures (the transition to corps and brigade system for the army and its divisions and their general reduction as an unavoidable result of the rejection of a mass army in favor of a professional one). Nevertheless, it will continue to have an anti-Japanese and anti-American orientation.

The "Northern Territories" conflict will play a particular military role in covering the mainland part of the Russian Far East on the forward defense borders, and also in the planning of storm/landing operations in the "Kuril-Hokkaido" theater of operations.

The implementation of Yeltsin's five-stage plan is improbable. It is possible that confrontational situations around the islands could arise, which would slow progress towards a peace treaty and would undermine earlier efforts to lay a foundation for full commercial-economic relations.

On the military-strategic front, Russia cannot lose, however, she also cannot win, and might even damage its position in the Asian-Pacific Region by losing a potential partner in a possible collective security system for this region. Hopes for a positive economic and financial influence on the Russian economy at a critical moment in its reforms would not be realized.

**Balance of Japanese and Russian Forces and Means
in the Kuril-Hokkaido Operational Theater
(June 1992)**

	<u>Russia</u>	<u>Japan</u>	<u>Ratio</u>
Divisions	1	4	1:4
Personnel	7,200	61,600	1:8.5
Tanks	41	683	1:16.7
Fighter Aircraft	31	93	1:3
Attack Helicopters	4	94	1:23.5
Artillery	582	763	1:1.3

In the assessment of the military, the Kurils play an important role in the defense of the Russian Far East, in as far as they do the following: present a natural defensive barrier against approaches to the Primorskii and Sakhalin areas, ensure stability for the strategic nuclear forces in the Pacific ocean, and prevent free access by the air defense and naval forces of the "enemy" to the area of the Sea of Okhotsk. The Kuril Straits provides a year-round exit for ships of the Pacific Fleet to the world's oceans.

All of this forces military circles to adhere to the point of view that the transfer to Japan of even some of the Kuril Islands will destroy the achieved balance of strategic forces in the world, which "is the main guarantor of security."

In the meantime, while recognizing the necessity of eliciting a declaration from the Russian President on the withdrawal of forces from the southern Kurils and their subsequent demilitarization, military circles have underlined the need first of all to resolve the question of comprehensive confidence-building measures in the military sphere between Japan and Russia in the Far East, before tackling the withdrawal of forces and the demilitarization of the islands.

In this way, according to the military's understanding, the territorial problem is not rejected, as the five-point plan for its resolution is accepted; however the political aspect of the problem is totally excluded in as far as it consists of the reorientation of the strategic conception of containment in the Far East from perceiving Japan to be a "potential enemy" to recognizing that country as a "potential partner."

Scenario 2: Sovereign rights over the two islands of the Lesser Kuril Chain (Habomai and Shikotan) are transferred to Japan. This scenario has great chances for realization, considering the number of political statements made by the current Russian leaders in support of the Declaration of 1956.

The transfer of these islands to Japan does not influence the balance of forces of the two sides in a practical sense, with the exception of the loss of a closer zone for radio, and radio-technical defense of the island grouping of Russian forces in the Far East.

On the strategic front, the loss of one of the passages uniting the Sea of Okhotsk with other areas of the Pacific Ocean will be felt by air-defense and anti-ship forces on the border of the entrance for American (PLARB) and multi-mission submarine forces, and also for carrier strike groups in the Sea of Okhotsk.

However, what may be more noticeable is the loss of an undetected passage for Russian submarines, including those from the strategic nuclear forces fleet (with ballistic missiles on board), from the Sea of Okhotsk into other areas of the Pacific Ocean. For example, the Japanese side will be able to totally control the Yekaterina Straits (between the islands of Kunashir and Iturup) with the help of hydro-acoustic and navigation equipment, based on the island of Shikotan.

In a confrontational situation this could affect the battle reliability of missile-armed submarines scrambling for battle patrol or returning to base. In the meantime, it is worth considering the possibility of arranging for their passage through other island straits of the Kuril archipelago.

The losses of a military-strategic character for the Russian side are relatively small. Compensation could be realized through relatively simple political measures along two lines:

1. By widening the Russian-US strategic dialogue in order to achieve a more radical agreement on the mutual reduction of naval activities in the regions already agreed to earlier that are critical to the security of one of the sides. Examples include special limitations on passage through the straits of submarines (only permitting passage on the surface) or more radical agreements on the permissible tonnage of ships which pass through the straits at one time (in the spirit of the Montreux Convention, which regulates the regime of international straits). It would be possible to agree upon adequate reductions of PLARB deployed in military patrol in the Pacific zone by all sides.
2. By achieving a Japanese-Russian agreement on the creation of a zone of trust or a demilitarized zone that includes the forward-most islands under Japanese sovereignty, with guarantees that land, intelligence, and active air defense forces will not be deployed.

In the context of realizing the task of fully normalizing Japanese-Russian relations, the transfer of two islands could become a significant political victory for both sides, but not to the degree that it could fully solve the problem of concluding a peace treaty. A peace treaty -- as an indicator of fully normalized relations between Japan and Russia -- is nearing, but still remains in the distance. In order to reach it, new efforts by politicians are earnestly needed to strengthen trust between the two peoples at all levels of their social structures.

In our opinion, given this scenario of events, it would be incorrect to proceed from the proposition that the question of the territorial jurisdiction of the islands of Kunashir and Iturup be placed before the International Court of Justice for consideration. History indicates that not one single, serious territorial problem has been submitted as a subject of conflict to this international organ. For example, China and India have not done so, neither have Pakistan and India, nor England and Argentina. Any decision by the International Court would be regarded psychologically by the peoples of the two countries as having been enforced from above. However, it is possible that on the basis of such a decision a peace treaty might be concluded, but it will forfeit the main

goal: full normalization of bilateral relations in the spirit of trust, good-neighborliness, and partnership.

Scenario 3: This is the variation with the maximum positive outcome (directly for Japan and a relatively positive outcome for Russia) resulting from the events preceding a peace treaty. Such an outcome is directly linked to the full normalization of Japanese-Russian relations.

In their political and military-strategic plans the two neighboring states make the transition to a new quality of relations. A line would be drawn under a complicated past. A full-fledged balance between politics and economics would be established. For Russia this means:

First, that one of the largest and most influential powers of the "Western world" becomes her partner in the Asia-Pacific region, and also on a global scale.

Second, that partnership relations with Japan will facilitate entry of the new democratic Russia into the community of civilized states, including the European, Asian-Pacific, and global institutions of economic, political and military cooperation.

Third, that a political mechanism for bringing the financial and economic potential of Japan into the market transformations of the Russian economy will be initiated, first on all in the Far East and Siberia.

The military ramifications of such a scenario, if examined in isolation from the political effects, may seem problematic for Russia, seeing as the geostrategic position of Japan will improve considerably. In the military's assessment, the transfer of the four islands to Japan will lead to the following losses for Russian security in the Far East and to corresponding gains for Japan in that same sphere:

Russia "Loses"	Japan "Gains"
Reduction in the military effectiveness of forces by a factor of 1.5-2	Increase in the effectiveness of aerial surveillance forces by a factor of 4
Reduction in the military effectiveness of naval strategic nuclear forces by factor of 1.5-2	Expansion of the zone for long-distance radio-technical surveillance by factor of 2
Economic burden of relocating troops -- 1.4 billion rubles (in 1992 prices)	Increase in the accuracy of detection of atomic submarines by factor of 9 (from .1 to .9)

The table above reflecting "loss" and "gain" characterizes the way of thinking of military analysts during the Cold War, the period of military-political conflict and the confrontation of ideas and socio-economic systems. All of the parameters presented in this table are significant only within the framework of a "dual" construction of the world, divided into two antagonists -- East and West.

We should recall that all military groupings now deployed in the Russian Primorye region, with forward forces on the Kurils, can be described in two strategic ways: anti-American (plus anti-

Japanese and anti-Korean) and anti-Chinese. The Far-Eastern theater was, for the former Soviet Union, second to the European theater of military activity. The fate of parity was decided in Europe, which in the Cold War determined the basic form of the conflict between West and East.

Military calculations regarding a reduction in the level of Russian (even just one year ago -- Soviet) defense capability in the Far East, in connection with "the loss" of the four islands, would be significant only if one of the following five circumstances came about:

- a. Russia, as before, found itself in a state of "Cold War" with the West;
- b. Russia was preparing for a third world war, and consequently for a barrage of attacks from Japan and the US, which would be unavoidable under the former military doctrine;
- c. Russia was not interested in forming a reliable economic and political partnership in the East;
- d. Russia rejected its role as a Pacific state that was sincerely interested in the collective security of the region, based on principles of good-neighborliness, cooperation, and non-aggression;
- e. Russia disregarded its own economic interest and rejected the opportunity of using Japanese financial-economic potential for the transformation of the Russian Far East.

In conclusion, we offer several recommendations:

1. The five-stage plan of B.N. Yeltsin fully meets the task of settling relations with Japan. However, current diplomatic efforts reveal two obstacles:

First, the long period of time to carry it out (fifteen to twenty years).

Second, and most crucial: the achievement of a resolution of the territorial question not in the course of a peace settlement, but after it has been concluded.

2. All of the financial outlays associated with the relocation (disbanding) of troops deployed on the South Kuril islands, and also the unavoidable loss of real estate, could be compensated for in the framework of agreements with Japan on a peace treaty, under conditions of a joint resolution of the territorial problem.
3. The demilitarization of the four islands, noted in the plan of the Russian President, could be achieved in the course of reforming the military forces of the former USSR. This is unavoidable and will be taking place on Russian territory as a result of the emergence of a new geopolitical situation linked to the CIS.
4. From the perspective of relations with Japan, it would be wise to link such a demilitarization with mutual obligations to reduce the military activity of both sides around the four islands, taking into consideration the air, sea, and intelligence activities, which are, for the most part, currently carried out against our strategic forces.

Giving to the island region the status of a permanently "demilitarized zone" would exclude the possibility of its being used in the future to enhance the military potential of the USA as a strategic ally of Japan.

5. It is possible to find a whole range of solutions for transferring the four islands to Japan which are advantageous for Russia in the military-political, economic, and socio-psychological senses. The most important thing is to defend Russian interests, including the civil and economic rights of the population of these islands.

Translated by the Strengthening Democratic Institutions Project

APPENDIX L [PAPER 2]

ON THE SECURITY DIMENSION OF THE NORTHERN TERRITORIES

Masashi Nishihara

One of the important issues related to the Northern Territories is its security dimension. Its significance, too, has changed since the end of the Cold War. During the Cold War, Moscow regarded the Sea of Okhotsk and the Kuril chain as strategically important to protect strategic nuclear submarines, which were to have second strike capability against US attacks. The Sea of Okhotsk was "a sea bastion." Today, as Russia and the United States are trying to develop a partnership, the probabilities of confrontation have become highly reduced, thus lowering the value of Moscow's "sea bastion" to strategy. Moreover, changes in the technology of modern warfare raise questions about how important the disputed Northern Territories are militarily.

Until recently, Moscow deployed a one-division size army or about 10,000 troops on the islands, with armored transport vehicles, tanks, 130-mm cannons, anti-air missiles, and M1-24 attack helicopters, plus some 40 MIG-23 fighters. During his visit to Tokyo in April 1991, President Gorbachev announced that the Soviet Union would withdraw some troops from the disputed islands. The Russian government, in March 1992, announced that it had reduced troops on the islands by 30%. Yeltsin's five-stage plan for the islands includes the demilitarization of the islands. These steps and pledges by Russia suggest that Moscow no longer sees the need to deploy one division there.

The Russian Pacific Fleet maintains over 400 personnel on Iturup, Kunashir, and Shikotan. Their mission is primarily to ensure navigational safety and to help the army defend the islands. In addition to small contingents of navy coastal artillery and rocket troops, those engaged in communications and intelligence-gathering activities seem to constitute the major force on the islands.

Yet, within the Russian navy, two divergent views of the strategic importance of the disputed islands seem to exist. A reformist school of thought maintains that the islands can be demilitarized or returned to Japan within the framework of a new Japanese-Russian partnership. However, a traditional school of thought considers that the four islands being claimed by Japan are crucially important to the safe navigation of the Russian navy between the Sea of Okhotsk and the Pacific. They argue that if the islands are returned to Japan, the Friz (Etorofu) Strait, between the Urup and Iturup islands, and the Yekaterina (Kunashiri) Strait, between the Iturup and Kunashir islands, would be used by Japan and the US to enter the Sea of Okhotsk with little difficulty.

However, in actual practice today, the Russian navy rarely uses these two straits, as Japanese and American sources confirm. This is probably because Russian submarines passing through the Friz Strait have a high probability of being detected by the US, and although quite deep (583 meters), the Yekaterina Strait is crooked and difficult to navigate.

One Japanese source claims that Russian naval ships usually use other straits in the Kuril Islands, namely the First Kuril Strait (Pervyi Kurilskii Proliv), the Kurzenshtern Strait (Proliv Kurzenshterna), and the Bussol Strait (Proliv Bussol). The First Kuril Strait is known to be used

for military purposes only, as it is the shortest route, and perhaps the safest way, between the Sea of Okhotsk and Petropavlovsk, one of the two most important naval bases that the Russian Pacific Fleet possesses, the other being Vladivostok. The fact that the Soviet/Russian navy uses the Fourth Kuril, Kurzenshtern, and Bussol straits rather than the Friz and Yekaterina straits can be confirmed by American sources as well.¹

As was mentioned above, the conservative school of thought in the Russian navy fears that, once the disputed islands are returned to Japan, the free and safe use by Japan and the US of the Friz and Yekaterina straits would give the two countries a military advantage. However, a closer analysis of the situation suggests that the return of the islands to Japan is not likely to affect the Russian position very much. First of all, as already stated, the Soviet/Russian navy has not used the two straits frequently in the past. Second, in both peacetime and wartime, Russian surface ships and submarines will be able to pass through the two straits, if they wish to, as these are international straits. As part of any agreed settlement of the dispute about the two larger islands, Japan and Russia can confirm that these are indeed international straits. Third, because the Yekaterina Strait is difficult to navigate, American and Japanese ships would find it hard to use. As far as the 19-nautical-mile-wide Friz Strait is concerned, the Russian navy will be able to pass through it rather comfortably. Russia will be able to use its 12-mile territorial water on the side of Urup, plus a 4-mile international water zone at the center, since Japan will probably claim only a 3-mile territorial water, as it does for all other international straits along the Japanese archipelago.

The same "hawkish" view in the Russian navy opposes the return of even the two smaller islands, as one of these, Shikotan, is said to have hydro-acoustic facilities which monitor navigation in and around the Yekaterina Strait. With modern technology, such facilities can be substituted with other means. This should not hinder the return of Shikotan. Similarly, the argument in Moscow may be that the return of Iturup to Japan would require Russia to relocate its intelligence-gathering facilities, which monitor the Friz Strait. Russia could seek compensation for the cost of this move to Urup as part of the final settlement. Moreover, as Russian-US relations and Japanese-Russian relations improve, the importance of such activities will decline.

A creative search for a solution, as part of a peace treaty, might find that the presence of Russian naval facilities on Iturup could be maintained for a set period (with the possibility for renewal), analogous to Germany's provision for Russian forces to remain in its eastern sector. This would better meet the Russian navy's concerns.

In sum, changes in both technology and politics have diminished the military value of the disputed islands. With reasonable flexibility from both parties, a satisfactory compromise could be found that resolves this dispute without significant loss to the real security concerns of either Japan or Russia.

¹ See the map shown in the Pentagon's Soviet Military Power 1989, p. 114.

APPENDIX M

APPENDIX M

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APPENDIX M [PAPER 1]

THE SITUATION IN RUSSIA: ANALYSIS AND FORECAST

Alexei Kiva

1

As of June 1992, the political process in Russia remains exceptionally dynamic and unpredictable. It may be dangerous to project future trends, as they frequently and unexpectedly change, reverse themselves, or disappear, only to be replaced by new ones.

The main centers of power -- the military, the political parties, organized worker's movements, managers etc. -- have not yet become active. The biggest danger comes from the marginal political forces, particularly the *lumpen* proletariat, not because of its condition (unemployment, alcoholism), but because of its mentality, psychology and habits. Part of the intelligentsia, technical as well as humanitarian, is joining the *lumpen*. They are all infected by neo-communist, national-communist and obviously nationalistic ideologies. But we should make some corrections here.

First, Russia's current period of deep social crisis is characterized by the collapse of old ideals. The ruling democrats are incapable (and do not find it necessary) of offering society new exciting ideas which could unite the nation. The leaders are unable to identify clear goals, and the standard of living of the masses is decreasing dramatically. In such times, positions and actions tend to have an irrational character.

This is especially true in a country where the national consciousness has been irrational for centuries. The intelligentsia is infected by the incurable virus of idealism, and its activities are far removed from reality. This is why there is a danger that as the crisis worsens, irrationality will overpower social life and make it unpredictable.

Second, although the marginal forces are not capable of creating a "coup party," they are quite capable of organizing an uprising. This was clearly demonstrated recently, when the joint forces of neo-bolsheviks and national-bolsheviks picketed the Central Radio and TV Station in Moscow for an entire week. In an acute crisis, any uprising or local coup is likely to snowball, especially if it is supported by the population and does not encounter the necessary government resistance.

Third, we should remember that more powerful forces stand behind the marginal political forces. They are well-organized and have a strong base in different strata of society. The opposition on the streets joins forces with the opposition to the democrats in Parliament and in the local councils. The parliamentary opposition is becoming increasingly aggressive and uncompromising, and is taking the struggle from the Parliament out into the streets.

Fourth, "the street opposition," which has a clearly extreme character, has managed to frighten the population, especially the residents of the capital. Unexpectedly, it turned out that the "street opposition" is organized in militarized groups, like the fascist German assault groups and the

Italian "black shirts."

Fifth, we should not be surprised by the current rise in the activity of neo-bolsheviks and neo-fascists. Outrageous anti-Semitic, and unadulterated fascist propaganda in the country has been spreading for some time, and has not met with any government response. Dozens of pro-fascist publications come out regularly.

Finally, the extremism of the "street opposition" would not be possible, had the government, including the Moscow government, behaved adequately. There is no single explanation for this inadequacy. It is the result of good-hearted nature and political naivete of yesterday's fighters against totalitarianism who unexpectedly found themselves in power and who oppose the use of force. There are also personnel-policy mistakes which have resulted in a situation where key positions in legislative organizations are occupied by people who do not belong there. The government is afraid of being criticized by the democratic press, which often considers simple measures to restore elementary order to be "violations of the rights and freedoms of citizens." It is also clear that the power of democrats is not absolute -- sometimes it is simply nominal. Half of the parliamentarians are communists and nationalists. They are more interested in destabilizing the situation than in restoring order. The situation in the Moscow City Council is difficult: there is a conflict between the executive and the legislative powers. The Constitutional Court is now participating in this conflict.

It is also clear that the media, which is predominantly controlled by the pro-Western liberal-democratic intelligentsia, is more of a destabilizing than a stabilizing factor. In pursuit of sensations, the media has made many reactionary and worthless politicians famous (N. Andreyeva, V. Zhirinovsky and others). The media advertises reactionary parties and organizations. With its hysterical style, nihilism, mockery of everything and everyone, the media provokes the spread of a mood of hopelessness and despair in society, which complicates the work of Yeltsin's government in its attempts to implement market reforms and adopt unpopular but unavoidable measures.

According to all the rules of the development of political processes in the country, a large social explosion should have already occurred. And if it has not happened, it is a sign of the same historical fatalism as the failure of the August 1991 coup, which predetermined the collapse of the communist regime and the imperial Soviet Union. If we forget about fatalism for a moment, however, and try to analyze events logically, the following is clear: the majority of the population is even more critical of the communists and national socialists than of the democrats. Their feelings are more intuitive than conscious, and currently the population does not see the communists and socialists as a force that could replace the democrats. As long as this mood prevails, so will the power of the democrats.

In any case, the strongest opposition force in the country, which was recently born of many different political parties, organizations and individuals, is called *The Russian National Convention*. It is headed by a former KGB general Alexander Sterligov and so far does not present a threat to the democrats. It does not have a social-political basis of its own, or a realistic alternative program, or popular support for its leaders. The basic ideology of the Convention is nationalism. If events in the country and abroad develop in a way that would lead to the spreading of nationalistic moods among the majority of the Russian people, so that politically active and influential members of the society will start supporting the Convention, then the destiny of the democrats will be easy to predict. It will be the worst scenario.

The parliamentary opposition is represented by *Russian Unity*, headed by Sergei Baburin. It consists mostly of nationalists and communists and has been largely discredited in the eyes of the public as a result of its non-constructive position and frenzied criticism of the government.

An amazing thing has occurred in the history of Russia: the extreme left of all colors has united with the extreme right of a similarly wide spectrum of colors and created a joint right-left opposition. Their hatred of democracy and the idea of revanche have united them.

Although the Parliament may be incapable of staging a constitutional coup, the Congress of People's Deputies is quite capable, judging from its present membership and also according to current law. The Congress is becoming more right-wing, and its aggressiveness toward the democratic executive power is growing.

