

M. Shah Alam

**RUSSO-JAPANESE TERRITORIAL DISPUTE :
THE HISTORICAL AND LEGAL ASPECTS**

I

Circumstances accompanying acquisition or loss of state sovereignty over a particular tract of territory have been a matter of controversy and dispute throughout 17-20 centuries. Situation somewhat stabilised after the fall of colonial empires in the post-World War II period. New states emerged under the revolutionary concept of self-determination of nations and peoples. Political map of the world underwent drastic changes. Many unresolved issues of territorial distribution and redistribution which have occurred through centuries by cession, discovery, occupation, prescription and annexation were settled under various peace treaties concluded after the World War II. All territories of our planet seemed to have acquired their valid owners. It came to be widely believed that problems associated with traditional modes of acquisition or loss of territorial sovereignty had become superfluous, if not redundant. But as it turned out, territorial disputes were not over yet.

While the fall of colonialism under the principle of self-determination of nations and peoples fundamentally altered the picture of state territorial sovereignty throughout the world, it also gave rise to many territorial disputes amongst newly independent states. These disputes are largely

Dr. M. Shah Alam, Associate Professor and Dean, Faculty of Law, University of Chittagong, Chittagong.

products of arbitrary division and sub-division by the colonial powers of the territories of their former colonies. On the otherhand, not all disputes have their origin in the colonial legacies. Claims and counter-claims by various powers for ownership of islands in the high seas and substantiating them by traditional modes of acquisition of territories, a frequent phenomenon in the past, have grown less frequent, but have not vanished altogether.¹

One of the burning territorial disputes of contemporary time which relates to the latter category as stated above is the territorial dispute between former Soviet Union² (now Russia) and Japan over the ownership of four islands of the northern coast of Japan. These islands are under Soviet occupation since the end of the Second World War and are claimed by the Russians as integral part of their territory. Japan intensely disputes the claim and calls the islands 'Japan's Northern Territories' which were occupied by the Soviet forces during the closing days of the war and were allegedly annexed by the Soviet Government in defiance of all treaties signed during and after the war and in violation of the norms of international law.

Japan has ever since been waging all out diplomatic and political campaign to recover her territories. Although Japan and former USSR normalized their diplomatic relations in 1956, the unresolved dispute over these islands has been the main stumbling-block to the conclusion of a formal peace treaty between the two countries.³ In the backdrop of disintegration of the USSR and the readiness of the Russian Government to negotiate the issue, once considered by Moscow as settled and closed, the dispute has acquired a fresh appraisal and merits detailed elucidation of historical facts and relevant treaties to examine who has a better title to the islands.

1. A recent such instance is the dispute over the ownership of Falkland Islands (Malvinas) which in 1982 led to war between Argentina and Great Britain.

2. Russia inherited the rights of the former Soviet Union over Kuriles as these islands formed parts of Russian Federation within the USSR.

3. *Border and Territorial Disputes*, A Keesing's Reference Publication, Ed. by Alan J. Day, Longman, 1982, p. 302.

II

The islands in dispute between Japan and Russia are the Habomai group (i.e., Suisho, Shibotsu, Yuri Akiyiri and Taraku) as well as Shikotan, Kunashiri and Etorofu—all situated off the north-east coast of Hokkaido, the northern most of Japan's four main islands. Etorofu and Kunashiri are generally regarded as the two most southern islands of the Kurile Chain of twenty islands running south from the Kamchatka Peninsula to the east of Sakhalin island. Whereas Russian sovereignty over the eighteen Kurile islands stretching from Uruppu island northward is not in dispute, Japan has consistently maintained that Etorofu and Kunashiri are distinct from the northern Kurile islands and that together with the Habomai group and Shikotan, they are historically part of Japan in that until 1945 Russian influence had at no time extended south of Uruppu island.⁴ Japan also claims that as regards flora and fauna all the disputed islands are Japanese in botanical character and have mild climate, whereas the islands from Uruppu to the north are subarctic.⁵ For its part, Russia has contested Japanese versions of the history of the disputed islands in the context of early Russian-Japanese relations and has consistently maintained that its sovereignty over them was clearly established under agreements between the allied powers concluded towards the end of World War II.⁶

Japanese and Russian versions about the early history of the disputed islands differ considerably. Both sides claim to have discovered or undertaken human activities in the islands earlier than the other. Both sides present facts in a manner as to justify their own historical claim over the islands. They refer to their own 'mountain of documents' about the ownership of the islands.⁷ Nevertheless, they do not deny altogether each other's presence in the disputed and other adjoining islands of the Kurile Chain and in parts of Sakhalin during the period when they argue their territorial rights took roots.⁸

4. *Ibid.*

5. *Japan's Northern Territories*, Ministry of Foreign Affairs, Japan, 1980, p. 3.