Ruslan Khasbulatov, the speaker of the Parliament, occupies a special place in the structure of the legislative power. He is playing a complicated political game. Avoiding an open conflict with the President (since he is afraid to provoke anger among Yeltsin's supporters and lose the game), he is openly trying to distance himself from the government, using every opportunity to criticize it, so that no matter how events develop, he will stay afloat. In the beginning he shamelessly exploited populist slogans, but when Russian nationalism started gaining strength, he became an active proponent of nationalistic ideas. By threatening some of the former Soviet and autonomous republics, Khasbulatov has caused tension in their relations with Russia. Khasbulatov is certainly a fellow-traveller of the democrats with no stable principles, and one can expect anything from him. He can keep his position as the speaker of the Parliament only if the current balance of forces in the Parliament and the Congress prevails. That is why he often plays to the interests of the right-wing, but also often reprimands them. He will do his best to prevent the premature dissolution of the Congress and new elections -- an idea supported by many democrats.

2

Another important figure in Russia's political life, who is trying to play his own game, is Vice-President Alexander Rutskoi. He is clearly a phenomenon of the young Russian democracy: where the Vice-President can pursue a political course different from that of the President. Rutskoi is impulsive and young and does not have strong potential as a politician. But he is gaining experience, and he is sincere. He also enjoys the support of a large section of the population, especially among military officers, people from the military-industrial complex, and more recently -- the agrarian sector. His youth and his image -- as a brave and decisive general who fought in Afghanistan and who wisely took the side of the democrats during the August coup -- are attractive to many people. This on the one hand, brings him closer to the generals who came to power after the coup, but on the other hand, makes him an unacceptable and hostile figure for the pro-imperial generals and officers who are dreaming, if not about the resurrection of the Soviet Union, then about the rebirth of "Great Russia" -- at least within the borders of the Slavic peoples, and of preserving Russia as a military superpower.

At the same time, Alexander Rutskoi is also a supporter of the establishment of a strong Russian statehood, of keeping Russia united and indivisible, even if it requires the use of military force (he has declared this position many times). He stands for implementing policy from "a position of strength," and for supporting Russian and Russian-speaking populations in the course of the inevitable inter-communal and inter-ethnic conflicts following the disintegration of the empire -- the USSR.

For a while, Ruslan Khasbulatov was planning his tactics in order to involve Alexander Rutskoi in his game against Boris Yeltsin and the democrats, and it seemed that Khasbulatov was succeeding in this. But, as an extremely unscrupulous person and one who often miscalculates his

moves, Khasbulatov frequently exposed Rutskoi, which made Rutskoi back off. Yeltsin and his entourage softened their generally negative attitude towards the obstinate Vice-President and he was offered an independent and very difficult area of work -- the development of agriculture. So far, any important politician who has been given this kind of task (which is hard to accomplish under Russian circumstances) has been considered just another victim of the political game. Rutskoi, however, has showed amazing energy and stubbornness; he has not lost but gained authority in the eyes of the masses.

In general, Alexander Rutskoi should be considered a political figure of the democratic camp. The processes developing in this camp are very complicated. The so-called "party of power," i.e. the *Democratic Russia* movement, which played a key role in the struggle against the communist regime and the disintegration of the imperial USSR, turned out to be poorly prepared for the struggle under new circumstances, and as a result of inertia, followed the opposition line with regard to the government, which was already democratic and which was actually brought to power by the movement itself. This inevitably led to disorder and instability among the members of the movement. It led to a split in the movement and the appearance of extremists on the left and right.

A number of circumstances played a drastically negative role in the development of the movement. On the one hand people did not understand that the transition of such a huge and extraordinary country as Russia from totalitarianism to democracy, from a pre-market to a market economy, is not a one-time event or a rapid process. It is a whole historical era with many stages, within which the co-existence of old and new structures is inevitable. Other factors are inevitable as well, such as: a temporary drop in living standards; an increase of crisis phenomena in all spheres of society; unrest among the masses; the growth of corruption; the legalization of criminal capital; and the development of speculation, middle-man activities and other business operations that promise quick profits at the expense of production.

The pro-Western radical intelligentsia failed to understand that it is impossible to transplant Western institutions, and structures of economic and social life, in their "ready-to-eat" form onto Russian soil. One cannot ignore the experience of the "belated development" of the new industrial countries and Japan. We are still experiencing the negative influence of the "post-communist syndrome," when people try to expel everything that might have objectively served the interests of democracy just because it directly reminds them of the communist regime. This includes, for example, the role of the state in the transitional process with its regulating functions, the development of a strategy for the transitional period (which the democrats do not have), and a realistic understanding of the role of market relations. The *Democratic Russia* movement, however, expects the market to take care of everything as long as the state is out of the way. The fear of strong political parties is the expression of the same syndrome and it is also typical of *Democratic Russia*.

On the other hand, the leaders of the movement did not realize in time that Russia is going through a period of a national-democratic revolution and nation-state building, similar to the former Soviet republics. During this period, the growth of interest in nationalism is inevitable, and outbursts of nationalism and chauvinism are only too likely to occur.

Many Russian democrats, especially the left-radical intelligentsia, have openly ignored this reality. They placed human values above all, setting individual rights and freedoms against the interests of nation states, especially the Russian state. They have mocked the ideas of "patriotism," "love for one's Motherland," and many elements of Russian history and Russian life.

This behavior of the left-radical intelligentsia is especially unforgivable under the circumstances which somewhat remind us of those which existed in Germany when Hitler came to power: a dramatic deterioration of the living conditions of the masses; the loss of the object of

national pride (which in our case was a strong state, "the guarantor of peace and independence for many nations," "the advanced social structure," which has "no unemployment, no exploitation of one person by another," etc.); national humiliation caused by surfacing destitution, poverty, and the fact that the country is begging the rich countries of the West for help -- countries which, they say, will certainly dictate their own conditions to Russia.

Taken together, as one should have expected and as some Russian political scientists have predicted, this has led to a rise of nationalism in Russia, which has yet to peak. There are also moods of healthy patriotism, the natural desire to create a strong democratic Russian state, which as a result of geopolitical circumstances, was meant to become the bridge between Europe and Asia; and which because of its ethnic roots and its historical-cultural peculiarities is a Eurasian state. The pro-Western intelligentsia, however, is not willing to recognize this.

There were no other strong political parties or movements in the democratic camp until quite recently. The Movement for Democratic Reforms, which was created by well-known liberal politicians of the former Soviet Union (Yakovlev, Shevardnadze, Popov and others) did not become strongly rooted in society and did not succeed in exerting significant influence on the political life of the country. The recently created movement *Young Russia* (social democrats and other small parties) does not have any significant influence on the society yet.

3

On June 21, 1992, however, the situation in Russia's political life principally changed. A powerful, quite civilized and constructive opposition to the ruling democrats in the framework of a democratic paradigm in the widest sense of the word was created. This took place with the creation of the *Civic Union*, which united Rutskoï's *Free Russia*, Volsky's all-Russian union *Renewal*, Travkin's *Democratic Party* of Russia, the parliamentary party *Change, New Policy* and a number of other organizations and independent politicians. Each party represents real forces and interests. The *Civic Union* is capable of proposing its own alternative to the reforms or of taking the place of today's democrats and following their course. It could also form a coalition with the democrats, or become President Yeltsin's main basis of support.

The creation of the *Civic Union* also means that Russian democracy has passed one of the critical stages in its development. Rutskoï and Travkin, together with their parties, or at least with a majority of their members, might have found themselves among the real right-wing nationalistic opposition, which consists of parties openly hostile to Yeltsin in both domestic and foreign policy. They might have ended there together with the constitutional democrats, the Christian democrats (who are actually false constitutional democrats and false Christian democrats), and others: in other words, together with Sterligov, Astafiev, Aksiuchits, Pavlov, Baburin, Mokashov and other extreme right-wing political leaders.

But the creation of the *Civic Union* also means that the political pendulum in the country will be inevitable moving to the right. This means promoting the ideas of power, patriotism, and a more decisive protection of Russian national interests and establishing a firmer approach in relations with the former autonomies and republics. It could mean a firmer stand in relations with the West, if the West exerts crude pressure on Russia, and attempts to benefit from its current troubles.

Western observers, especially in the US, frequently do not even try to understand the balance of forces in Russia, or the details of the political struggle. More importantly they ignore the Russian national character, which is very different from their own national consciousness. This will play into

the hands of the extreme right-wing forces and promote the drift of the *Civic Union* to the right, to nationalism.

The G-7's blocking of its promised hard currency assistance which was intended to stabilize the ruble and create the conditions for its convertibility, and the G-7's conditioning this help on the satisfaction of humiliating political demands, will seriously weaken Yeltsin's position and strengthen the opposition.

The following conclusions are obvious:

1. Right-wing nationalistic forces are gaining strength in Russia's political life. Under certain circumstances they might become the majority in the political process.
2. The communists are not capable of being an independent political force today. They are trying to adjust to the situation and to hide behind the so-called patriots. However, as the situation deteriorates further, and the poverty of the masses worsens, national socialism is quite likely to become an influential force in society.
3. Russian fascism in the original meaning of the word does not have a future in Russia. It is a multinational country with old traditions of Messianism, and is based on principally different ideas. Communism "conquered" Russia because of this internationalism.

4

Possible scenarios for the development of the political process:

Scenario 1. Development continues within the framework of the current political paradigm. Yeltsin still commands high (when one considers the currently very difficult situation in society) authority in the eyes of the masses. Public opinion polls, including the latest ones, show that his rating is the highest among political leaders. He has a stable 30% of support, Khasbulatov has 3%, Baburin, the leader of the parliamentary opposition faction *Russian Unity*, has 1%. Rutskoi, however, who had 13% in the beginning of June, now rates at 30% (the end of June). Why? He has issued strong statements about "restoring order" in Moldova and Georgia. This is a symptom of the current political situation in Russia: those politicians who demonstrate their readiness to "protect Russia's interests" and the interests of the Russian-speaking populations, are gaining popularity.

And yet, as the most influential politician in the country, Yeltsin objectively, and through the mass media, appeals to the population for support. He forces the Parliament to make concessions, and succeeds in the implementation of the planned reforms. It may even be possible that to some extent it is better for the President and the government to have a weak Parliament, torn apart by contradictions, than to have a strong one. In this way the government can blame the Parliament for all the failures in the reform process, which may be the result of its own mistakes and wrong decisions. Everything has its limit, however.

If the situation dramatically deteriorates, as a result of the non-constructive position of the Congress of Peoples' Deputies (which Parliament is technically subordinate to) and the continued erosion of the authority of this artificial legislative organ, Parliament itself, yielding to pressure from the President and the government, may decide not to convene the Congress anymore in order to

prevent further deterioration.

In this case the resolution of the "Northern territories" problem will be very difficult but *not impossible*. On the one hand, the President, the government and a large number of supporting deputies, arguing their position with the help of facts that prove that Russia would benefit from the resolution, will appeal to public opinion. On the other hand, political opposition to the democrats will do its best to discredit their attempts and to blame the government for "betraying national interests" by "selling the Motherland." They will also appeal to public opinion.

The Constitutional court is more likely to support the opposition, since it has been interfering in the reform process from the position of protecting a "united and indivisible" Russia.

Scenario 2. The conflict between the executive and legislative powers climaxes and is not resolved by constitutional procedures, which were created by the communists to serve their own interests. Reforms reach an impasse and unrest among the population grows. Under these circumstances, the President acts independent of Parliament and calls a referendum to decide about the dissolution of the Congress (and perhaps even of the Parliament) and about organizing new elections.

He also puts the question of the new constitution for the country to referendum. It is likely that if the President wins the referendum with his version of the Constitution for a "Presidential republic" (versus the Parliament's version of a "parliamentary republic"), the issue of borders will be formulated in a way that would make it possible for the President to resolve the issue of the "Northern territories" without another referendum or without the approval of the Parliament.

A few problems remain. If the Parliament is dissolved, the "Presidential party" *Democratic Russia* is unlikely to win many seats in Parliament in the new elections. *The Civic Union*, which stands on "state-patriotic" positions and which is likely to be against the transfer of the "Northern territories" to Japan, might become the most powerful parliamentary faction. *The Civic Union* will certainly support the deputies of the right-wing nationalistic parties, who will most likely strengthen their positions after the new elections at the expense of the communists.

Secondly, if the Constitutional Court remains in its present form, (since it is difficult to imagine how it can possibly disappear or radically change its staff in the framework of the democratic transition from totalitarianism to democracy,) it will certainly pass a verdict of "unconstitutional" with regard to a transfer of "Russian territories" to Japan that does not consult the Parliament or its commissions, etc. Judging from the declarations of the Chairman of the Constitutional Court and from the decisions of this organ, it is obvious that the preservation of the unity and indivisibility of Russia takes priority over the right of nations to self-determination.

Thirdly, the President will have to overcome the resistance of the most powerful forces at the time when the question is submitted to the above referendum. Only *Democratic Russia* supports the idea of a referendum, whereas right-wing, centrist and even some left-center parties, including the *Civic Union* oppose it.

Scenario 3. The conflicts in the society reach their peak, the situation deteriorates to the point where people demand the rapid "restoration of order" at spontaneous mass meetings. The President, using his devoted military troops, imposes a state of emergency, dissolves the bankrupt Parliament, and puts an end to the activities of all of the opposition. Under these circumstances, with Western support (since the West understands the necessity of choosing the lesser of two evils) and with supportive steps from the Japanese government, the President may make his own independent decision on the issue of the "Northern territories." But in this case it is necessary to

find a mutually acceptable resolution, one that would satisfy the interests of the Russian army, the population of the islands and Russia's economic interests, etc. A legal basis for the resolution should be developed. Especially since it exists in reality, and there is no need to invent it.

Scenario 4. The situation is the same, but right-wing nationalists come to power. The issue of the "Northern territories" is totally removed from the agenda. Under the current circumstances, however, a right-wing nationalistic government does not have a future, so it will not stay in power for long. On the other hand, having found themselves in international isolation, right-wing nationalistic forces, as well as any other reactionary force, will in the end be forced to look for ways to resolve disputes, particularly with Japan. This is especially true for forces which are essentially democratic, but which are against redrawing Russian borders.

Scenario 5. During President Yeltsin's visit, Russia, as the USSR's successor state, confirms the validity of the Russian position on the two islands. In accordance with the 1956 Declaration of the Soviet government, Russia declares the other two islands to be subject to negotiations. The following should be taken into account:

First of all, President Yeltsin will have to be able to resist an explosion of criticism from the right-wing forces and from everyone who opposes the return of the territories seized by Stalin to Japan.

Second, the President will have to be able to explain to the population that this act serves national interests, and the interests of the peoples of Russia, and that it reflects the spirit of the new Russia which has resolved to take the path of law and justice.

Third, the democratic media should organize an appropriate explanatory campaign among the population. The majority of the population still believes that the "four islands" are either Russian territory from time immemorial, or that the territory became Russian as a result of many Russian sacrifices in the war with Japan. This campaign should start immediately.

Fourth, after the declaration by the Russian President, Japan should immediately respond with friendly steps. Under these circumstances, the Japanese position (which holds that until the "Northern territories" issue is resolved, Japan will not assist Russia more than has already been agreed in the international aid package) no longer seems productive. This position is considered to be some kind of an ultimatum in Russia and causes a negative reaction. But in any case, a sharp aggravation of the Russian political situation is possible.

Commentary 1. In the short-term, Scenario 5 seems to be the most preferable. Scenarios 2 and 3 are the most likely ones in the medium-term.

Commentary 2. The author of this forecast believes that from the point of view of Russia's national interests it is better to have an Eastern foreign policy that would be as strong as the Western. Otherwise it will be difficult for Russia to have an independent foreign policy at all. Without Japan or against Japan there is no way to form a strong Eastern foreign policy. But without the resolution of the "Northern territories" problem, without the signing of a peace treaty, Japanese-Russian relations cannot develop normally. This is a vicious circle. Thus the main issue is to find a way to resolve the "Northern territories" problem.

Commentary 3. The resolution of the "Northern territories" problem encounters most resistance from the military with its old *confrontational thinking*. The mass group consciousness of

the political and military strategists of the old school has not yet absorbed the fact that the two competing world systems do not exist anymore. There is no basis for confrontation with the West. Since the communist regime no longer exists, there is no country (no USSR) which can confront the whole civilized world. The bipolar world is dead, a new structure of international relations is being created. By resolving the "Northern territories" problem and signing a peace treaty, Russia will avoid having a potential enemy and gain a friendly neighbor.

As soon as the mass group consciousness perceives that Russia is not the former Soviet Union, that it is not the leader of one of the two blocs, but that it is one of many big powers, even though it possesses a huge nuclear potential, the situation will change.

It will take time and appropriate media actions to make this happen.

Translated by the Strengthening Democratic Institutions Project

APPENDIX M [PAPER 2]

OUTLINE OF POSTWAR JAPAN-SOVIET FISHERIES RELATIONS: 1956-1991

Courtney Purrington

Establishment of a Japan-Soviet Fisheries Regime

Before World War II, backed by Japanese naval power, Japanese fisheries operations dominated the Northwest Pacific. Following the conclusion of World War II, the Japanese fishing fleet was restricted by SCAP to delineated areas surrounding Japan and to high-seas areas directly west of Japan. This rectangular area, commonly known as the MacArthur line, was established to contain the Japanese fishing fleet and to prevent fisheries incidents from arising again between Japan and other North Pacific nations. With the loss of Japan's navy and following Truman's proclamations concerning the continental shelf and fishery conservation zone in 1945, the Soviet Union asserted its control over territorial waters within a 12-mile limit.

During negotiations for a peace and security treaty, Dulles and Yoshida exchanged notes on February 7, 1951. Yoshida promised that the government of Japan would prohibit fishing by its citizens where unilateral or multilateral regimes were established, and in areas where Japan had not fished before World War II. As a result, the MacArthur line was subsequently withdrawn. Article 9 of the San Francisco Peace Treaty provided that "Japan will enter promptly into negotiation with the Allied Powers as desiring for the conclusion of bilateral and multilateral agreements providing for the regulation or limitation of fishing and the conservation and development of fisheries on the high seas."

Pursuant to such promises, the government of Japan entered into fishery negotiations with the United States and Canada and signed the International Convention for the High Seas Fisheries of the North Pacific Ocean (INPFC) on May 9, 1952. Under the convention, Japanese salmon fishing was regulated east of a line set at 175' west longitude. The abstention principle, which allowed the United States and Canada to claim management authority over migratory fish stocks outside their territorial waters, stood in direct opposition to traditional freedom of the high seas and set a precedent for subsequent Japan-USSR fisheries negotiations.

Even after the MacArthur line ceased to regulate Japanese fisheries operations in regions adjacent to the Soviet Union, Japan largely avoided fishing in waters near Kamchatka and the Kurils between 1952-56. This was because the safety of the fishing fleet was not internationally guaranteed while a state of war persisted between the Soviet Union and Japan. In addition, Japanese naval power no longer provided adequate protection for Japanese fisheries operations. With the loss of South Sakhalin and the Kurils, Japanese land-based fishery operations were limited in the Northwest Pacific. Nevertheless, the mothership fishing fleets still took 64 million tons of salmon in 1955, consisting largely of stock that spawned in Soviet waters.

The so-called Bulganin Line was proclaimed in March 1956 during Japan-Soviet negotiations to normalize diplomatic relations and sign a peace treaty. In addition, the Soviet Union increased

its harassment of Japanese fishing vessels off its coast in 1955-56. The Bulganin Line provided for exclusive Soviet control over fisheries within an area bounded on the east by a line running southward from Cape Olytorsky to a point 48° degrees north-170° degrees 25 minutes east. The catch of salmon was limited to 50,000 tons between May 15-September 15, with the USSR Ministry of Fisheries given authority to grant permission to Soviet and foreign fishing within the zone. This measure was taken not only to give the Soviet Union greater control over regional fisheries resources, but also for political leverage during the London negotiations. The Soviet declaration of the Bulganin Line, together with the Soviet veto of Japan's application for membership in the United Nations in December 1955, served as powerful incentives for Japan to normalize relations with the USSR.

The Japan-USSR Convention on High Seas Fisheries in the Northwest Pacific Ocean, signed following talks in Moscow between April 28 to May 14, 1956, was the first postwar agreement between Japan and the Soviet Union (while the INPFC was the first international agreement Japan entered into after regaining its sovereignty). The agreement specified that neither side could abrogate the arrangement for ten years and thereafter upon one year's notice (only in this issue area was there anything resembling a long-term shadow of the future for cooperation in bilateral relations). But the agreement, which applied to waters north of 45° degree latitude, only went into effect following the normalization of diplomatic relations on December 12, 1956. The agreement prohibited the use of movable salmon fishing gear within 40 miles of the coast of either party. In accordance with Article 3 of the Fisheries Convention, a Northwest Pacific Fisheries Commission was established in order to regulate salmon catches. The Commission, which met annually, consisted of three representatives each from Japan and the Soviet Union. The agreement established a mutual commitment to the principle of maximum sustainable yield and forced both countries to accept restraints on their fishery operations. Like the INPFC agreement, Japan acquiesced to regulation of Japanese fishery operations in areas considered to be on the high seas.

1956-1977

The Japan-USSR fisheries relationship was the most stable and durable form of bilateral cooperation following the normalization of diplomatic relations. Both sides largely delimited this "low politics" area from superpower competition and related territorial problems. Because Japan feared termination of fishing in the region, it was reluctant to link the fisheries to other issue areas (such as the territorial dispute). For the Soviet Union, the annual fishery negotiations served a valuable role in maintaining contacts throughout the vagaries of bilateral relations during the Cold War. As a result, annual fishery negotiations were held despite the signing of the 1960 Security Treaty, Afghanistan invasion, Polish sanctions, and the KAL incident. Both sides were reluctant to manipulate fisheries as a political pawn in other issue areas. Nor did the United States place pressure on Japan to end its close relationship with the Soviet Union in this issue area with few security dimensions.

Unfortunately for Japan-Soviet relations, a "primary industry" could not serve as an adequate basis for bilateral cooperation as Japanese and Soviet fishery fleets expanded their regional operations. Resource conflicts were inevitable between both nations, which annually ranked first and second in the world in terms of annual catches. As a result, areas closed to Japanese operations were enlarged to include Peter the Great Bay and salmon fishing in the Sea of Okhotsk. Annual Japanese salmon quotas declined from 120,000 tons in 1957 to 65,000 tons in 1961. But a new area

("B") was opened to Japanese operations in 1962, allowing the size of the total catch in 1962 to rise to 115,000 tons. Thereafter, the limits on annual Japanese catches declined to 95,000 tons in 1971 and 80,000 tons in 1976 as the size of Soviet fisheries operations expanded and fishery stocks declined

During the period, the scope of bilateral cooperation was also enlarged to include a non-governmental agreement allowing Japanese fishermen to gather sea tangle (kale) off Kaigarashima, part of the Habomai Group. This agreement lasted from 1963-76. By conducting negotiations between private organizations, both governments were able to bypass the territorial issue. Agreements were also later signed regulating shellfish (tsubu), crabs, and whaling in the Northwest Pacific. Finally in 1975, both countries reached an agreement designed to settle damages to Japanese fishing gear, etc. arising from operations by Soviet trawlers in waters adjacent to Japan. Both countries also agreed to establish scientific testing facilities in South Sakhalin for joint salmon breeding and to hold annual ministerial conferences on fisheries.

The Declaration of 200-Mile Zones and Establishment of Reciprocal Access to Fishery Zones

On December 10, 1976 the Presidium of the Soviet Union declared a 200-mile fishery zone, including the rich fishing grounds around the Northern Territories. This decision followed the imposition of 200-mile zones by many North Atlantic countries, and caused an accelerated shift in Soviet deep-seas operations from the Atlantic to the Northwest Pacific. On February 24, 1977, the Soviet Government announced the decision of the Council of Ministers to extend Soviet jurisdiction effective March 1 (the same day the US 200-mile zone went into effect). In 1975 Japan had taken approximately 1 million metric tons from the areas covered by the Soviet decree. During two rounds of talks, both sides found it difficult to construct a formula separating fisheries from the territorial dispute. The Soviet Union demanded that Japan recognize its fishery zone, which included areas surrounding the Northern Territories. Progress on reaching a settlement was delayed due to the reluctance of both sides to agree to any formula which would diminish their claims to sovereignty over the disputed islands. (The defection of a Soviet pilot in a MIG-25 fighter also temporarily toughened the Soviet bargaining position, one of the few instances where political problems were allowed to affect the fisheries negotiations).

In order to strengthen Japan's bargaining position, the Diet passed two bills on May 2, 1977, extending Japan's territorial waters from three to twelve miles and establishing a 200-mile economic zone. Damage caused to the Japanese coastal fishery industry by the Soviet fleet was another motivation. Since the Soviet Union had annually caught 500,000 to 600,000 tons of fish within the Japanese zone, it responded by banning the harvesting of tangle seaweed (købu) off Kaigarashima and demanded that the Soviet fleet be allowed to fish between Japan's 3-mile and 12-mile limits.

Following such maneuvers, both sides reached a formula for putting aside the territorial issue. Article 8 of the Interim Fisheries Agreement signed on May 24, 1977, which governed Japanese catches in Soviet waters, stated that nothing contained in the agreement shall be deemed to affect or prejudice in any manner the positions or views of either government with respect to the questions relating to mutual relations between both countries (an oblique reference to the territorial question). An interim agreement on Soviet catches within Japan's 200-mile zone was reached on August 4, 1977.

The interim agreements ushered in a new era of Japan-Soviet fisheries cooperation, based upon the principle of specific reciprocity. The interim agreement provided both sides with reciprocal

access to the 200-mile zone of each country. For the remaining six months of 1977, Japan's quota was set at 455,000 tons, while the Soviet quota with the Japanese zone was set at 335,000 tons. (Salmon fishery negotiations were also completed, which reduced Japan's total quota outside the Soviet 200-mile zone to 62,000 metric tons). The 1978 allocations with the Japanese and Soviet zones were set at 850,000 and 650,000 tons respectively. Encouraged by a principle of reciprocity, both sides were relatively generous in their quotas.

In December 1984 both sides signed the "Agreement Between the Government of Japan and the Government of the Union of Soviet Socialist Republics Concerning the Mutual Relations in the Field of Fisheries Off the Coasts of the Two Countries." According to the agreement, Japan and the Soviet Union issue fishing permits, which allow the other party to engage in regulated fishing operations within its zone based on total allowable catches, species composition, and areas of fishing specified in annual negotiations. The agreement established a Japan-Soviet Fisheries Commission, which meets alternately at least once a year in the two countries. In oblique reference to the territorial problem, Article 7 refers again to "nothing in this Agreement shall be deemed to prejudice the positions or views of either Contracting Party in regard to any question of the law of the sea or any question pertaining to mutual relations." The agreement remained in force until the end of 1987, and thereafter has continued with either party allowed to abrogate the agreement upon six months notice. Annual negotiations are conducted in December.

In response to Soviet demands, in 1985 both sides agreed to a principle of equal quotas in each other's 200-mile zone. The 1986 catch was set at 150,000 metric tons, while in 1987 the amount increased to 200,000 tons, 210,000 tons for 1988-89, and 182,000 tons in 1990. According to the 1991 agreement, Japan can catch 182,000 tons for free and 35,000 additional tons for ¥1.12 billion worth of fishery products and equipment. The total number of Japanese boats allowed into the Soviet economic zone was set at 1,396 for fishing free of charge and 63 with fishing fees. Japan also agreed to continue to allow Soviet fishing boats to continue to make port calls at Onahama-shi in Fukushima-ken. In addition, Japanese fishermen are paying Kyokuto Suiki Gyogyo Seisan Kodan (Dalyryba) (Far East Fisheries Production Group) ¥480 million in order to catch 15,000 additional tons of ground fish from the Dalyryba's own allocation. The latter agreement was negotiated at the civilian level. The price paid is about the same as the government agreement (¥32 per kilogram).

The close level of Japan-Soviet fisheries cooperation within each party's 200-mile zone, stood in sharp contrast to Japan-US fishery relations during the 1980s. The United States pursued a coercive "fish and chips" policy which demanded access to the Japanese domestic fish market, Japanese fishing technologies, etc. in return for continued access to the US zone. By the end of the 1980s, after making numerous concessions, the Japanese fishing fleet was "rewarded" for its cooperation by being completely shut out from the US 200-mile zone. Unlike the Japan-US case, there were strong mutual incentives for Japan and the Soviet Union to continue their joint fisheries cooperation. This shows that conflict between Japan and the Soviet Union (and now Russia) was not over-determined by other obstacles such as the territorial conflict, historical enmities, conflict between two differing economic systems, etc. The relatively high level of Japan-Soviet cooperation in this issue area during the Cold War shows that in issue areas with few security dimensions, where there existed strong mutual interests, the level of Japan-Soviet cooperation approximated or even exceeded Japan-US cooperation. With the end of the Cold War, Japanese-Russian cooperation is no longer limited to areas with few security dimensions, such as fisheries. The history of close Japan-Soviet cooperation in this issue area provides some room for optimism that with the end of the Cold War both sides will now be able to surmount other outstanding conflicts in issue areas with high security dimensions.

Resumption of Tangle Gathering off Kaigarashima

Annual non-official negotiations for sea tangle off Kaigarashima, conducted by the Hokkaido Association of Fishing Industries, were resumed in 1981. Because of the political sensitivities involved, the island is not specified and only the location of the agreed upon activities are spelled out in terms of latitude and longitude. The major stumbling bloc of the negotiations has been the license fee paid by the Japanese. Shellfish, shrimp and crab negotiations were conducted after 1985 on a private level.

Salmon

On April 28, 1978 a new Japan-Soviet Fisheries Agreement was signed replacing the 1956 Treaty. The Soviet Union closely monitored developments in the INPFC, which gradually pushed Japanese salmon operations eastward to 175' east, essentially shutting out Japanese salmon operations in the Northeast Pacific (with the exception of illegal catches). Similarly, Japanese salmon operations outside the Japanese 200-mile zone in the Northwest Pacific were gradually reduced by annual reductions in Soviet quotas. In addition, the Japanese pay a "fisheries cooperation fee" in terms of technical assistance in construction of salmon hatcheries, equipment, and a small amount of hard currency. In May 1985 the agreement regulating anadromous stocks outside the Soviet 200-mile zone, which originated in the rivers of the USSR was signed with Japan. In 1991 Japan and the Soviet Union agreed upon a new lower catch quota for Japanese fishing operations outside Soviet waters to 9,000 tons, but increased the quota inside the zone to 8,000 tons. This is because the Japanese pay a higher compensation fee for catches within the Russian 200-mile limit and because such catches can be more closely regulated.

Towards a Multilateral North Pacific Resources Regime?

With the waning of the Cold War, Canada, Japan, the Soviet Union, and the United States began negotiating a new multilateral treaty to replace the INPFC and the bilateral Japan-Soviet agreement of 1984. The new regime bans all salmon fishing in the high seas of the North Pacific. The agreement has already been ratified by Japan. Japanese salmon catches within the Russian 200-mile zone will continue to be conducted through annual bilateral negotiations. Given the economic and military resources of the participating countries, it is expected that other countries will respect the agreement. This marks the beginning of comprehensive resource management among all the major states in the North Pacific. Perhaps, emerging cooperation in this issue area will also serve as the basis for future *multilateral* cooperation among the countries in other issue areas, just as the INPFC and 1956 Japan-Soviet fisheries treaty served as the first treaties Japan negotiated as an independent power with the United States and Soviet Union during the Cold War period.

The Donut Hole

The Donut Hole is a region in the Bering Sea outside the 200-mile zones of Russia and the

United States. As distant-water fishing operations were gradually shut out from the 200-mile zones of the United States, Soviet Union and other nations, the unregulated Donut Hole's rich resources of Alaskan Pollock represented a last opportunity for the dying distant water fishing industries of these nations. Hauls in the international waters of the Bering Sea in 1989 totaled about 1.5 million tons, with Japan's share approximately 650,000 tons. The United States and Soviet Union charged that stocks within their 200-mile zones intermingled with the Donut Hole stocks and were therefore damaged by such unregulated catches, while other governments claimed that there was not enough scientific evidence to support this view.

In response to calls within the US Congress for a ban on all fishing in the region, Japan first proposed multilateral talks on the Donut Hole in 1987 at an INPFC meeting. Both the US and Canadian delegations supported this idea. However, this proposal was eventually rejected by Alaskan fishing fleets and Congress, which thought the United States could control or prohibit fishing in the Donut Hole through either unilateral or bilateral means with the Soviet Union. US officials made arguments (based on Law of Sea and scientific evidence) and also political threats (i.e. a Senate resolution sponsored by Senator Stevens linking trade sanctions with the issue). The State Department's lack of sympathy to the Japanese position caused resentment within the Japanese Government. During Gorbachev's visit to United States in 1990, the US and USSR discussed the problem. But a bilateral solution to the problem was thwarted by defense officials in both countries, who opposed increasing encroachments on the high seas. The Soviet Union was also concerned about jeopardizing its closest area of cooperation with Japan. The United States thereafter agreed to a multilateral solution, marking a turning point for US policy.

Unlike Russia and the United States, who claim special rights (priority) over the area, Japan claims that all countries have an equal right and responsibility for the Donut Hole resources. In February 1991, the first meeting of six countries with interests in the area took place (Japan, US, USSR, Poland, South Korea, and China). All parties agreed to "recognize the need for management measures for fisheries in the long-run." The need for "intermediary measures, until the establishment of permanent management measures" was also agreed upon. The countries were divided into three groups: the US and Soviet Union pushed for a total ban on fishing in the region; Japan was amenable to quotas (favored a catch around 1 million tons) and the deployment of scientific observers to monitor the fleet, while Poland, South Korea and China favored no quotas. With such conflicting interests, no agreement was reached at the first meeting, nor at the second meeting in Tokyo in July 1991. At a subsequent meeting in Spring 1992, the positions of Japan, Russia, and the United States converged slightly but South Korea and Poland still refused to agree to interim measures which would temporarily regulate the Donut Hole until a regime could be constructed regulating the areas. For 1992, the government of Japan unilaterally announced it would restrict Japanese fishing catches to 120,000 metric tons, although with the recent exhaustion of stocks from overfishing even this low figure would not likely be achievable. At the next scheduled meeting, both Russia and the United States are expected to demand a moratorium, due to political pressure from the Russian Far East and from the Alaskan fishery operations.

Both Japan and the United States are currently discussing the establishment of a North Pacific Convention for Tuna Resources, an area currently not covered by the network of regimes covering resource management in the region. Within the Japanese Government, a group of officials favors the replacement of the current myriad of bilateral and trilateral agreements for regional resource management and oceanographic research with a single overarching regime governing demersal species, pelagic species, anadromous species, cephalopods, marine mammals, seabirds, crustaceans, seaweeds, and scientific cooperation in the marine sciences. Given bureaucratic as well as

intergovernmental obstacles, however, this remains a distant goal that would need a "high-level" push to be realized. The construction of regimes governing tanker safety and pollution prevention remains another high priority for the North Pacific rim nations. The importance of such measures in promoting mutual trust within the region and internationalizing the region cannot be overlooked.

Rather than serving as an obstacle to Japanese-Russian settlement of the territorial conflict, resource cooperation in the North Pacific could serve as the basis for building mutual trust among the nations of the region. Construction of an overarching regime and replacing the current patchwork of bilateral and trilateral regimes is needed not only for environmental reasons, but also to serve as a precursor to the eventual construction of an overarching security framework governing the North Pacific.

APPENDIX M [PAPER 3]

THE TERRITORIAL PROBLEM IN THE HISTORICAL CONTEXT OF THE EPOCH

Vassily Saplin

Factors That Led to the Emergence of the Territorial Problem

1. The predominantly negative character of Japanese-Russian(Soviet) relations from the beginning of the 20th century:

The Russo-Japanese War, Japanese occupation of Siberia. Military conflicts (Khasan and Khalkhin-Goll). Relations of mutual distrust and hostility. Both sides perceived one another as a hostile state, a potential enemy. Punishment of the enemy was always considered to be the success of your own policy.

2. Russian public opinion considered Russia's defeat in the 1905 war with Japan and the loss of Southern Sakhalin to be a national disgrace. The idea of a revanche -- territorial revenge -- had wide popular support. Stalin, who had similar ideas and was looking for opportunities, took advantage of these attitudes.
3. After 1917, factors 1 and 2 were reinforced by the ideological confrontation of the two systems. Any victory over imperialism and its "punishment" were *a priori* legitimate. This legitimacy was based on the logic of the class struggle, which was considered to be above international (i.e. "bourgeois") law.
4. Traditional emphasis on force in Soviet foreign policy as a means of realizing state interests: expansionism based on the idea of class superiority, the doctrine of the armed export of the world revolution, and Japan as a "stronghold of aggressive imperialism" meriting any actions which served the interests of the Soviet state.

WWII, from the point of view of Soviet leaders, offered excellent opportunities to realize the goals outlined in 1-4 above.

- By the beginning of 1945, the results of the war in the Pacific were clear. Stalin saw an opportunity to participate in the division of spheres of influence after the defeat of Japan. In order to do that, it was necessary to enter the war.
- The allied powers had to take Stalin's interests into account (through his domination on the German fronts), and at the same time they were interested in Soviet participation in the war in Asia (the US especially feared bloodshed in ground forces operations).

- This led to the *Yalta agreement*. In fact, Stalin's direct demand that the nations agree to the territorial division of Japan to the benefit of the Soviet Union as *compensation for taking part in the war* was satisfied. The Yalta agreement was in fact the result of secret diplomacy between the great powers. The plan of acceptable measures aimed at expelling Japan from the territories it seized as an aggressor, included, according to the USSR's wish, steps aimed at redividing the territories of Japan itself.

The idea that Stalin first of all aspired to *participate in the division of spheres of influence in Asia* (where Japan was one of the main objects of interest), and not to end the war can be proven by the following facts:

- Refusal of Japan's request to participate as a mediator at the negotiations with the US where the conditions of Japan's capitulation were to be discussed.
- The hasty (three days earlier than planned) entry into the war with Japan after her imminent surrender became obvious (especially after the nuclear attack on Hiroshima).
- Plans for occupying Hokkaido and the existence of specially trained paratroopers for this purpose.
- Occupation of the Kurils, notably the Southern Kurils, after Japan had ceased all military activities (occupation of the Habomai Islands took place after the signing of the official Capitulation Act).
- Planned and actual mass use of Japanese prisoners of war for forced labor in the USSR.

Failed attempts to occupy part of Hokkaido and to actively influence the organization of the Japanese post-war structure (since Japan found itself completely under US influence) especially hardened Stalin's position on the Kurils. This led to the inclusion of the Kuril territories into the USSR (February 2, 1946) before the signing of a peace treaty (i.e. their status was changed from "occupied," which implied an annexation). It also led to other violations of international law (deportation of the local population without military necessity, etc.).

Factors That Led to the Preservation of the Unresolved Territorial Problem in the Post-War Era

1. Japan was fully in the US sphere of influence. The beginning of the "Cold War." Japan, being the closest US ally, once again becomes a state hostile to the USSR.
2. The absence of military power of its own, and consequently, the absence of the factor of force in Japanese policy made Japan appear unimportant in the eyes of Soviet leaders in terms of planning its strategy of global competition. The main Soviet goal in its policy with regard to Japan was to tear it away from union with the US, to ensure "friendly neutrality" (to make Japan into a "Finland of the Far East"). The persistent refusal of the weak, but stubborn Japan to change its course caused special irritation among the Soviet leaders, and

led them to realize the necessity of using the language of force in talking to Japan. Force was the only effective measure. Naturally, this did not imply establishing friendly relations or searching for compromise.

With all the fluctuations in post-War Japanese-Soviet relations, their main characteristic was the absence of vital interest in one another and the constantly present "enemy image."

3. Under the circumstances of East-West confrontation, policy in the Asia-Pacific was formed according to military competition with imperialism and the creation of a "socialist bloc" aimed at the expansion of geographical borders. The Soviet Union considered the Southern Kurils to be an important strategic border, which enabled it to have access to the Pacific ocean and to protect the Far Eastern coast. Their possession was considered to be absolutely necessary to ensure strategic stability, which made the problem larger than an issue of Japanese-Soviet bilateral relations.
4. The Soviet government realized that the Kurils had been acquired through use of force, and that this acquisition was a violation of international law. Persistent attempts to create a legal base for the annexation of the Kurils have never fully succeeded: the San Francisco Treaty documented Japan's renunciation of the Kurils, but it said nothing about Soviet sovereignty over them (that was one of the reasons why the USSR did not sign it). There was also no bilateral peace treaty with Japan, which would have defined the border between the two countries. The Yalta agreement was secret and did not have the status of an agreement. That is why the Soviet position displayed weak points and was vulnerable at the negotiations.
 - These circumstances forced the Soviet leaders to avoid not only discussing but even mentioning the territorial problem in their contacts with Japan. The formula "the issue has been resolved" was the only accepted one for years, and this meant that political relations with Japan had no future.
 - In order to influence internal public opinion, a false historical version that all the Kurils were part of Russia "from time immemorial" was created. Documents and materials which denied this version were made secret and were prohibited from publication. No other scholarly interpretations of this problem were allowed.
5. The historical consciousness of the Soviet people was consistently formed by government ideology, fostering approval and support of expansionism, and the "usefulness" of acquiring new territories, no matter how these territories were to be acquired. The victory over fascism made all the results of the post-War regulation seem fair and legal. The Kurils issue was firmly implanted in the public consciousness as an "act of historical justice in returning our lands, which had been seized from Russia by Japan."

Conclusions. The territorial issue in Japanese-Soviet relations is a logical consequence of relations between two hostile states, who found themselves in the roles of winner and loser. It was one of the results of the post-War division of spheres of influence. The role of the USSR as one of the main participants in the anti-fascist coalition helped ensure that the world community accepted its territorial acquisitions at Japan's expense under the pretext of punishing one of the main initiators of the aggression.

Relations based on confrontation during the Cold war era added ideological value to the territorial issue: it became a "factor in the struggle between communism and imperialism." In the framework of a world structure based on confrontation between two systems, there was no chance that the territorial issue in Japanese-Soviet relations would be resolved, and the relations themselves were doomed to an historical impasse.