6. *Border and Territorial Disputes*, *op. cit.*, p. 303.

7. Russel Warren Howe, "Russia Likely to look East, Not West," *Dialogue*, Dhaka, April 3-10, 1992.

8. *Japan's Northern Territories*, Northern Territories Issue Association, Tokyo, 1974, pp. 12-20.

As a point of departure, it may be useful to study the Treaty of Commerce, Navigation and Delimitation which the Russians call the Treaty of Friendship, Commerce and Delimitation signed between Japan and Russia on 7 February, 1855 at Shimoda.⁹ The Treaty reflects the actual positions held by the disputant parties prior to 1855. Circumstances of signing and the contents of the Treaty may be indicators of the true story which is differently told by the parties concerned. Whereas the contents of the Treaty may be differently interpreted by the parties and its effects differently measured in terms of time and bilateral relations, it would be difficult for anyone to ignore the objective circumstances under which the Treaty at Shimoda was signed. It appears from a careful study that the circumstances and the contents of the Treaty are relevant for determining the ownership of the islands based on the traditional modes of acquisition of state territories under international law.

Article 2 of the Treaty of Shimoda states, "henceforth the boundaries between Russia and Japan will pass between the islands of Etorofu and Uruppu. The whole island of Etorofu belongs to Japan and the whole island of Uruppu and the other Kurile islands to the north constitute possessions of Russia. As for Sakhalin, this shall remain, as in the past, undivided between Japan and Russia."¹⁰ Japan's claim for ownership of the disputed islands primarily rests on this Article. Yet this Article signified more than what may follow from a mere treaty provision. Other provisions of the impugned Treaty (*infra*) are also relevant inasmuch as they reflect the then evolving bilateral relations between Japan and Russia and are indicative of the developments that preceded the conclusion of the Treaty.

For facility of investigation, it is worthwhile to acquaint first with the opposing versions of Japan and Russia about the historical facts having bearing on the ownership of the islands and then to judge their comparative merit in the context of the Treaty of 1855. An official brochure entitled *Japan's Northern Territories* published by the Ministry of Foreign Affairs of Japan gives the following version:

9. *Diplomatschiski Slavar* (Diplomatic Dictionary), Vo. II. Moscow, 1950, p. 558.

10. *Ibid.*, p. 559.

Sakhalin and the Kurile islands were known to the Japanese long before they became known to the Russians. It was Japan which actually developed these northern regions. But the Japanese had to withdraw from these areas later because of the inroads made by the Russians.

Toward the end of the 16th Century, Russia advanced eastward over the Ural Mountains and through Siberia. At the beginning of the 18th century, she ruled the Kamchatka Peninsula and had discovered Alaska. By that time, the Russians were in the northern part of the Kuriles and had come in contact with the Japanese there. In 1792, a Russian envoy, Adam Kirilovich Laksman, came to Nemuro in Hokkaido. He was followed by Nikolai Petrovich Rezanov who came to Nagasaki in 1804 to try to open trade with Japan. The Shogunate Government, however, refused to respond by citing Japan's traditional policy of isolationism.

The Shogunate Government, for its part, conducted surveys of the northern areas by sending Juzo Kondo and Rinzo Mamiya, among others, to the Kuriles and Sakhalin. In governing these islands, the Government endeavored to build up defenses for these regions by establishing guard stations on Etorofu and other islands to the south in order to prevent incursions by foreign explorers and settlers.

Meanwhile, Russia moved into the Kuriles by sending in survey expeditions and by attempting to colonize the islands through a Russo-American company. Russian influence, however, at no time reached southward beyond Uruppu Island because, as mentioned above, Japan had established guard stations on Etorofu and other southern islands to prevent just such incursions.

Thus, when Japan concluded the Treaty of Commerce, Navigation and Delimitation with Russia in 1855, the two signatories agreed in Article 2 that thenceforth the boundary between Japan and Russia lay between Etorofu and Uruppu, and that the Kurile Islands north of Uruppu belonged to Russia.¹¹

Among many official Soviet refutations of the Japanese version of earlier history as outlined above was one published in September 1981 by *Izvestia*.¹² As translated into English and broadcast by Moscow radio, this official newspaper article included the following:

Absolutely all the arguments used by the [Japanese] authorities today hold no water, and first and foremost this applies to the assertion that the Kuriles are traditionally Japanese territory. Let us recall in this connection that right up to the mid-19th century the so-called northern territories that Tokyo claims now were not part of Japan proper. What is more, even Hokkaido island, the northern part of present-day Japan, was not part of the

11. *Japan's Northern Territories*, Ministry of Foreign Affairs, *op cit.*, pp. 4-5.