The End of the Cold War and the Disintegration of the USSR

- A radical change of the situation led to a loss of importance and practical disappearance of factors 1-3.
- The new democratic Russian government rejects the policy of the former totalitarian regime. The attitude towards Japan as a defeated enemy has been denounced. The existence of the territorial problem, which should be resolved on the basis of law and justice, has been officially acknowledged. Although the government holds no consensus of opinion on the matter, the Supreme Soviet for the most part adheres to the same old positions. But in general, factor 4 has been significantly weakened.
- The conservative influence of factor 5 is still preserved. It is reinforced by the difficulty of the situation in Russia, by a number of territorial conflicts, by the presence of forces which use the problem of the southern Kurils to serve their own interests.

Thus, the territorial problem in relations between Japan and Russia is very much an issue of domestic policy.

The period of transformation from confrontation to cooperation *in the Asia-Pacific* poses the following tasks *for Russia*:

- Establishing stable, good-neighborly relations with bordering countries, and becoming allies with developed democracies. It is necessary to resolve the existing conflicts with those countries to ensure stable borders, and to radically rethink military-strategic concepts based on the idea of competition of force, the existence of a threat from an opposite social-economic system, and expansion of influence by military-political means.
- Development of economic potential, first in Siberia and the Far East, as a result of economic cooperation with the countries of the region.
- Joining the economic integration processes in the region, actively participating in regional economic organizations and projects.

- Initiating the creation of a joint security and conflict prevention system in the region on a new basis.

Judging objectively the economic and political weight of Japan as a leading power in the Asia-Pacific, it is obvious that in order for Russia to reach the identified goals, Japan should become the main object of Russian foreign policy efforts.

Conclusions. The original reason and basis for the rise of the territorial problem, and its existence in bilateral relations, has for many years been the era of confrontation initiated by communist doctrine and aggravated by the negative history of mutual relations between the two countries. WWII gave Stalin a chance to realize his aspirations in this specific form. In fact, the territorial problem is the heritage not only of WWII, but of the totalitarian epoch, which reigned in the former Soviet Union. That is the reason for the existence of the problem to this day.

That is why during the period of the establishment of a qualitatively new state in Russia, the necessity to resolve this problem is based on the following reasons:

1. A number of *internal factors* aimed at burying the totalitarian past and its heritage. In its relations with Japan, Russia is still looking into the past. This contradicts the course declared by Russia, and an aggravation of this contradiction is inevitable if the resolution of the problem is postponed. It is not accidental that the political forces that attempt to reestablish totalitarian rule are so interested in preserving the problem, and in influencing public opinion against resolution.
2. A number of foreign policy factors, based on Russia's need to address its main strategic issues, which include finding a new place in the world as well as serving pragmatic economic interests. Neither Japan nor the US, as the main partners and objects of Russia's diplomatic efforts, will agree to full development of relations if the status-quo in the territorial problem is preserved.

The present moment offers the Russian President a unique chance for radical steps in the resolution of the territorial problem. First, Yeltsin is not responsible for the policy of the former Soviet leaders and is free to announce a new course. Second, this change of course is justified by the whole new democratic policy of Russia and it would thus be a logical development.

Options for Possible Principle Approaches

1. *Political resolution.* The actions of the USSR in 1945-46, which resulted in the seizure of the southern Kurils, are acknowledged to have been unfair and to qualify as an annexation. It is necessary to recognize Japanese sovereignty over the Southern Kurils and the fact that before 1945 they belonged to Japan and no one else.

This way of resolution has a number of advantages.

- It offers an immediate resolution of the problem. It transfers the issue from the framework of bilateral political problems (the decision on these problems should be

made by the President of the country) to the framework of practical diplomacy, which through a detailed negotiation process would define all the conditions for the transfer of the four islands to Japan and would develop appropriate agreements.

- This process may take a long time, but it will occur under circumstances in which the main obstacle in the development of Japanese-Russian relations has been overcome, which would create a favorable atmosphere for the process.
- A basic agreement on sovereignty and the border makes it possible to sign a peace treaty immediately.
- This approach basically coincides with the official Japanese position, which would facilitate a rapid resolution of the problem.

There are several arguments *against* this approach:

- One of its conditions is the acknowledgement of the fact that some elements of the post-War settlement in Asia, including the San Francisco Peace Treaty, are not valid because of their unfairness and discrepancy with international law. This might unleash a chain reaction in Europe. The world community in its present state is clearly not yet prepared to accept the collapse of the post-War structure of the world, since the creation of the structures of the new world order is just beginning, and such a development of events may cause serious conflicts in different regions of the world.
- The official position of Japan includes recognition of the San Francisco Peace Treaty and its conditions.
- This scheme does not consider the Soviet-Japanese Declaration of 1956, which was a logical part of the post-War regulation and was based on its conditions. This leads to an undermining of the whole system of post-war Japanese-Soviet treaties, since they were based on this document.
- It is almost certain that the territorial problem will lead to the question of whether it was legal to deprive Japan of all the Kurils -- not just the Southern ones.
- A one-time political decision may cause serious internal problems in Russia. Those who oppose the resolution of the territorial problem may see an opportunity to blame the President for ignoring international law (i.e. the post-War system of treaties and agreements), and taking a libertarian approach and capitulating to the demands of Japan. This might cause broad unrest among the population and become a serious destabilizing factor for Yeltsin's government.

Conclusions. In the current internal and international situation there are not enough conditions to make a resolution based on a political decision possible. It would be premature.

2. *Resolution based on existing legal documents and obligations.* The first step of this approach is to confirm and carry out the USSR's obligations as stated in the Joint Soviet-Japanese Declaration of 1956. This is the most natural step for Russia as the successor state and it is very persuasive for the Supreme Soviet Deputies and broad public opinion.

This approach suggests a number of *stages* in the resolution of the problem:

Stage 1. Confirming obligations to transfer Habomai and Shikotan and agreeing to further negotiations on the territorial issue.

Stage 2. Developing and signing a system of agreements which would regulate the conditions for the transfer of the islands and discuss the interests of the parties.

Stage 3. Beginning negotiations on Kunashir and Iturup. Russia does not have any official obligations concerning these islands. On the contrary, the San Francisco Treaty documents Japan's renunciation of these islands. Negotiations based on existing international treaties and agreements would be unproductive in this case; we know this from the diplomatic experience of recent years. At this stage the principles of historical justice and political necessity, based on the future interests of Japanese-Russian relations, should define the process. There might be a need for some new agreements with regard to the conditions of the San Francisco Peace Treaty, which may imply the participation of the US and other countries in the process.

There is no need to predict the specific forms of agreements. They will embody a compromise between the parties, which would reflect the changes in the entire system of international relations. It is possible that, should any serious difficulties in bilateral negotiations arise, the question will be transferred to the International Court, brought to the attention of the UN, or an agreement to give Kunashir and Iturup a special international legal status will be reached, etc.

The final demarcation of the border line and the signing of a peace treaty is possible only after an agreement on Kunashir and Iturup has been reached.

The weakness of this approach is that it may take quite a long time, and thus can be influenced by the changing political situation, specifically, changes in the Japanese and Russian governments. There is still a basis for distrust on the Japanese side, which will slow down the development of relations.

In order to overcome these obstacles, it is necessary to agree to carry out in a very precise form all the terms of the agreements that have been reached and the principles that have been declared. Here the US might play a constructive intermediary role as the guarantor, which seems even more realistic after President Yeltsin's visit to the US.

3. *Refusing to look for a resolution of the territorial problem and freezing it in its current form.* This approach is absolutely unacceptable for democratic Russia for the reasons mentioned above. The implementation of this approach is possible only if conservative reactionary forces, interested in the reestablishment of the old totalitarian structure, come to power.

APPENDIX M [PAPER 4]

THE RESOLUTION OF THE KURIL ISLANDS PROBLEM IS IN THE HANDS OF THE RUSSIAN GOVERNMENT AND THE RUSSIAN PEOPLE

Vladimir Yeremin

This paper is based on two assumptions:

1. That the development of events in Russia will follow the road of democratic reforms.
2. That President Yeltsin's visit to Japan will not be postponed.

In this case there can only be one scenario for Yeltsin's visit: a return to the 1956 agreements (i.e. to the Declaration and exchange of letters between Gromyko and Matsumoto) with a delay in the actual signing of a peace treaty and the actual transfer of Habomai and Shikotan to Japan. Obviously, we cannot predict the results of the negotiations on Kunashir and Iturup.

Who would such a resolution of the territorial problem depend on in Russia?

Imagine a pyramid, the top of which is represented by the Russian state government, including the Congress of People's Deputies, the Supreme Soviet, the President, the Council of Ministers and their staff. The rest of the pyramid is the Russian people. In order to obtain a full description of the situation and define it according to our problem, we can identify a layer of specialists on the territorial issue between Japan and Russia located between the top of the pyramid and its base: some of them are specialists on Japan and others are not. Some of them are part of the top of the pyramid, but the majority are academicians, scholars and media workers who are quite far from the government. Some of these specialists are known to the public and have even earned such labels as "traitors of the Motherland" and "salesmen of the islands," but many are not known to the public.

We are paying a lot of attention to this layer because of the important role it will play in the future.

The image of a pyramid facilitates the understanding of the truth, i.e. that the following conditions for the resolution of the Kuril Islands problem are necessary:

On the part of Russia -- a decision by the President and the government (the executive branch of the government) to agree to this option and the readiness of the Supreme Soviet (and perhaps the Congress of People's Deputies as well) and society (the people, the public, the citizens, the constituency) to support this decision.

On the part of Japan -- readiness to agree to the option proposed above.

Do these conditions currently exist on the part of Russia?

We can be quite certain that there is a consensus between an influential part of the government and the majority of the experts on the issue that the resolution of the territorial problem should be reached by carrying out the 1956 agreements, i.e. through the formula: "peace treaty,

transfer of Shikotan and Habomai, and negotiations on Kunashir and Iturup." From now on we will use the concept of "a radical resolution of the problem" which means a resolution anywhere between fulfilling the obligations of 1956 to a complete satisfaction of Japanese demands according to the following formula: "recognition of Japan's residual sovereignty over the four islands, the transfer of Shikotan and Habomai, the signing of a peace treaty, and the transfer of Kunashir and Iturup at a specified time." We should also note that the unrealistic position of Russian supporters of immediately satisfying all Japanese demands, some of which go beyond the 1956 agreement, stands in the way of those who work for a true resolution of this issue on the Russian side and confuses the Japanese by inspiring unrealistic expectations. At the same time we should admit that any change in the traditional Soviet position is positive, and it is probably not very difficult for all the supporters of the new approach to find common ground.

What is the attitude of the rest of society to the territorial problem? It is not supported by the wider circles of society. A certain section of the government (above all the Supreme Soviet and many deputies) are in favor of preserving the status quo on the territorial issue. They enjoy wide-range public support and are endorsed by many specialists. A large number of people are either indifferent towards the problem or are actually ready to "sell" the islands to Japan.

Thus, a radical resolution of the problem in the form of a unilateral decision by the government (even by its most influential members) is currently impossible, since this option does not enjoy popular support and the reaction of many social forces and members of the government to such a resolution would be very negative.

The consensus mentioned above seems to be quite equivocal under these circumstances. Without a real outlet to the masses, mutual understanding between radical members of the government and experts on the problem becomes something speculative that is only good for the self-satisfaction of an elite of intellectual democrats. In meetings, situational analyses, and round table discussions, the members of this small group air their views and display their learning to each other and even come up with recommendations for the government's leaders, but all of this serves no purpose since it in no way reflects the mood of the public which does not even know about the brilliant deductions of these seminar- and symposium-goers. The all too rare articles and television appearances, the even rarer documentary films which introduced us to Vladimir Tsvetov and Aleksandr Barkhatov, and the brochure published by the Japanese Embassy raising fears of possible attacks on Japanese diplomats all had the cumulative effect of a stone dropped in the water -- the ripples that are quite visible at first gradually fade out entirely.

A question confronts supporters of the radical solution (among whom the author counts himself): are we serious about achieving this solution, or are we secretly satisfied with a simple show of activism? Do we understand the situation? Or is it that we understand it, but have our eyes closed to it?

The radical solution will only be achieved if we make decisive changes in the form and content of how we go about supporting this cause.

The tasks facing the supporters of the radical solution to the Kuril question are the following: to attract the majority of the public to our side in order to create social support for the radical solution and to preserve Japan's faith in the existence of forces in Russian society able to bring about the radical solution -- faith in the real prospect of such a resolution to the problem.

The preconditions for resolving the Kuril dispute in the manner proposed here are also lacking on the Japanese side because Japan continues to insist on a solution, described above, that goes beyond the terms of the 1956 agreement.

The following measures could be taken to create the conditions for a foreseeable and speedy

resolution of the Kuril dispute:

- Encouragement of Japan and Russia to come to a tentative understanding to return to the terms of the 1956 agreement. Such encouragement should be aggressively undertaken without delay.
- Announcements by the Japanese Prime Minister and Russian President of their willingness to return to the terms of the 1956 agreement. These should not be official announcements, but declarations of opinion with the actual decision being left to Parliament and the people. The declarations should, however, call upon the Parliament and people for support of this position. These declarations should be made as quickly as possible; such activity may be called pressure "from above."
- Enlisting support for the position described above from the broadest possible segments of the public. Such organizational work should be initiated by specialists on the problem who support the radical solution. This is pressure on Parliament and the public from below or from the sidelines.
- Official endorsement of a return to the terms of the 1956 agreement with a deferral of the actual signing of a treaty and the transfer of the islands.

This painstaking, tense, and momentous process will be successful only if it is carried out systematically, and for this we need a well thought-out program of action. By such a program I do not mean one single fat document. Part of the program can exist in people's minds, another part might be in the form of verbal agreements, and some may be set in writing.

The fundamental elements of such a program are the targeting of individuals and groups, principles of action, content of action, and the structures and leadership of the movement itself.

Target Individuals and Groups. To a certain extent, we should concentrate on the executive branch of government (the President and cabinet, local authorities, etc.). However, more attention should also be devoted to Parliament and the public. Activity should also be organized for more specific groups, such as the inhabitants of the Kurils.

As we have said, the executive branch is quite well disposed toward the idea of returning to the 1956 agreement. However, the Parliament and the public are far from being ready to accept it. There is little understanding of the Kuril problem among the Parliament and the people. There is mostly either the pseudo-patriotic approach or indifference. Education of the Parliament and public in favor of accepting the 1956 agreement is a crucial task (this was faintly heard in many speeches at the Moscow meeting of the Trilateral Study, starting with Professor Highet who asked the question, "Will the Russian people agree to turning the Kurils over to Japan?").

In urging the President and cabinet to come out flatly in favor of returning to the 1956 agreement, one must not forget that they are in a difficult position and are constrained by public opinion. One must also keep in mind the personalities of specific figures and their openness to influence by those around them. One should not attach too much importance to Kozyrev's assertion that the Russian Ministry of Foreign Affairs would stick to the "adamant position of the former Soviet Union" (*Komsomolskaya Pravda*, June 9, 1992), or to Yeltsin's statement that, "When there are good relations and cooperation, then, perhaps, we may talk to Japan about the islands," and, "If

they continue to pressure us, the situation will not change" (*Komsomolskaya Pravda*, June 3, 1992). It is clear that Kozyrev wanted to push the President and Parliament to work out a clearer position on the Kuril question and Yeltsin is always finding himself exposed to different and often mutually exclusive pressures. It seems to me that our contacts (direct or through intermediaries) would be best used by advising him not to consider revoking some of his directives and declarations, but to adapt and develop them (such as his five-stage program).

Work among the People's Deputies is of great importance. The deputies' understanding of the Kuril problem and of Russia's national interests will determine their decisions on the matter. They are faced with choosing between two formulas set forth in the draft of the Russian Constitution (a transfer of territory requiring a referendum, or the establishment of borders, which does not require a referendum). They will choose in effect whether or not to act upon the flexible approach outlined in the Supreme Soviet by Yevgeny Ambartsumov, Chair of the Committee on International Affairs and Foreign Trade (see the interview by the Dzi-Dzi Tsusin Agency). The Parliament will be called upon to play a large role if the territorial question takes the form of a law on the setting of boundaries.

We should take full advantage of every opportunity to advocate a new approach to the territorial problem within the committees and commissions of the Supreme Soviet. We must insistently remind the Committee on International Affairs and Foreign Trade of their proposal to conduct a seminar on the territorial problem within the committee (the seminar was postponed until a time "nearer to the visit"). We have to take full advantage of the invitation to the Constitutional Commission's hearings on the territorial question.

It may be supposed that certain deputies, regardless of their ideological positions, are constrained by their desire to preserve their ties within Parliament and their positions as deputies, which they could easily lose in these times by coming out in favor of genuinely democratic views.

It is quite obvious that to gain influence at the top of the pyramid we spoke of earlier will require an enormous amount of work. We can only agree with a comment made by Vladimir Lukin during an interview with *Novoye Vremya* not long before his departure for Washington that there is nothing worse than trying to follow several lines of diplomacy.

In order to understand the attitude of our society as a whole toward the issue under consideration in this paper, it is necessary to take into account three things: the national and psychological characteristics of the Russian people, of the other peoples of Russia, and of the peoples of other CIS countries; the social and psychological legacy of the many years of living in the Soviet state and society (the results of which were the inculcation of false patriotism, a class-based approach to foreign policy, and even prejudice against the Japanese); and the modification of these traits by new trends in the country (separatist moods, nationalism, populism, and unchecked hostility toward democrats).

The fundamental characteristics of the current situation in Russian society are sufficiently well known. It should be pointed out that only slightly more than 10% of the Russian public have firm views on the Kuril question (*Izvestia*, June 12, 1992). K.O. Sarkisov spoke at the Trilateral Study's Moscow meeting about the way that the Kuril card is being played in the domestic politics of Russia, and A. V. Kiva commented on the Russian people's feeling of humiliation after the disintegration of the Soviet Union, which has given them an unhealthy perception of territorial issues. Public opinion will play a far greater role if the Kuril question is submitted to a referendum.

Notwithstanding all of the claims that the islanders' positions on the question vary depending on the season (supposedly, in the relatively "well-fed" summer, the island's inhabitants are against the radical solution to the question, while, in the early spring when there are noticeable shortages

of food, they express readiness to transfer the islands to Japanese control), the inhabitants of the Kuril Islands are generally undismayed by the prospect of a radical solution to the territorial question. Each of them has chosen between the alternatives of staying on the islands under Japanese control or moving to mainland Russia using the compensation promised by the Japanese side. The mood that Russia must not "yield an inch" and that the Kurils must be "defended with guns in hand" is not at all typical of Kurilians. It is to be found instead on Sakhalin or in Moscow. One has only to look at the sharply negative reaction by the inhabitants of the Kuril Islands toward the decision of the Sakhalin administration to bring in the Cossacks to defend the Kurils.

At the meeting, we mainly discussed the executive authorities and less about Parliament and the public and inexcusably neglected Russian political parties and business interests.

We must pay special attention to the importance of bringing a certain amount of influence to bear on both the people and governments of other CIS countries, because it is entirely possible that Japan will begin to use its ties with these countries in furthering its own interests in the territorial dispute with Russia. It is also very likely, however, that these governments could, in certain conceivable circumstances, try to use the issue of the Kuril Islands to put pressure on Russia. At a June 25 press conference held in Moscow by official representatives of the Moldovan government, the hint was let drop that Russia should not interfere in the Trans-Dniester conflict, seeing that Moldova was not interfering in the problem of the Kurils -- "Just as you in Russia are arguing about whether or not to hand over the Kurils, it wouldn't be right for us to set up a committee to protect the Kurils in Kishinev."

As far as influencing the Japanese side goes, it must be pointed out that in spite of the indisputably nationalistic character of Japan's territorial claims on Russia, the feeling is not equally intense at every level of Japanese society. It follows that the demand for receiving assurances that the territorial problem is resolvable is not so uniformly strong. I would like to put forth a supposition concerning yet another feature of Japanese public opinion. The substance of the current Japanese territorial demands has been cited above. Russians often assert that such a departure from the terms of the 1956 agreement can be attributed to an intention on the part of the Japanese to take advantage of Russia's economic troubles to seize as much as possible. This is not the case, in my opinion. It is obvious that Japan has renewed and enlarged its demands on the Kurils beyond what was agreed upon in 1956 not because it intends to take advantage of Russia's economic difficulties, or because it seeks to prevent the replacement of the democrats in the political arena by those who would really not "yield an inch." Japan is motivated by the fear that the democrats will degenerate into an ugly copy of the pre-perestroika regime. The only way that Japan will be induced to lessen the extent of its claims and to tone down the insistence with which they are being advanced would be to give guarantees that its claims will be satisfied no matter what happens. Such a guarantee can only result from the acceptance of the radical solution to the problem by large numbers of the Russian people. Although we have yet to see this, Japan may be mollified if Russian supporters of the radical solution turn away from their club-like exclusivity and present their views to the public at large.

The American government and public could have an influence, but they must be urged to take a more active part in helping to resolve the conflict between Japan and Russia. This participation would be justified in light of the US's involvement in the origin of the dispute and the character of its relations with both Japan and Russia.

Working Principles. Work in bringing about a solution to the problem must be guided by general rules for propagating the ideas: producing accessible and striking material to support the

cause, including slogans; bringing forward a popular and trusted figure who can influence the public; enlisting the support of (or perhaps creating) organizations with popular support; and being constantly aware of the changing situation and ready to alter tactics accordingly.

All of these general rules must of course be tailored to fit the specific situation.

The following material should be looked at in light of two imperatives: the great importance of appealing to the people and the importance of setting to work among the people as soon as possible in order to ensure that the problem does not become a dead issue.

Public declarations on the territorial problem must be phrased in terms of the following principles that are now gaining acceptance among the Russian people: the aspiration toward democracy and the rule of law; the adherence to new thinking in foreign policy and a rejection of the use of force in relations with other countries; the unconditional declaration of human and ethnic rights; the complete eradication of all traces of imperial and Stalinist interpretations of national interests; a readiness to admit mistakes and past injustices; etc. Each of these principles has concrete applications to the territorial problem and must inform the educational materials in spirit and content.

All of these principles are also in keeping with the humanitarian principles of mutual respect, empathy, and reciprocal support that are also gaining adherence in our society.

In advancing their own positions and refuting those of their opponents, the supporters of the radical solution should not resort to the tricks that are often used against them -- crudeness, distortions of the truth, the introduction of arguments unrelated to the problem at hand, etc. At the same time, however, they should not accept unscrupulous attacks without protest. The truth must be defended.

We categorically reject the idea that Japanese-Russian relations must be placed on a new footing and that only then, on the basis of strengthened trust, will it be possible to deal directly with solving the territorial problem. At the same time, we recognize the beneficial effect that the improvement of relations between the two countries could have for the radical solution of the problem. Therefore, supporters of the radical solution, while concentrating their basic efforts on the territorial question, should at the same time seek out opportunities for improving economic, political, cultural, humanitarian and other ties between Japan and Russia.

Target Groups. In outlining the contours and basic elements of the proposed program, we will proceed with the goal of influencing the Russian public in such a way as to bring them around to supporting the radical solution of the territorial problem. This process involves explaining the problem to prepare the public to make an independent and competent verdict, and of a well-considered and non-aggressive public opinion campaign in favor of the radical solution.

The educational part of the program would involve explaining the heart of the problem, its origins, and its historical, economic, legal, strategic, and national aspects.

We must not neglect to enumerate all of the substantive factors of the educational program centering on the problem of the Kuril Islands. We shall consider a few of these.

We must stress how the solution of the Kurils problem is naturally bound up with positive processes at work in Russian society -- democratization, the beginnings of rule by law, and the transition to new political thinking in foreign policy.

The best way out of the tangle of political, economic, historical, geographical, and nationalistic difficulties would be to declare the primacy of international law and adopt international law as a lever for resolving the problem. This would bring about a noticeable calming of social passions. To get the Russian people to agree to support such an approach, it is necessary to convince them that appealing to international law will have at least the following advantages: first,

it would result in a simple statement of the case and a clarity and economy of argument that will make the problem comprehensible to every citizen, allowing the individual to work out his or her own position; second, international law uses legal norms and institutions that preclude all bias (including political) and emotion, thereby facilitating dialogue between persons and groups of even opposite ideological positions; third, such a step would increase the esteem in the eyes of the world of our government and society by demonstrating our respect for law, which is necessary in order to enter the community of civilized nations; and fourth, it would provide Japan and Russia with a secure forum for the dispassionate exchange of opinions on the Kuril question.

It is essential to convince the authorities and the public of the importance and urgency of focusing our foreign policy on the United States and Europe and of giving due importance to an eastern policy in which Japan would be given its proper place (A. V. Kiva spoke persuasively of this at our meeting).

The concept of Eurasianism in the form that sees Russia as a bridge between East and West and stresses that Russia belongs not only to Europe but also to Asia, and not, of course, the form of this concept that has Russia as a protective barrier between the East and the West, can be used to support the educational activity centering on the territorial question. Appealing to the work of Russian Eurasian thinkers could be extremely effective.

Another effective measure could be to take advantage of the new humanitarian spirit of reconciliation between former military opponents that has been underpinned by the abolishment of the formulation on "formerly hostile states" in the UN Charter.

Another possible way to draw public attention away from the hair-splitting calculation of possible Russian losses should the radical solution be chosen is to point out how Russia's true interests (in the best meaning of the word) would be advanced by that solution. The tension surrounding the problem could be partly defused by explaining that the problem, strictly speaking, is not territorial in nature. It is rather a question of establishing the boundaries of the state.

It would also be tremendously helpful to explain to the Russian public the significance that the problem of the Kuril Islands has for Japan, thereby putting an end to unfounded charges against Japan.

It is very important to expound the principle of the "inseparability of politics and economics" and show that Japan is not "squeezing" Russia by using its economic troubles, but is rather reacting economically to Russia's political behavior. Russia should understand that Japan is justified in giving its money only to those that earn its sympathy. We must reject the unjust comparison with Germany which became convinced of our good faith only after we went along with the unification of Germany. In short, it is necessary to convince the population that the radical solution to the territorial problem should not be considered as a business deal.

The internationalization of the Kuril dispute and the Russian public's reaction to this internationalization deserves to be treated separately. In our opinion, Japan would be justified and would greatly benefit in appealing to the United States to use what influence it could with Russia to facilitate a speedy resolution of the dispute according to the radical plan (we have already shown that the Japanese and Russian conceptions of a radical solution do not coincide). As we have said, the effectiveness of such an appeal is due to the fact that the United States was involved in creating the problem and that the United States is in a good position to fulfil an intermediary role thanks to the nature of its relations with both sides in the Kuril dispute. However, this mediation would require not only great subtlety in execution but painstaking public opinion and educational preparation. Russian society may protest against the internationalization of the problem as an attempt at outside interference in relations between Japan and Russia and an attempt to organize pressure, or,

conversely, it may see mediation by a third party with relief as a way to lessen tension between the two sides, thus breaking the cycle of reflexive mutual hostility. The task of the supporters of the radical solution is to convince the public that American participation could have a positive effect and to allay fears surrounding such participation.

The possible participation of Western Europe or of the G-7 should be approached in a similar way.

Dissemination of material which criticizes Gorbachev's political actions, during his visit to Japan in 1991 as President of the Soviet Union and now as a private citizen, would strengthen President Yeltsin's position and would prompt him to take more decisive action. Yeltsin must realize the undesirability of returning from Japan having accomplished less than Gorbachev in 1991.

A few words about the attacks by opponents of the radical solution. These attacks are inevitable and, as indicated above, call for counteraction. It seems very important to me that we do not allow others to make distorted interpretations about the fact that some of those in the government and a number of non-government specialists on the problem hold very similar positions on the Kuril question. All kinds of wild theories about a "deal" can be imagined. We must take great pains to explain that the correspondence of positions is not the result of secret agreements. At the same time, we should avoid providing extra ammunition for the attacks by refraining, for example, from appearing together in public and from issuing joint declarations. The government should avoid hiring independent scholars to do analyses of the problem.

The educational and public opinion materials should contain self-critical admissions of mistakes and deliberate political misdeeds of the past. This should include Russia's real motives for entering into the war against Japan in 1945, the real reasons for the occupation of the Kuril Islands, the improper confinement of Japanese prisoners in Soviet camps, etc.

In my view, we must try to influence the Japanese in two ways: by persuading them to take a realistic look at the options currently open to the Russian leadership and by getting them to reduce their territorial claims in accordance with the 1956 agreement and to agree to a relatively unhurried resolution of the problem; and by demonstrating that the Russian government can, in principle, solve the dispute through its own efforts, and that it fully intends to achieve the radical solution based on the feasibility of building popular support for such a move in an acceptable time-frame. We have previously spoken of the interrelation of these two elements. Only one condition would enable Japan to look upon the current actions of the Russian leadership on the territorial issue with equanimity: some unmistakable signs of some acceptance of the radical solution within the Russian public.

In explaining the constraints on the Russian leadership to Japan, it would be advisable to refer to the development of democracy in our country and the obligation of the government to carry out the will of the people. We could pose the following question to them: could your government take such a momentous step without first winning public support for it?

It is likely that the Russian supporters of the radical solution to the Kuril question will have to debate with that small group in Japanese society that denies the primary importance of the problem of the Kurils in Japanese-Russian relations and specifically with Rokuro Saito, president of the All-Japanese Association of Former Prisoners of War. Mr. Saito makes use of one ploy that was characteristic of Soviet diplomacy and which, unfortunately, is still present to a certain degree to this day -- the portrayal of every action by the Soviet or Russian side to correct old mistakes or deceptions as nothing short of heroism. The acknowledgement that a territorial dispute exists is to be considered a great feat. The decision to revert to the terms of the 1956 agreement is heroism. It should be noted that Mr. Saito is speaking about a different subject, namely Russia's release of data to former prisoners of war that the United States and Great Britain had released long ago. The

drift of the reasoning is that since the Soviet or Russian side has taken such "major" steps, it is up to Japan to respond with concessions.

The Forms of Educational Material and Influencing Public Opinion. In our work on the Kuril issue, we can take advantage of all existing types of instruction and influencing public opinion: lectures, symposiums, seminars, round-table discussions, question and answer sessions, television and radio speeches, documentaries, articles, brochures, books, the published results of public opinion polls, the dissemination of recommended reading lists, etc. As we know, attempts to publish books within Russia on the territorial question by Oleg Bondarenko and Vladimir Yeregin were met with great difficulties. One may recommend the composition and publication of a "white paper" similar to the one now being prepared by Professor Berton.

However, the whole point of educational and public opinion activity is to bring the message directly to a wide audience, to enter into a dialogue with the public and to receive feedback. With this in mind, the best forms of outreach activity are speeches at organizations and educational institutions, lectures open to the general public, and television and radio appearances with open phone lines. The difficulties and risks of such forms of action are self-evident and include the unpredictability of audience reactions. However, it is in just such cases that the trustworthiness of this or that figure's declared adherence to the radical solution can be tested.

Measures taken by the executive power such as official visits, meetings, negotiations, and an exchange of letters could have a beneficial effect on opinion if they are eventually brought before the Parliament and public in order to create an atmosphere of openness, trust, and cooperation.

The forms of educational activity we have listed will be effective only if the material is carefully selected to suit the specific audience toward which it is directed. The effect on public opinion could be heightened by using short, meaningful, comprehensible, and memorable slogans at the right moments such as, "Not a deal, but paying back a debt" and "the last stain of Stalin's imperial policies."

It would be useful to create a permanent committee on the Kurils with a panel of experts in the Supreme Soviet. Japanese precedents of a similar kind are interesting. Mr. Sibuya, a member of a special commission of the lower house of the Japanese Parliament, paid a visit to Russia in 1991. His work was to direct research for the Parliamentary Commission on the problems of Okinawa and the Kuril Islands.

It might also be expedient to conduct a hearing on the territorial problem in the appropriate committees of the Japanese and Russian Parliaments, with experts from both sides attending.

One of the concrete ways of demonstrating to Japan that there is a growing tendency in Russia to accept the radical solution to the Kuril problem would be to send a group of non-governmental specialists on the problem to Japan before President Yeltsin's scheduled trip in the fall. I would think that the Japanese, who are used to hearing from only two or three well-known supporters of the radical solution, would be pleasantly surprised to learn that there are many more such supporters and that the idea of the radical solution is not confined to an elite group of specialists, but rather enjoys widespread support.

The Study of Positions and Attitudes. The proposed measures must be founded upon the study of the current positions and attitudes in the government, Parliament, and the public, as well as of the dynamics of the shifts in these positions and attitudes. In particular, an analysis of these shifts will allow us to evaluate the effectiveness of our activity and would enable us to react to new factors, especially unfavorable ones.

These positions and attitudes could be studied in the following ways:

Group and individual public opinion polls of the Supreme Soviet's Committee on International Affairs and Foreign Trade, of its sub-committee on the Pacific Rim, of other Committees and commissions of the Supreme Soviet, of political parties and parliamentary factions, among various social groups, in the Far East (especially on the Kurils), in other CIS states, and among Western, Chinese, and South Korean diplomats conducted by independent governmental and private figures;

Mass media appearances using direct telephone feedback, analysis of letters received by newspapers and television and radio stations (for access to which we would need special permission), and analysis of newspaper articles, including Sakhalin's newspaper, *Svobodnyi Sakhalin*, and the southern Kurilian newspaper, *Na Rubezhe*; and the examination of the minutes of various meetings, especially sessions of the Fourth Congress of Peoples' Deputies and the last session of the Russian Supreme Soviet.

It is essential to make contacts at the *Rossiiskaya Gazeta* and the *Hokkaido Shimbun*, the Kyodo Tsusin news agency, and the Institute of the Sociology of Parliamentarianism in order to receive the results of the studies they have conducted on the Kuril question and to set up future cooperation with them on projects of this type. In using the results of these analyses of public opinion, we must keep in mind that they were conducted by pollsters and not experts on the specific and complex problems of the Kuril Islands. Working with organizations that specialize in public opinion polls will require the creation of procedures adapted to the issue. In particular, it will be necessary to discover the level of the respondents' knowledge of the problem, the sources of their knowledge, and the motives behind the positions that they take.

People are formed by history, knowledge and politics. It will be necessary to study the attitudes and positions of the figures who make the decisions -- Yeltsin, Burbulis, Gaidar, Kozyrev, Kunadze, Saplin, Solovev, Kuznetsov, Grachev, Kokoshin, Khasbulatov, Ambartsumov, Rumiantsev, and others. But all of these are individuals who occupy well-defined positions and who have well-defined responsibilities. It is likely that less prominent people also influence decisions. A problem requiring attention is whether the so-called Japanese-Russian University (it really has nothing to do with a university in the strict sense of the word) has much influence on decisions relating to the Kuril question. This institution is directed by Lobov, Yeltsin's prominent comrade-in-arms during the August putsch. The institution has taken on quite a few representatives of the old Party nomenklatura (like Ovchinnikov, the political columnist for *Pravda* and one of the leading voices for the "we won't give up the islands" position) and has extensive ties with Japanese business.

We must keep track of the views of those who support a return to the terms of the 1956 agreement and of other variants of the radical solution to the Kuril question in order to remain on friendly terms with them and to notice changes in their interests and activities. Besides the participants of the Trilateral Study meeting in Moscow, these include Belkin, Zagorsky, Mlechin, Ramzes, Sirotkin, Slavinsky, Storozhenko, Tavrovsky, and Tyshetsky.

It is of course also essential to study the positions and statements of the opponents to the radical solution -- Fedorov, Baburin, Pavlov, Latyshev, and others.

Grounds for the Formation of a Broad Consensus. The choice of persons to appear before the public in speech and print is crucial to the formation of a broad public consensus in Russia to support a new approach to the territorial problem. Here I would ask the reader to return to the image of a pyramid that I used at the beginning of this paper. Persons occupying prominent posts in the government leadership and enjoying the trust of the people (these two things far from always coincide) would be extremely valuable as spokespersons. A public declaration of support by

President Yeltsin would be of great significance, although his endorsement should not be phrased in terms of a authoritative decision which would be counterproductive, but as a personal opinion and a recommendation to the public to look into the problem and come to the proper verdict. While placing great hopes on the President, I would warn against any actions that would bind him to a particular course of conduct or, conversely, that would push him into acting spontaneously. I very seriously fear that ex-President Gorbachev's scheduled visit to Japan in April could have precisely such a negative effect. I would give a great deal for a guarantee that nothing of the kind happens in the period before September 1992.

If President Yeltsin accepts the premise of returning to the 1956 agreement, his authority and energy might serve to guarantee that the proposal would gain wide public acceptance (which would involve, of course, organized campaigns in support of the President's position as described above). I believe that Yeltsin could use this as a way of persuading the Parliament and people to adopt a different stance. One recalls that on his visit to America in June 1992, he had no qualms saying that if the Supreme Soviet did not support the agreements reached in Washington, it would be a crime against the people.

Hopes that Yeltsin would go along with a return to the 1956 agreement were not ended even after the statement which *Komsomolskaya Pravda* published on the June 3, 1992. This statement suggested that the President needed assistance because it seemed that information was not reaching him. A joint open letter to the President from groups of specialists on the Kuril question who support the radical solution perhaps would be a good idea.

Besides President Yeltsin, Gaidar and Kozyrev clearly support the radical solution. It would be helpful to get even the smallest amount of support for the radical solution from parliamentary leaders like Khasbulatov, Ambartsumov, and from speakers of the House and Committees. I think that those with democratic views, but whose interests are far from the territorial problem, may be willing to express such support.

I would also like to comment on the specialists on the question. A small number of them are government employees or are frequently hired as consultants on the Kuril question. These persons are genuinely knowledgeable about the problem and have an unbending conviction demonstrated in their actions about the necessity of the radical solution. These specialists still have much to do in bringing about a solution to the problem. Although their abilities are great, their full potential is far from being fully realized. The only drawback to this small group of specialists is that it is identified in the mind of the public with the radical solution. This leads to their opponents' sharp condemnation of the radical solution and the mistaken perception in the public that the proponents of the radical solution can be counted on one hand.

There is a very real need to support the activity of this group of specialists by enlisting the support of a wider circle of experts on the question. These other experts may not have such a thorough grasp of the problem, but they would be fresh figures for the public as well as for professional opponents of the radical solution. In a talk with reporters, Liubov Serova, doctor of biology said (on, it is true, a completely different subject) "...everywhere you see the same people. Turn on your television and there are the same old faces. Even the smartest of them has long ago said all that he has to say." Commenting on two preceding interviews with the same reporter, she asserted, "Those two were better -- you let new, normal people speak their mind. You may not agree with them, but they say interesting things." (*Izvestia*, May 22, 1992) These expressions of opinion give an excellent idea of exactly how people are reacting to the efforts to influence public opinion and are a clear reminder that we must observe the rules of propagandizing and guard against the dissemination of errors. These specialists on the problem, as yet little known to the public, will

very soon bear the main burden of creating an atmosphere among the public conducive to the radical solution of the problem. These and only these persons are relatively undisturbed by the exhausting attacks from opponents of the radical solution who also enjoy the public's trust (or, more accurately, they are not subject to its distrust).

A wider circle of supporters of the radical solution who have an adequate understanding of the problem does exist. These specialists are neither too well known to the public, nor yet harried by the opponents of the radical solution. We have named some of them above when we were speaking about studying the attitudes and disposition of forces in society. It is very likely that if we enlist people not very knowledgeable on the subject as a means of broadening the social base of the radical solution, these people would soon become acquainted with the problem, become convinced of the necessity of the radical solution and would begin to speak out in favor of it on their own. It would be to our great good fortune if these persons came to enjoy authority in the eyes of the public and were talented at influencing the public.

The support of private institutions would be of enormous assistance in securing the success of the educational and public opinion program surrounding the issue of the Kurils. Proponents of the radical solution could probably also be found in the business community. They may be willing to act as sponsors. Without a doubt, a number of social organizations (such as political parties) would come out in support of the radical solution. Not long ago, I spoke with Irina Khakamada, Co-Chairperson of the new Party of Economic Freedom, and she offered to try to get the Kuril question included as a plank of the party's platform. I recall that in 1991, Nikolai Travkin, the leader of one of Russia's most popular political parties, professed to be strongly in favor of handing the Kurils over to Japan without any conditions.

Existing social organizations on the Kurils that specialize in the territorial problem are of particular importance. The Zemliak society in Kunashir, headed by Mikhail Lukianov, is now well-established. Incidents of hostility toward this organization have stopped and it is now tolerated and even respected. They say that although the group had only a few dozen members in the beginning, after Governor Fedorov's decision to deploy Cossacks in the Kurils, membership has increased tenfold. The beginnings of similar groups exist on Shikotan and Iturup.

The mass media and the press play a crucial role. Some publications, notably the journal *Novoye Vremya*, have proved themselves to be bold and consistent proponents of the radical solution.

Given that the opponents of the radical solution are carrying out their work in an essentially organized manner and taking advantage of allies in power (such as Sakhalin's governor Fedorov), the proponents of the radical solution should think deeply about the fact that they will not succeed in achieving their goal of securing public support for their cause without organization and the creation of supporting movements. As an interim step along the way to an organized movement, we propose the creation of an independent Japanese and Russian institute of political problems which would be something like a club of scholars and public figures.

It is necessary to seize every opportunity for ensuring that the Japanese perspective on the Kuril question becomes known to the Russian public. It must be made clear that hindering the dissemination of the Japanese viewpoint is inimical to the most basic norms of civilized discourse.

As may be seen, the work to secure parliamentary and public support for the radical solution to the problem of the Kurils is often very close to being political activity and, at times, is political involvement. S. M. Punzhin was completely correct when he said at our Trilateral Study Moscow meeting that the solution of this problem should have a political and legal character. With the requisite organization of support for a return to the terms of the 1956 agreement, the problem of the Kurils may be transformed from a source of heightened tension in our society which polarizes social

forces and undermines the democrats, including Yeltsin, into a means of reducing tension, bringing society together, and strengthening the position of the supporters of reform and the head of the government.

Translated by the Strengthening Democratic Institutions Project

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APPENDIX N

APPENDIX N

**PLAN FOR DEVELOPING THE NORTHERN TERRITORIES
APRIL 1991**

**Nemuro City Conference on Promoting the Movement for Demanding the Return of the
Northern Territories**

**The Northern Territories Four Islands Development
Planning Committee**



Preface

The attached plan was the first attempt by a Japanese Committee to address the problem of developing the four disputed islands should they be transferred to Japan. It was produced in April, 1991 by the "Northern Territories Four Islands Development Planning Committee," based in Nemuro, Japan in response to the first visit to Tokyo by then President Gorbachev.

The plan is sketchy, and by no means comprehensive, but it does seek to transform the islands into a base for future Japanese-Russian cooperation, rather than confrontation. Four concepts for transformation are presented in the plan: 1) a zone for International Peace, 2) a symbolic area for the development of Japanese-Russian Friendship, 3) a bridge to adjacent areas of Japan and Russia, and 4) a focus for environmental protection.

Given the high saliency of the issue in Japan, it is surprising that no other governmental or private groups have come forward with more detailed proposals for the development of the "Northern Territories."

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Introduction

Since the beginning of Gorbachev's Administration, his foreign policy strategy based on New Thinking has brought about the end of the Cold War. Remarkable progress has been made in the field of diplomacy, and a new era for East-West relations based on cooperation has begun.

There are signs of improvement in the Japanese-Soviet relationship which has been deadlocked since World War II, but President Gorbachev is coming to Japan this April. This visit of the top leader of the Soviet Union will be an historic event. We expect to see great progress on the Northern Territories issue that has been the biggest remaining subject of dispute between Japan and the Soviet Union.

Disorder in the Soviet Union, however, has significantly worsened. Problems with the Republics (such as the three Baltic nations) and the rise of nationalism, together with economic turmoil, have caused a crisis for the very existence of the Union State. Gorbachev is moving toward conservatism, hinting at "exercising his power," and Perestroika is losing steam.

Under such circumstances, we hear various opinions on the Northern Territories issue from the Soviet side, but we have not yet seen any change in official statements. Resolving the problem still appears very difficult.

To take back the lands that were illegally taken away from us is the duty of the people. Japan disavows use of military force, and pursues a peaceful world. Therefore, we must resolve this problem peacefully by reaching a mutual agreement through talks. We must be prepared for lengthy negotiations, and we should always keep our enthusiasm for getting back the territories so that our counterpart will understand the true determination of the Japanese people.

In fact, this is the goal for our Committee. The Committee brings together the different backgrounds and opinions of the local population. Among the fourteen members of the Committee are ex-islanders, people in the fishing, agriculture and commerce industries, members of youth and women's organizations, and so on. We hope that our plan will give hope and vitality to the whole movement.

Nemuro, April, 1991

Factors to Consider on Development

We are now close to the 21st Century, and the world is moving from dialogue toward cooperation in order to achieve our common objectives -- a peaceful earth and the coexistence of the human race.

The four islands have been the subject of dispute between Japan and the Soviet Union for the last half century following World War II. How we develop these islands will determine the image of "Japan contributing to the world."

Developing the four islands should not be seen as the development of just one part of our country. We should look at it from the standpoints of the Soviet Union's Far East Region, the Northern Bloc, and the North East Asian Region.

Conditions at the Time of Reversion

1. Demilitarized Zone

At the time the Islands are returned, Japan will regain sovereignty. Therefore the Soviet Army should withdraw from the islands as a matter of course. However, we should not forget that the Sea of Okhotsk has been one of the main theaters of US-Soviet military antagonism. In order to develop the islands and international peace, it is necessary to demilitarize the area.

2. Mixed residential Area for both Japanese and Soviets

There are Soviets whose homeland is on the four islands, and we must permit those who want to remain there to have right of residence. We must make the islands a mixed residential area for both Japanese and Soviets. We need to give special consideration to former Japanese islanders and their relatives.

3. Private Ownership for Former Islanders

Even after the decision to return the islands has been taken, it will take quite a long time for practical negotiations and field studies to be completed. It is thus necessary to legally freeze private ownership in and around the islands in order to prevent overdevelopment and to ensure beneficial development after reversion.

Principles for Development

1. Zone for International Peace

The territories are the ideal place for Japan to contribute to the international community, because they are located near both the Far East area of the Soviet Union and countries in the Northern hemisphere countries. The territory is large. We should establish greenbelt areas, and try to found an International Convention Center and various research institutions so that the islands will become a "Comprehensive Cultural Research Institution for the North."

2. Symbolic Area for Japanese-Soviet Friendship

Both Japanese and Soviets should live together with equal rights, and we must expand employment opportunities by establishing joint research institutions, joint businesses, and joint enterprises. In terms of social guarantees such as health care, welfare, and public pension plans, we must assure the people that they may continue the system of either country. Education must be available in either language and must be linked with higher education systems in both countries.

3. Bridge to Neighboring Areas

The nearest neighbor is Nemuro-City. The main industry is fishing, and Nemuro shares the area of the sea for fishing with the four islands. Access to transportation and physical distribution networks are also comparable. Therefore, we need a plan which will link these areas.

4. Focus for Environmental Protection

Thanks to the fact that the Soviet Union has left the territories almost untouched, the environment has been well preserved. We must focus on the protection of this environment and provide a balance between productivity and a pleasant living environment. To achieve this, we must make the best use of Japanese technology to provide and develop the islands' infrastructure. On the other hand, we must try to preserve the natural environment as much as possible by administrative acts designating areas for the protection of nature.

Plans for Each Island

Etorofu

It is estimated that 12,000 Soviets live here, mainly around Shana (Kuril'sk). The island is 203 km in length, 29 km wide, and 3,139 square kilometers in area. It is the largest of the islands. It is also the northernmost and easternmost tip of Japan. We will make use of this geographical situation and develop the island focusing on international peace and a physical distribution base.

Kunashiri

The population is about 8,000, and the main city is Furukamappu (Yuzhno-Kuril'sk). The island is 120 km long, 24 km wide, and 1,500 square kilometers in area. It is the second largest of the four, next to Etorofu. The climate is exactly like that of Nemuro, and the island is replete with indigenous forest. Development will be centered on the tourist and resort industries.

Shikotan

The estimated population is 8,000. The administrative center is Furukamappu (Yuzhno-Kuril'sk) on Kunashiri Island. It is a small island, only 28 km long, 9 km wide, 255 square kilometers in area. Its beautiful landscape is well known. It has good ports such as Anama (Krabozavodskoe) and Shakotan (Malo-Kuril'sk), so we shall develop the island focusing on tourism, the marine products industry, and fishing.

Habomai Islands

Geographically this area is the extension of the Hanasaki Peninsula [on Hokkaido] and consists of five islands. All of these are plateaus with no trees. Soviets border guards are stationed there, but there are no civilian inhabitants. The Habomai Islands are a treasure trove of seaweed, so we will develop them as fishing areas.

Developing Water Resources and Securing Energy Supplies

In order to assure a stable life and economy for the islanders, it is essential to develop water resources and a stable supply of energy. Since the demand for water increases with population growth, the improvement in living standards, and industrial development, it is crucial to have a stable water supply.

In terms of energy, the islands are totally dependent on oil. We will secure a stable supply of oil and promote the development of alternative energy sources.

Water Resources

Both Etorofu and Kunashiri are lucky to have many rivers with high quality water. However, as industrial development continues, we can expect an increase in the demand for water. It will thus be necessary to construct multi-purpose dams. We must pay a considerable amount of attention to preserving the environment around the river sources when we construct such dams.

Energy

In terms of electricity, the islands are now dependent on petroleum thermal power generation. Since Etorofu and Kunashiri are situated in a volcanic zone, we must promote the development of clean, local energies such as geothermal power generation, hydroelectricity, ocean energy, hot spring heat, and so on, utilizing natural resources. We must conduct research investigations on each island and promote such enterprises.

Shikotan and the Habomai Islands are not situated in the volcanic zone, and must therefore depend on thermal power generation using petroleum or gas.

Providing Transportation and Communication Systems

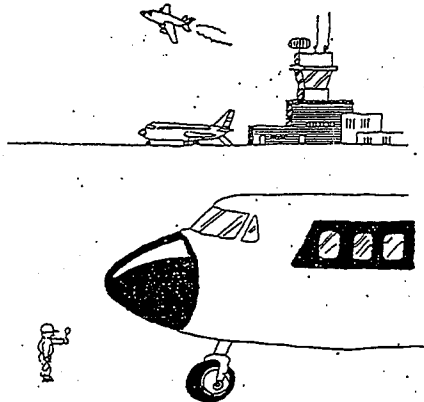
Airlines

Considering the geographical conditions, an air transportation system will be highly useful. With the promotion of a future development plan, we assume that the demand for air transport will keep growing.

1. We should make the Tennei (Burevestnik) Airport on Etorofu the central airport. It should also become an International Airport which could be the base for international exchanges in the Northern part of our country. We will enlarge the airport so that it can function as an international cargo base: a transit base for international freight.

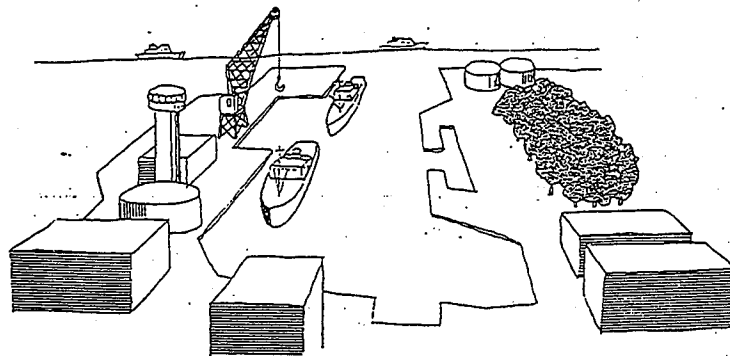
2. Seskei (Mendeleev) Airport (Kunashiri) will be integrally linked to various places in Japan. Facilities should be organized to function efficiently and serve the resort areas.

3. We should build a new airport on Shikotan, and establish a new air route connecting Nemuro-Kunashiri-Etorofu.



Marine Transportation

Because of weather conditions, people depend largely on marine transportation, especially during the summer. Materials, in particular, are transported by sea. The demand for marine transportation will grow with economic development, and the role of ports is crucial. We will provide ports which can deal with larger ships, more developed industries, and marine recreation.



1. Etorofu

Toshimoi is a port in Hitokappu Bay which is ice-free even during winter. Here we will construct a huge port with a -15M wharf, which can function as a major international "base" port. On the eastern coast (the Pacific Coast) are Iribushi, Urumobetsu and Tennei; on the western coast (the Sea of Okhotsk) are Oito, Naibo, Rubetsu, and Shana (Kuril'sk), etc. We will need to construct fishing ports at these places. Shana's (Kuril'sk's) port should become a semi-base port, and we must provide a base for the marine products industry. Rubetsu's port should add marine recreational facilities.

2. Kunashiri

We will turn ice-free Furukamappu's (Yuzhno-kuril'sk's) port into a base port. It should have a wharf over -15M so that large ferryboats can come alongside the pier. On the eastern coast of the island are places such as Tomari, Toufutsu, etc.; and on the western coast is Nikishiro, where we should construct fishing ports in the future.

3. Shikotan

The coastline here is complicated, and there are many bays and inlets all over the island. In particular, Shakotan (Malo-Kuril'sk) Bay and Anama (Krabozavodskoe) Bay are very narrow so it is calm through the year and a perfect place to anchor. They are also the best sheltered harbors in a region renowned for its frequent low pressure areas. We will expand both bays as bases for the fishing and marine products industries. Shakotan (Malo-Kuril'sk) should also function as a base for tourism. In addition, we need to develop Notoro Bay, Matsugahama, and Inemoshiri, which are all located on the Pacific Coast, as fishing ports.

4. Habomai Islands

We should construct fishing ports at Zeikomai on every island. We will have liners to Habamai Harbor (Nemuro-City) and to Shikotan. Moreover, we need to have two or three wharves on each island.

Land Transportation

The automobile is the main form of land transportation on the islands, so we must depend on roads. However, road conditions are very poor, which has a negative effect on people's daily life and on industrial activities. Etorofu and Kunashiri are narrow islands, and mountain ranges run inland along the Pacific Coast of Etorofu, and along the Sea of Okhotsk Coast of Kunashiri. We will construct main roads that will traverse the islands, utilizing the geography. We will provide roads to connect these main roads with tourist and industrial access roads. On Shikotan and the Habomai Islands, we will construct beltways and provide road networks to connect with them. We must be well prepared for snow clearing during winter, and for sea fogs during summer. In the future, we may consider constructing bridges between Cape Nosappu and the Habomai Islands and Shikotan, and another bridge to connect Notsuke Peninsula and Kunashiri.

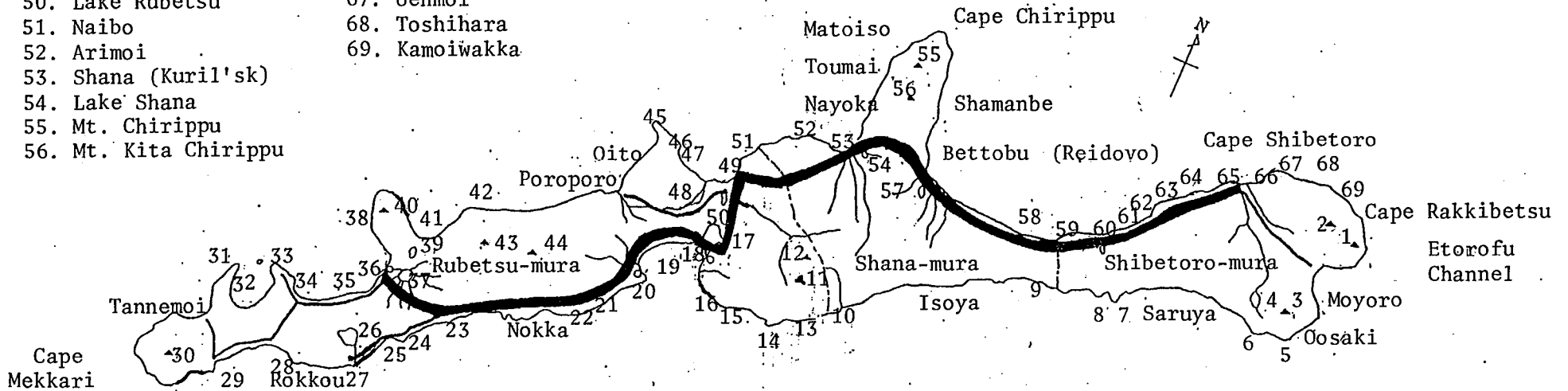
Providing Communication Systems

In order to vitalize industrial activity, we must resolve those problems associated with isolated islands and remote areas. Providing substantial communication facilities is thus very important. We must provide for diverse communication demands, such as those for fax and data communication. To do so, we should introduce a digital telecommunication network and must use it as a system to provide medical and other information. In terms of TV broadcasting, we will provide broadcasting facilities which would solve the problem of poor reception. We will also build post offices and establish distribution networks.

- 40. Atosanobori
- 41. Otashutsu
- 42. Onnemoi
- 43. Mt. Hitokappu
- 44. Mt. Onnemoi
- 45. Cape Notoro
- 46. Tottari
- 47. Ruibara
- 48. Lake Rausu
- 49. Rubetsu (Pioner)
- 50. Lake Rubetsu
- 51. Naibo
- 52. Arimoi
- 53. Shana (Kuril'sk)
- 54. Lake Shana
- 55. Mt. Chirippu
- 56. Mt. Kita Chirippu

- 57. Lake Onsen
- 58. Rucharu
- 59. Porosu
- 60. Lake Touro
- 61. Touro
- 62. Oitomaushi
- 63. Sokiya
- 64. Makuyomai
- 65. Toitabetsu
- 66. Shibetoro (Slavnoye)
- 67. Uenmoi
- 68. Toshihara
- 69. Kamoiwakka

ROAD PLAN MAP: ETOROFU



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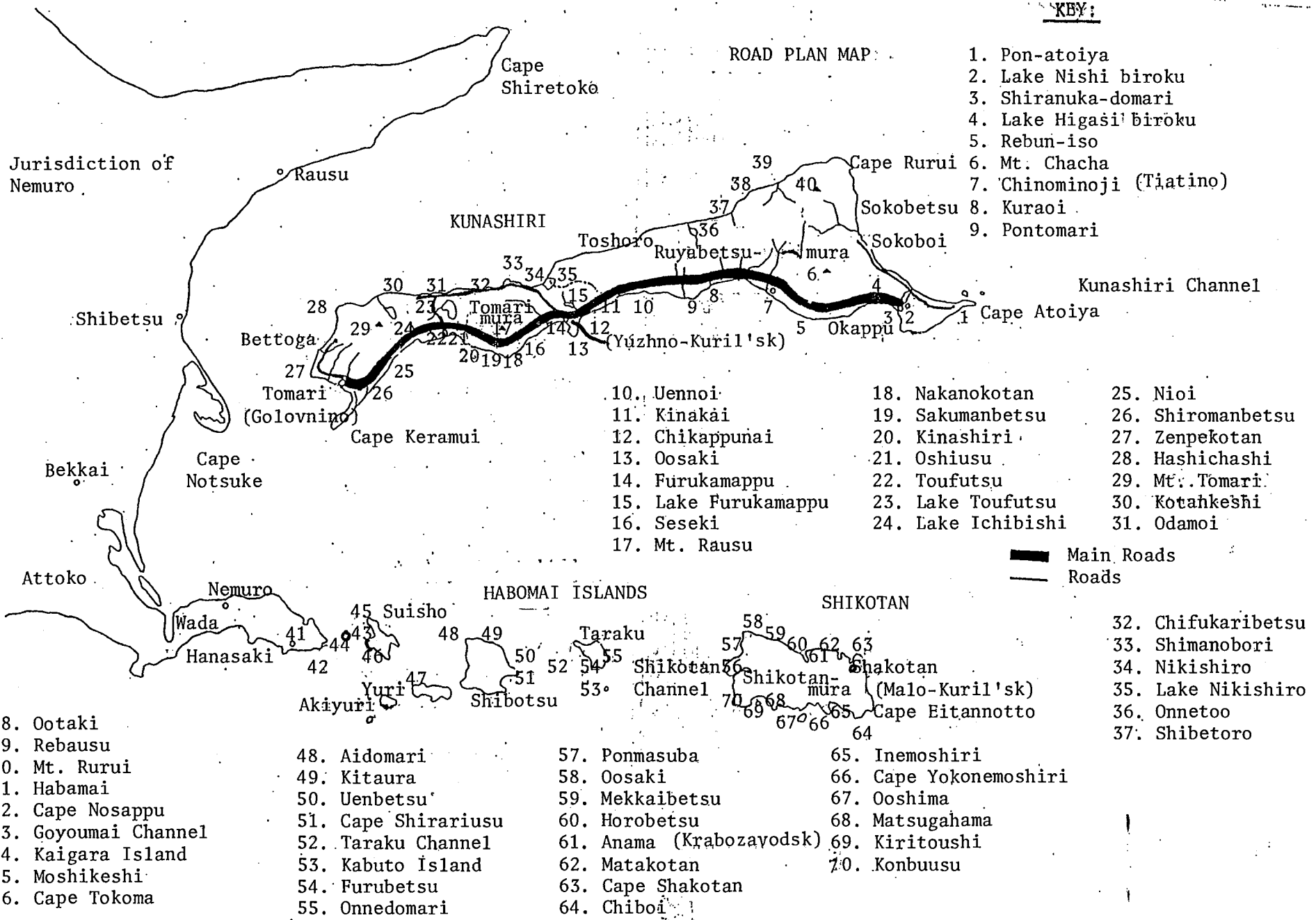
- | | | |
|--------------------|------------------------|--------------------------|
| 1. Mt. Rakkibetsu | 10. Sashiusu | 19. Bay Hitokappu |
| 2. Mt. Kamui | 11. Mt. Odamoe | 20. Tennei (Burevestnik) |
| 3. Mt. Moyoro | 12. Mt. Sankaku | 21. Tomakarusu |
| 4. Lake Shibetoro | 13. Odamoe | 22. Guya |
| 5. Shiobahana | 14. Cape Hodokoi | 23. Iriribushi |
| 6. Seoroshi-misaki | 15. Cape Rebunshiri | 24. Mataruzaru |
| 7. Odamoi | 16. Hodokoi | 25. Jugoyamoi |
| 8. Toshiruri | 17. Lake Toshimoi | |
| 9. Higasi Rucharu | 18. Toshimoi (Kasatka) | |

- Main Roads
- Roads
- 26. Lake Urumobetsu
- 27. Urumobetsu
- 28. Cape Biyonotu
- 29. Riyaushi
- 30. Mt. Berutarube

- 31. Cape Tannemoi
- 32. Bay Mokeshi
- 33. Cape Mokeshi
- 34. Manmai
- 35. Rebun-onnemoi
- 36. Naibo (Dobroe)
- 37. Lake Naibo
- 38. Kamuikotan
- 39. Lake Kimonma

KBY:

ROAD PLAN MAP



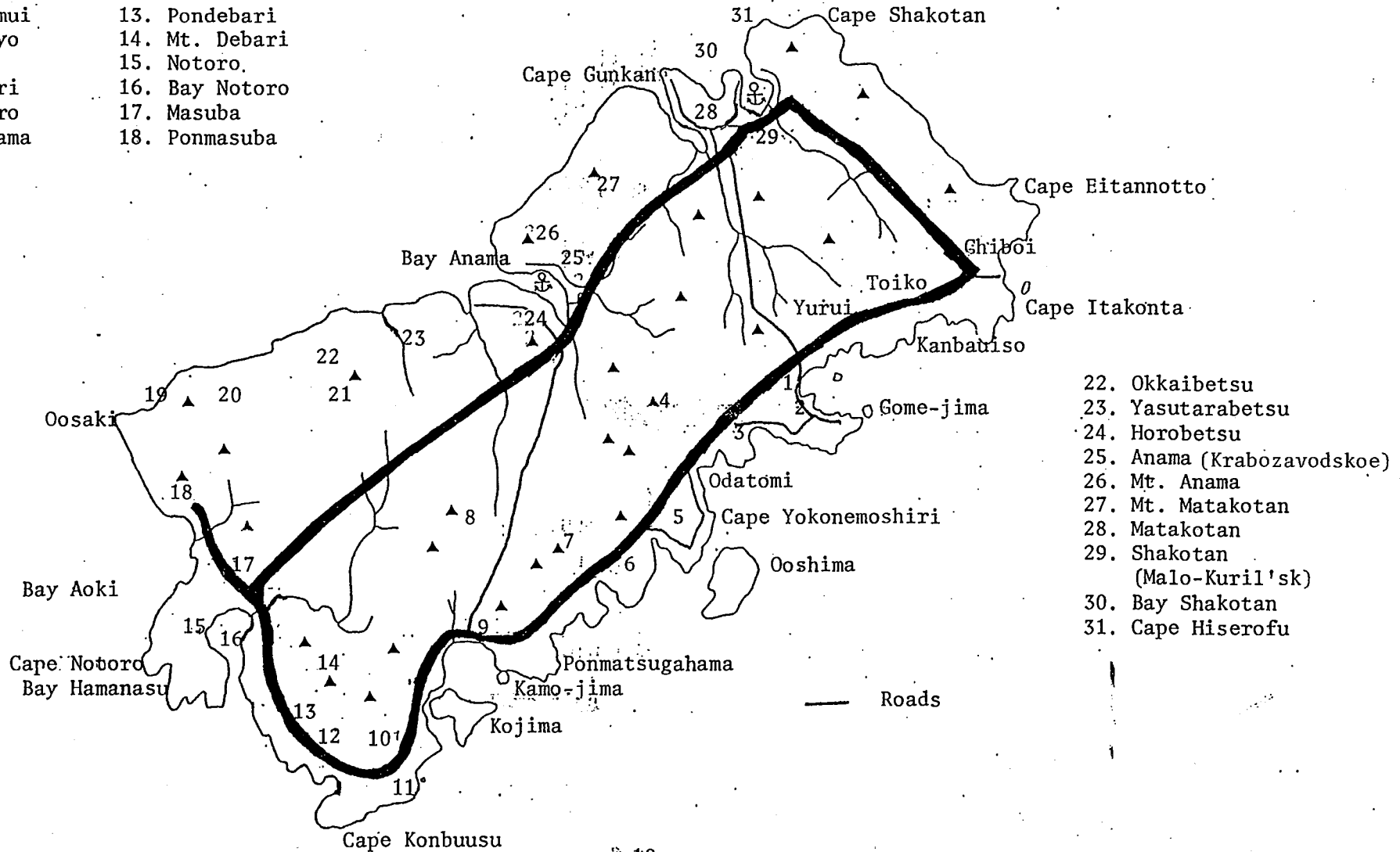
1. Pon-atoiya
2. Lake Nishi biroku
3. Shiranuka-domari
4. Lake Higasi biroku
5. Rebun-iso
6. Mt. Chacha
7. Chinominoji (Tiatino)
8. Kuraoi
9. Pontomari
10. Uennoi
11. Kinakai
12. Chikappunai
13. Oosaki
14. Furukamappu
15. Lake Furukamappu
16. Seseki
17. Mt. Rausu
18. Nakanokotan
19. Sakumanbetsu
20. Kinashiri
21. Oshiusu
22. Toufutsu
23. Lake Toufutsu
24. Lake Ichibishi
25. Nioi
26. Shiromanbetsu
27. Zenpekotan
28. Hashichashi
29. Mt. Tomari
30. Kotanakeshi
31. Odamoi
32. Chifukaribetsu
33. Shimanobori
34. Nikishiro
35. Lake Nikishiro
36. Onnetoo
37. Shibetoro
38. Ootaki
39. Rebausu
40. Mt. Rurui
41. Habamai
42. Cape Nosappu
43. Goyoumai Channel
44. Kaigara Island
45. Moshikeshi
46. Cape Tokoma
47. Yuri
48. Aidomari
49. Kitaura
50. Uenbetsu
51. Cape Shirariusu
52. Taraku Channel
53. Kabuto Island
54. Furubetsu
55. Onnedomari
56. Shikotan Channel
57. Pommasuba
58. Oosaki
59. Mekkaibetsu
60. Horobetsu
61. Anama (Krabozavodsk)
62. Matakotan
63. Cape Shakotan
64. Chiboi
65. Inemoshiri
66. Cape Yokonemoshiri
67. Ooshima
68. Matsugahama
69. Kiritoushi
70. Konbuusu

ROAD PLAN MAP: SHIKOTAN

KEY:

- | | |
|----------------|-----------------|
| 1. Inemoshiri | 10. Ponkonbuusu |
| 2. Otomokae | 11. Konbuusu |
| 3. Sakimui | 12. Debari |
| 4. Mt. Sakimui | 13. Pondebari |
| 5. Bay Kekkyo | 14. Mt. Debari |
| 6. Tomari | 15. Notoro. |
| 7. Mt. Tomari | 16. Bay Notoro |
| 8. Mt. Notoro | 17. Masuba |
| 9. Matsugahama | 18. Ponmasuba |

- | |
|--------------------|
| 19. Hishinebetsu |
| 20. Mekkaibetsu |
| 21. Mt. Okkaibetsu |

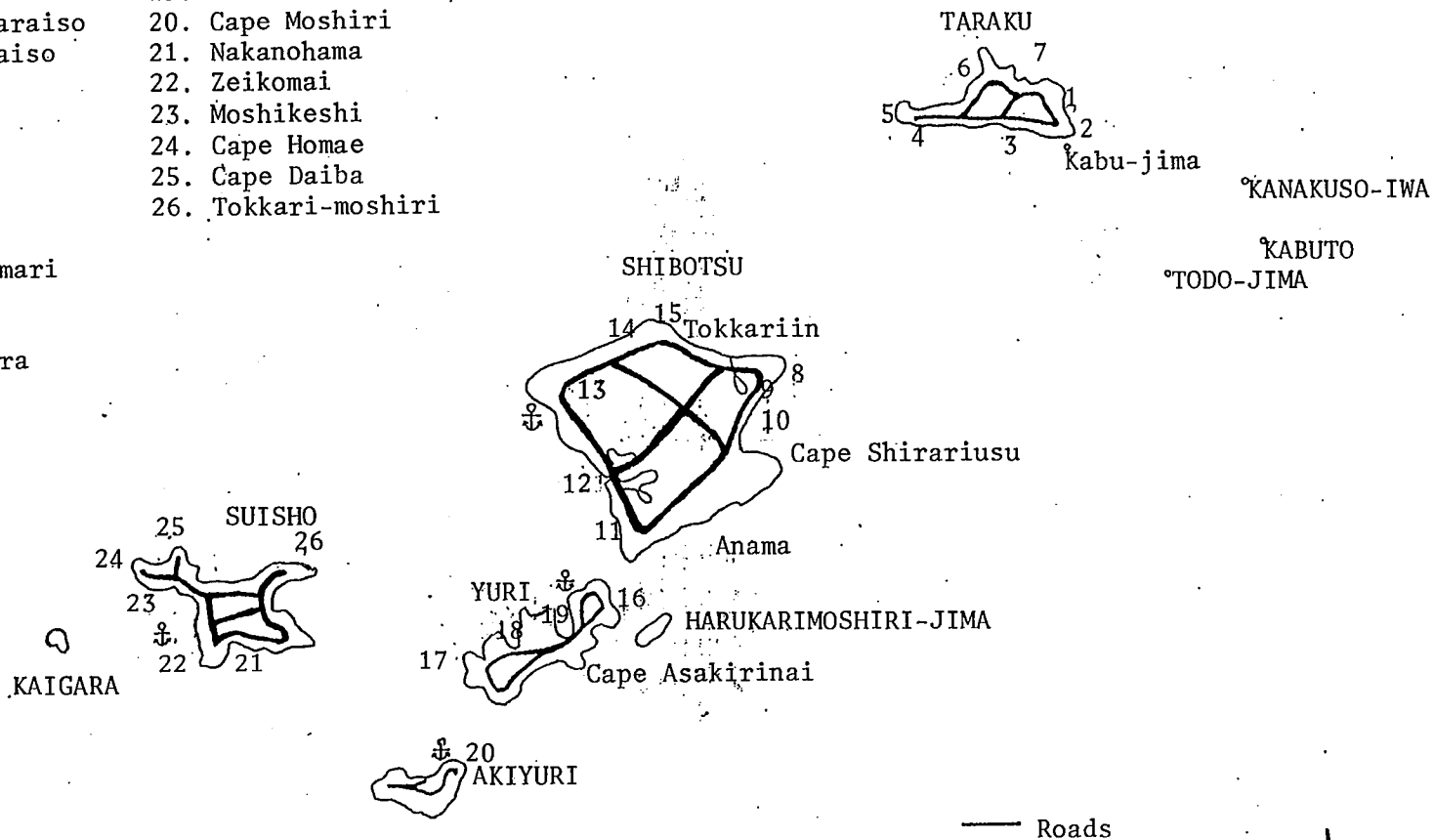


- | |
|---------------------------------|
| 22. Okkaibetsu |
| 23. Yasutarabetsu |
| 24. Horobetsu |
| 25. Anama (Krabozavodskoe) |
| 26. Mt. Anama |
| 27. Mt. Matakotan |
| 28. Matakotan |
| 29. Shakotan
(Malo-Kuril'sk) |
| 30. Bay Shakotan |
| 31. Cape Hiserofu |

ROAD PLAN MAP: HABOMAI ISLANDS

KEY:

- | | |
|----------------------|---------------------|
| 1. Onnedomari | 17. Sunahama |
| 2. Zeikomai | 18. Cape Tokoma |
| 3. Furubetsu | 19. Zeikomai |
| 4. Minami Kanbaraiso | 20. Cape Moshiri |
| 5. Kita Kinbaraiso | 21. Nakanohama |
| 6. Tarakuishi | 22. Zeikomai |
| 7. Kamamae | 23. Moshikeshi |
| 8. Sankakuzaki | 24. Cape Homae |
| 9. Kafuenotsu | 25. Cape Daiba |
| 10. Uenbetsu | 26. Tokkari-moshiri |
| 11. Nishimae | |
| 12. Nishiuradomari | |
| 13. Aidomari | |
| 14. Kitaura | |
| 15. Cape Kitaura | |
| 16. Pontomari | |

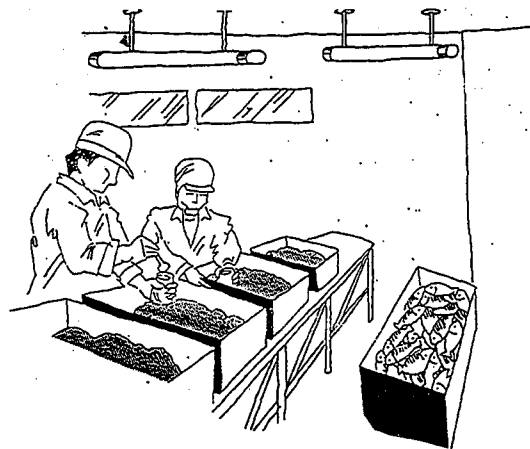


Developing Industry

The four islands must have independent economic growth and opportunities for the employment of the inhabitants. In order to achieve these goals, priority must be given to developing the fishing and tourist industries. Right now, social services and the industrial base are in a very poor condition. The most urgent task is to improve the industrial base and the standard of living as soon as possible so it is close to the level on the mainland. Industrial developments should take into account the characteristics of each island.

Fishing Industry

The sea area around the four islands is ideal for fishing, and the resources include various fish, shellfish and seaweed. Kunashiri faces Shikotan and the Habomai Islands to the South East, and the southern half of Kunashiri lies in the heart of the Nemuro Straits. Therefore, the sea area around Kunashiri has a land shelf, which makes it a perfect place for fish and shellfish living on the seabed. The warm Kuroshio current flows close to the southern coast of Shikotan, and the warm Tsushima current flows through the Soya Straits to the Shiretoko Peninsula. Part of this warm current flows through the Nemuro Straits, another part flows north, past the western coasts of Kunashiri and Etorofu. The cold Kuril current flows south, past the eastern coast of the Kuril Islands, then past the eastern coastline of Etorofu. Near Shikotan, it mixes with the warm Kuroshio current. Part of the cold current flows past the western coasts of Etorofu and Kunashiri, and then meets the warm Tsushima current. Therefore, even though the four islands are located in the area of the Northern Sea, they have relatively rich fishing grounds, not only for fish that live in cold currents, but also for those living in warm currents. We must utilize this wealthy sea area, and develop it as the primary base for the Northern Sea fishing industry, including the development of the Kuril Islands.



1. Making good use of the surrounding sea area

We must strongly promote "resource management" style fishing both offshore and near the coast, and utilize fishing grounds properly and efficiently. We must also preserve the environment and establish a way to increase resources. It is necessary to have facilities for researching reproduction and marine products farming. We need a center to produce and raise artificial seeds. Moreover, it is important to manage the fishing grounds properly and to keep control of the quantity of resources. We will provide a fishing industry management system including the Nemuro Jurisdiction Fishery Industry Cooperative, which shares this area of the sea.

[The main kinds of fish are: flounder, octopus, crab, sea urchin, scallop, clam, lobsters]

2. Providing a base for fishing industry production

We will provide fishing ports and affiliated facilities on each island systematically and try to provide a substantial base for production and distribution. Toshimoi and Shana (Kuril'sk) ports on Etorofu should function as bases for the Northern Sea fishing industry. These two and Furukamappu's (Yuzhno-Kuril'sk's) port on Kunashiri, should have marine products complexes nearby to promote industry and to prevent pollution.

3. Developing fishing technology

In order to promote a resource management type fishing industry, we must set up a research institution for reproduction and marine products farming as well as a center to produce and raise artificial seeds. We will try to develop fishing technology. We will also try to spread and firmly establish fishing technology by cooperating with other research institutions.

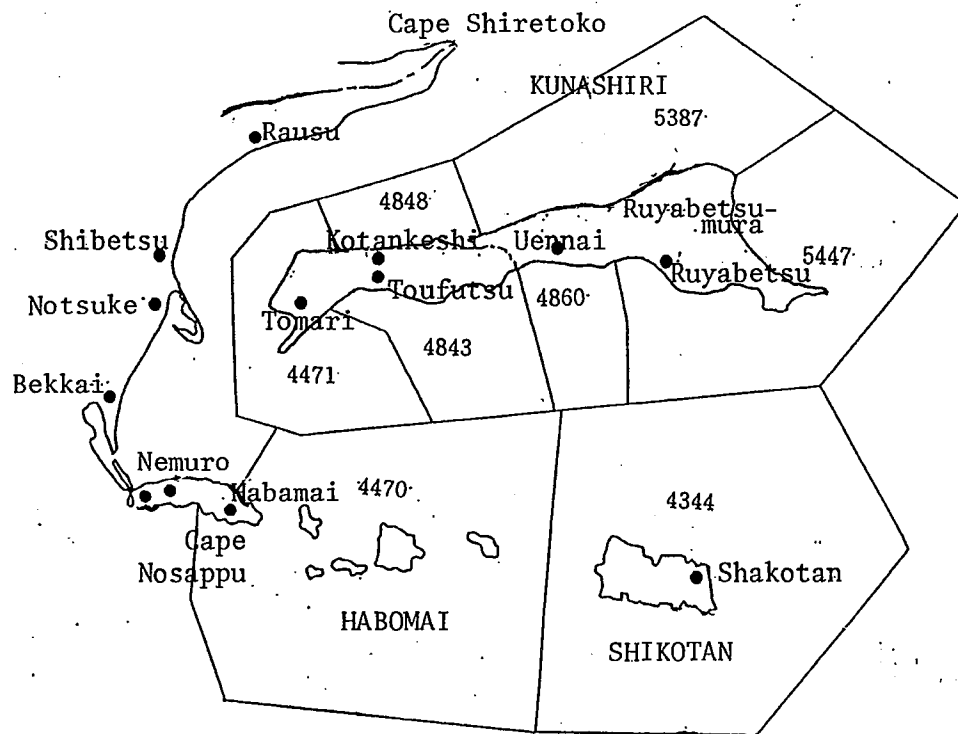
4. Part of the measures for the Northern Sea fishing industry

Trout and salmon spawn in the rivers of Etorofu and Kunashiri, and there are already some fish-farming enterprises. However, we will try to renovate these facilities and introduce new technologies to improve productivity.

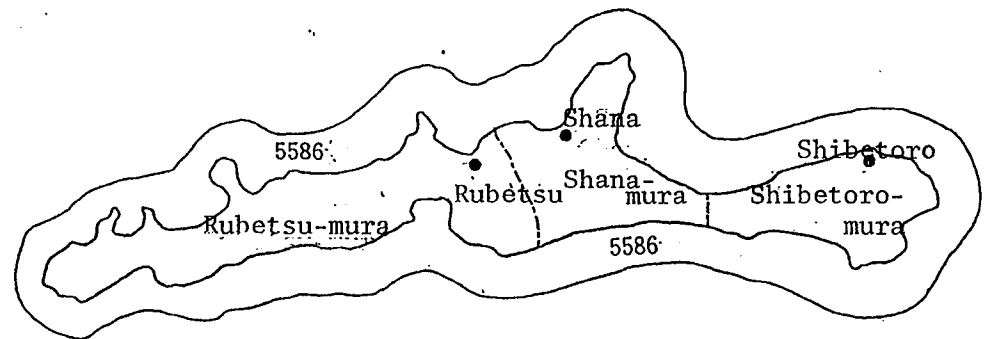
5. Setting up a Research and Development Center for Northern Sea Resources

Japan and the Soviet Union should research and develop the marine and submarine resources in the Northern Sea together.

NORTHERN TERRITORIES — FISHERIES RIGHTS
BEFORE WORLD WAR II



ETOROFU



Agriculture and Stock-raising

The average temperature in the four islands is low, the foggy season is long, and the season for agriculture is short. In the summer they get dense fogs and it is cool and humid. Generally speaking, the soil is not suited to agriculture. The exceptions are Tomari and Ruyabetsu Districts on Kunashiri, which resemble the Negushi Plain on Hokkaido. People grow mainly potatoes. However, it is still possible to have efficient productivity by using new technologies such as bio-technology. For example, on Kunashiri and Etorofu, we may increase self-sufficiency in growing vegetables for local consumption by utilizing soil heat for greenhouses. In terms of dairy farming, there are many places on each island suitable for grazing. Dairy farming in general is in a difficult situation now. However, we should have a large-scale management plan and link it with the tourist business. An experimental farm and a dairy factory to exhibit for tourists are such examples. We must consider multi-management among different types of industries, providing a base for agricultural production as well as through programs such as grass land improvement.

Forestry

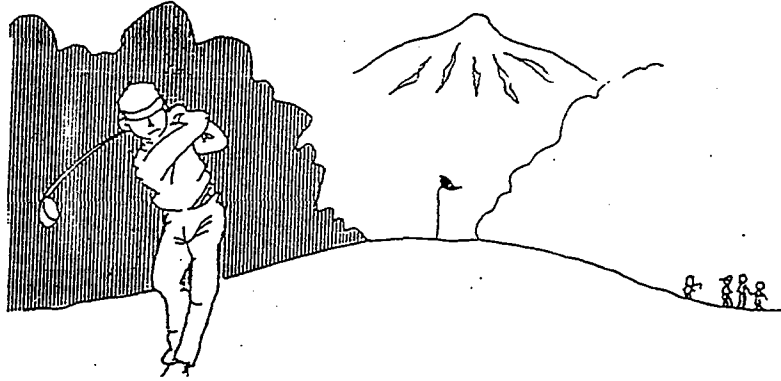
There are a few coniferous forests on Kunashiri and Etorofu, but they are hard to reproduce due to the weather, and we must also take care to protect the environment. We will systematically plant trees on the one hand, and improve the indigenous forest on the other. We will promote various forestry functions such as land conservation and nurturing water resources. We will also encourage forestry related industries. On Kunashiri, we plan to construct a Northern Sea Botanical Garden.

Developing Tourist and Resort Industries and Reception Systems

If the four islands are to be returned, we will probably have a national economic boom larger than the previous Shiretoko boom. Developing the tourist industry, utilizing attractive resources such as the great scenic panoramas, hot spring gushing out here and there, and primeval forests will be as important as the fishing industry. Most of the tourists are likely to spend some time on the islands. Therefore, we should build resort hotels, inexpensive lodges run by local governments, camping areas to accommodate tourists who want to stay for long periods and enjoy nature. On the other hand, we will promote a comprehensive resort development project including both land and marine activities. We must be prepared for future recreation activities, and we must also provide for recreation facilities such as skiing, golf courses, and yachting for the islanders. Tourist spots must have parking places and facilities like

observatories. Those towns where sightseeing is encouraged, need to have lodging facilities. We should take local characteristics into account and make unique, attractive towns.

Food and souvenirs associated with the tourist industry should be produced on the islands where possible, so that related industries will develop together. Also, we will link fishing and dairy farming industries with tourism and promote all these industries together.



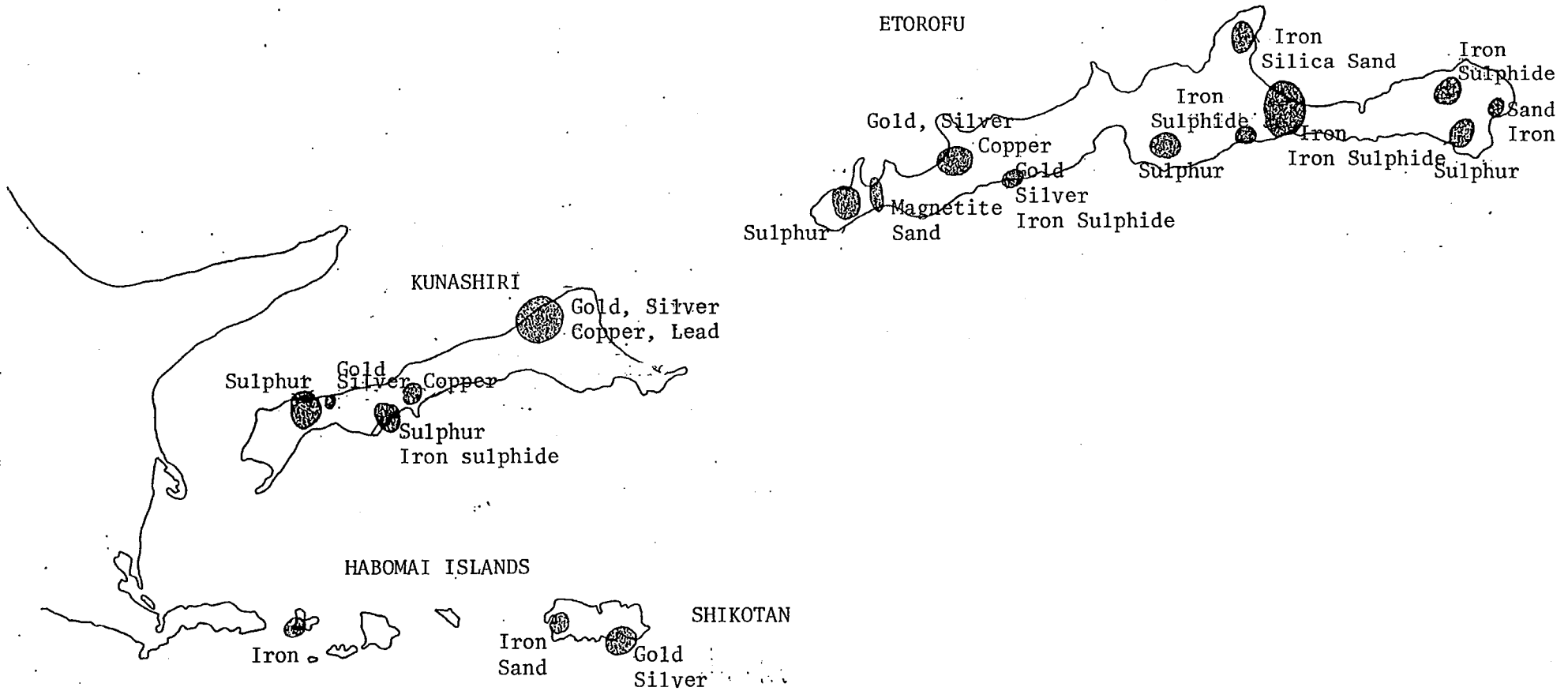
Developing Underground resources

The Kuril Islands are expected to have underground resources, and mining has occurred since the old days. However, due to the geographical conditions, transportation is not easy, and there is not sufficient local labor. The districts are also very cold. For all these reasons, mining has been costly, and so far not enough research on soil and mining has been conducted.

In 1945, as many as 190 mines were registered, mostly on Etorofu and Kunashiri, but the quantity of mining at the end of the war was very small.

Research has not been conducted since the end of the war. A full investigation is necessary in the future, and we look forward to it.

MAJOR UNDERGROUND RESOURCES



UNDERGROUND RESOURCES IN THE NORTHERN TERRITORIES

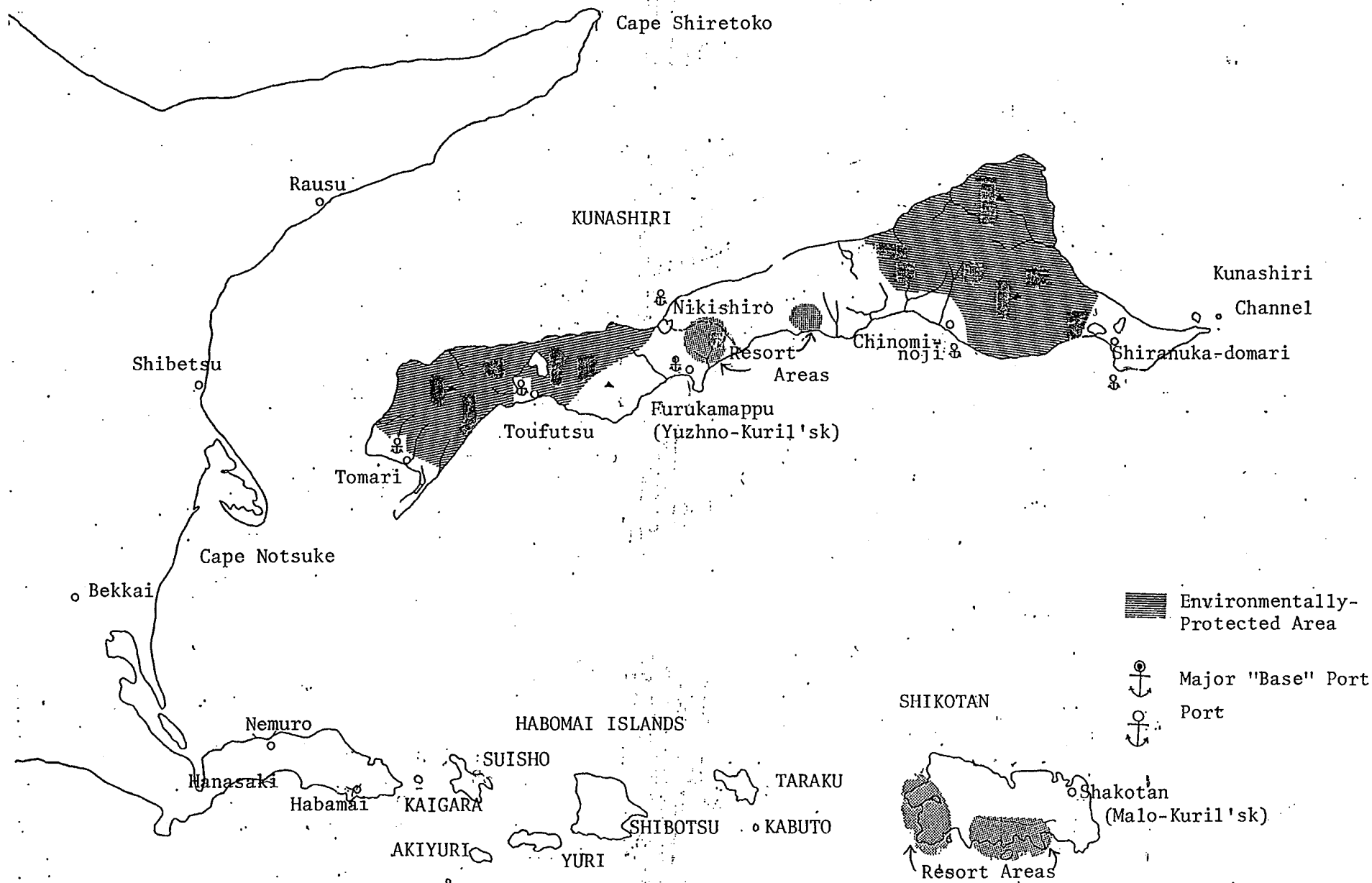
	Gold & Silver	Copper	Lead & Zinc	Iron Sulphide	Sulphur	Limonite	Magnetite Sand	Silica Sand	Diatomaceous Earth	Hot Spring
ETOROFU	○		○	○	●	⊖	⊕	⊕	○	
KUNASHIRI	⊕	⊖	⊕	⊕	●	⊕	⊕			●
SHIKOTAN	○						○			
TARAKU										
SHIBOTSU										
YURI										
HARUKARI-MOSHIRI										
AKIYURI										
SHUI SHO						○				
KAIGARA										

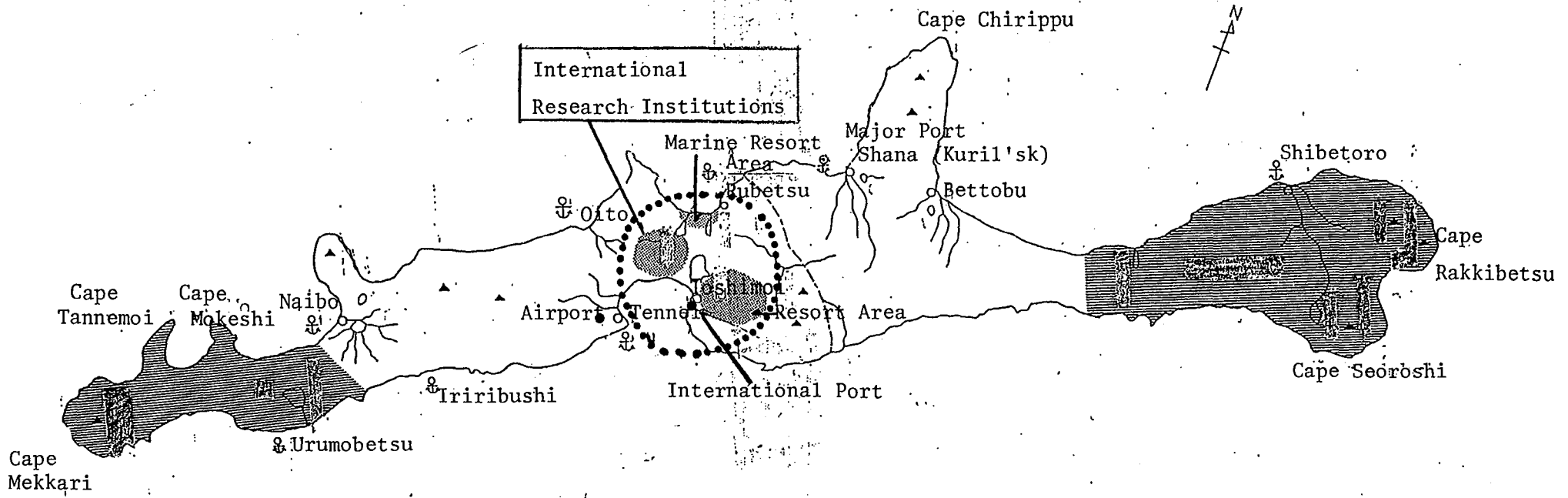
- MAJOR DEPOSIT
- ⊕ MEDIUM DEPOSIT
- ⊖ SMALL DEPOSIT
- MINOR DEPOSIT

Preserving the Natural Environment





Fortunately, the natural environment of the islands seems to be well preserved. Rich primeval forests and precious animals and plants which we have already lost on the mainland are still found on the closest islands.

In 1984, Kunashiri was designated as a conservation area, and one third of the island is now protected. This land is the property of the people, so we must preserve and utilize it actively. Except for cities and industrial areas, we need to designate the land as a natural park, and pursue ways of "preservation" and "utilization" which meet the goals of national parks. When we construct roads and lodging facilities, we must first consider ecological influences. We must do our best not to destroy the environment and to prevent pollution.





ETOROFU

-  Environmentally-Protected Areas
-  International Peace Zone
-  Major "Base" Port
-  Port

Constructing an area for International Exchanges and Peace

We will develop the plain on Etorofu, which extends from Hitokappu Bay, on the eastern-central part of the island to Lake Rausu and Rubetsu, as an area for international exchanges.

Tennei Airport should become an International Airport

In the future, Tennei (Burevestnik) Airport should function as an International Cargo Base and should be a transit base for international air freight. We expect to see an increase in trade with China, Taiwan and Korea, so we would like to connect these areas to North America, Alaska and Canada. Etorofu is the shortest route from each side. This function will create triangular trade and airside manufacturing industries and will expand the economy.

Convert Bay Hitokappu into an International Port

Construct it centered on Toshimoi inside Bay Hitokappu

1. Must have wharf over -15M
2. Must be facilitated with loading and unloading facilities such as cranes
3. Bonded warehouses
4. Outdoor loading space
5. A dock and a ship repair shop
6. Management center

As a base for the Northern Sea fishing industry

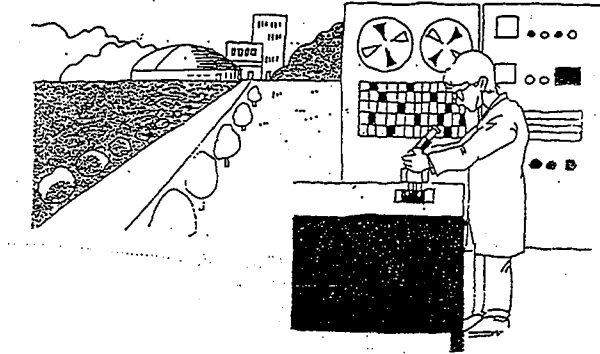
1. -10m wharf
2. A freezer
3. Market
4. Marine products complex at the rear

Area for International Research Institutions

Around southern area of Lake Toshimoi

1. Facility for International Conferences
2. Invite International Research Institutions and United Nations Organizations
 - * Earth physics
 - * The United Nations Environmental Plan (UNEP)
 - * World Meteorological Organization (WMO)
3. Japanese-Soviet Joint Research Institutions
 - * Research on volcanoes (Kamchatka, the Kuril Islands)
 - * Research and development of resources of the Northern Sea area (marine products, submarine resources)

4. Accommodations for researchers
5. Recreational facilities (e.g. sports center)
6. Constructing new models for housing suitable for cold regions



International Resort Area

East side of Lake Toshimoi (Etorofu) and areas including the Seseki region (Kunashiri)

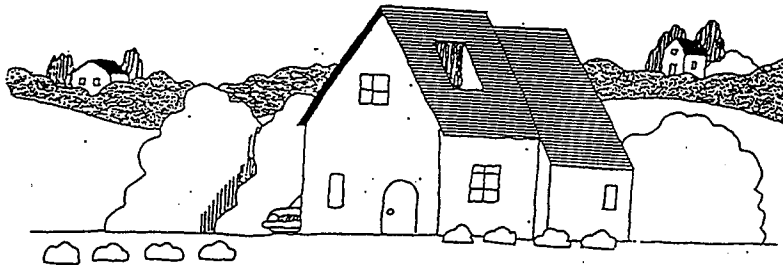
1. Skiing
2. Golf courses
3. Resort hotels
4. Horseback riding
5. Yacht Harbor (Rubetsu Harbor on Etorofu)
6. Tennis courts
7. Spa (utilizing hot spring)

The Living Environment

Right now, the standard of living on the four islands needs to be improved. We must begin providing the base immediately, starting with the key areas on each island. We must raise the standard close to that of the mainland by utilizing existing facilities. In the areas designated for urbanization, we must control disordered urbanization. We must provide public facilities such as roads, parks, water, and sewage as well as housing.

- * securing safe social life for the islanders
- * providing welfare and health insurance
- * promoting education and cultural activities

We must take these points into consideration and provide facilities so that the islanders can live healthy and comfortable lives.



The relation between Vitalizing Nemuro-City and Developing the Four Islands

Nemuro-City has been the origin of the movement demanding the return of the territories for the 46 years since the end of World War II. The main industries -- fishery, agriculture and stock-raising -- are having hard times because of internationalization. Fishing, for example, is suffering from other countries' restrictions, such as the 200-mile fishing zone limitation. Agriculture and stock-raising on the other hand, are becoming less profitable because of the pressures for free trade. Thus, the economy is in a pretty bad situation.

Development of the four islands must play a leading role in alleviating this situation and vitalizing the regional economy. It is quite natural to think this way when we consider geography, administration, and history since the War. However, we must first have substantial bases within the four islands, and we hope that both the public and private sectors will work cooperatively and productively.

Invite Government Offices in charge of development to set up bureaus Securing transportation access

1. Ports

- * Nemuro's port providing a ferry boat wharf, base for ocean liners between the four islands.
- * Hanasaki's port, providing a wharf for ferry boats and large ships, providing and expanding the base for physical distribution among the Kuril Islands, to Kamchatka, and the Northern hemisphere.

2. Roads

- * Develop the Kushiro - Nemuro National Development Highway as soon as possible
- * Promote the construction of the road between Nemuro-Nakahyozu Airport

3. Airports

- * Provide a medium-range plan and try to realize it
- * Link with All-Hokkaido Commuter's Air Network
- * Regular flights to the four islands
- * Base for Emergency heliport

Provide a key health-service system for the Kuril Islands and four islands area

Establish an "International Section" in city organizations

Establish facilities to promote social exchanges with the Soviet islanders

Establish free associations

Create a "Center for Fishing Grounds Resource Management"

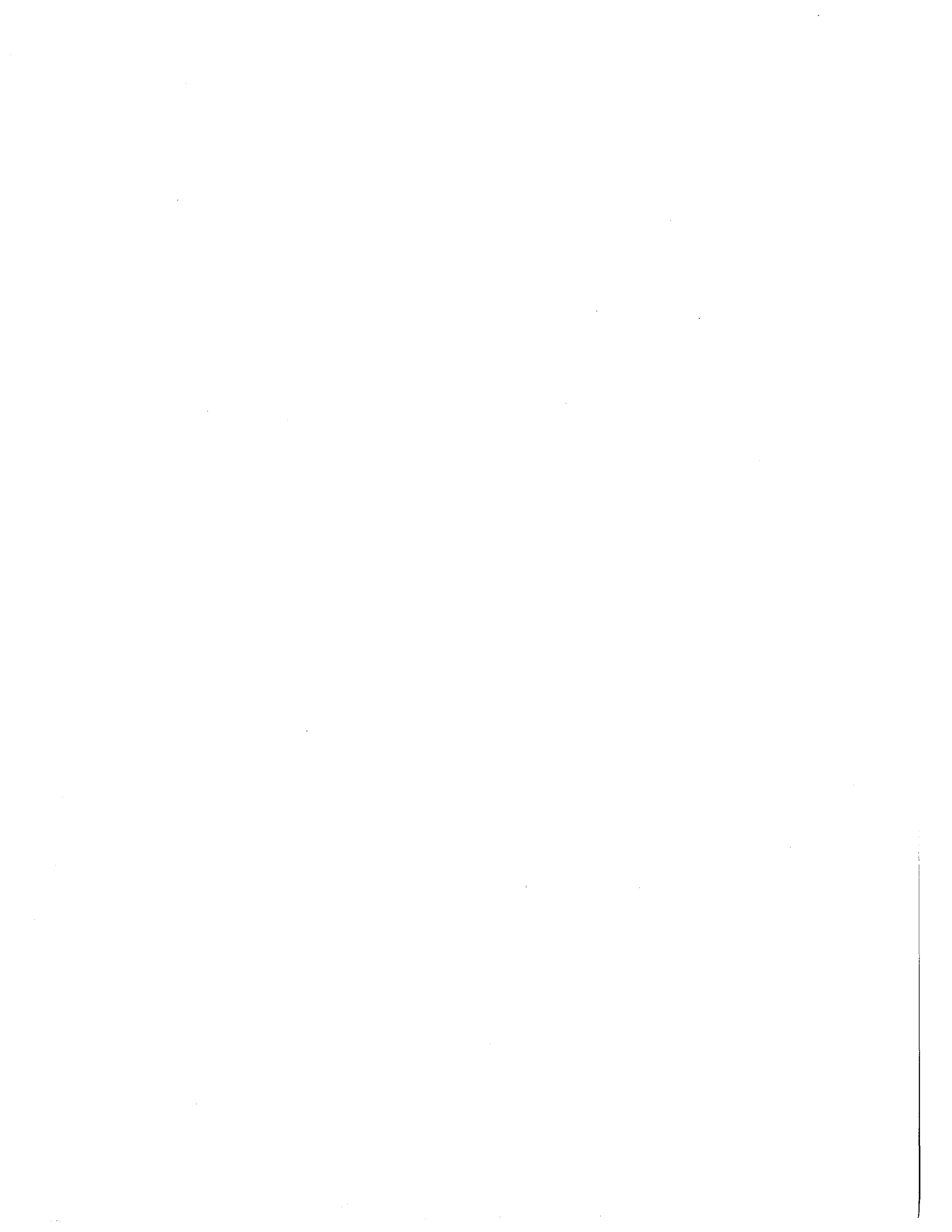
Incorporate Shikotan into Nemuro-City

Shikotan, along with the Habomai Islands, should be incorporated into Nemuro-City and be linked to its development.

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