12. *Izvestia* is the newspaper of the Presidium of the former USSR Supreme Soviet. Views expressed in this newspaper were always considered to be official position of the Soviet Government.

country. Only a small peninsula in the southern part of Hokkaido was colonized by the Japanese principality of Matsumae. True, in 1798, the Japanese Government proclaimed Hokkaido its territory, but was unable to actually rule it. In 1821 Hokkaido had to be returned to Matsumae principality. Only in 1834 did Japan again proclaim the island its territory, but even then the act was purely nominal. When in 1862 two Americans ... arrived in the south of Hokkaido, they noted that for the Japanese the island was an absolutely enigmatic land.

"So it is not hard to understand, bearing all this in mind, what the claims to the Kuriles are worth, for these islands were peacefully developed by Russia long before even Hokkaido, an island that lies south of the Kuriles, became part of Japan. Claims are being made in Japan that the Russians, by signing in 1855 the Shimoda Treaty, recognized Japan's legitimate rights to part of the islands of the Kurile chain. But that is a clear-cut distortion of the historic truth. The Shimoda treaty did not give Japan any legitimate rights and could not recognize such because it was not intended as something clearing up the issue of legitimate rights. The treaty was signed by the Russian diplomat Putyatin in Japan, then actually as a hostage, forced by the naval guns of England and France, countries with whom Russia was then in a state of war (i. e. in the Crimean War of 1853—56).

"Later on the Russian Government reminded Japan that Putyatin had signed the treaty in violation of the instructions given him, and if the document was left in force that was solely because of Russia's sincere desire to live in peace and friendship with Japan. In other words, the treaty did not establish the legitimacy of the Japanese rights but signified ceding to Japan a territory that had, by that time, been developed by the Russians and was part of Russia. The subsequent events in the Far East showed that Russia's hopes for peaceful relations with Japan were vain hopes. Japan took the road of aggression against Asian countries and regarded Russia only as an enemy. Eventually, in 1904, Japan attacked Russia, so Russia's territorial concessions were annulled. That they were a mistake was proved by history."¹³

It is to be borne in mind that the Kuriles are not one compact islands but a chain consisting of twenty main islands along with many more tiny islets. Documents on both sides, Russian in particular, often refer to Kuriles in general, though distinguishing them sometimes as Northern and Southern Kuriles. Russian documents even refer to Southern Kuriles as Lesser Kuriles,¹⁴ distinguishing them thereby from Kuriles proper or

13. *Border and Territorial Disputes, op. cit.*, p. 304.

14. *Japan's Northern Territories, Northern Territories Issue Association, op. cit.*, p. 12.

The circumstances as described by the Dictionary bear clear testimony to the fact that the Shimoda Treaty of 1855 was not signed under duress as it was subsequently claimed by Russia.²³ Putyatin had also not signed the Treaty in violation of the instructions given him, as it was later alleged by the Soviet authorities.²⁴ If the first round of talks held in Nagasaki had not produced any result, it was not because there was any serious difference of opinion as to whom the sovereignty of over Southern Kuriles (Etorofu including) should belong. Russian Plenipotentiary was prepared to agree to Japanese sovereignty over Etorofu. Main difference occurred over the ownership of Sakhalin. Both sides claimed the whole of the island. Japan as a compromise proposed a division of the island which Putyatin could not agree to because he had no such instructions from Imperial Russian Government. If Putyatin had wanted to return to Russia for fresh instructions and mandate, it was not because he lacked authority to recognise Japanese sovereignty over Etorofu or any other Southern Kurile island, but because he needed necessary powers to negotiate Sakhalin issue in the light of compromise proposed by Japan.

Putyatin could not return to Russia, but had to hide from English Fleet in the mouth of River Amur in the Sea of Japan.²⁵ But when he heard of USA-Japan Treaty concluded on the initiative of Admiral Peare, he hurried back to Japan and concluded the Treaty at Shimoda, so as not to be overshadowed by American influence in Japan. Notably, provisions of the treaty which were agreed upon during the first round of talks in Nagasaki were almost without change included in the Treaty at Shimoda. Island of Sakhalin which impeded successful completion of first round of talks remained as before undivided between Japan and Russia.

The Treaty of Shimoda together with another Russian-Japanese treaty signed three years later (1858) which established formal diplomatic relations

23. *Border and Territorial Disputes, op. cit.*, p. 303.

24. *Ibid.*, p. 305.

25. It was during the period of Crimean War, Russia was at belligerency with Great Britain.

1854-55 negotiations between the two parties continued in Nagasaki, the atmosphere was very friendly and mutually accommodative.¹⁸ As testified to by the Russian Dictionary, Putyatin proposed that the islands north of Etorofu be recognised as Russian territory while sovereignty over Etorofu, Kunashiri, Shikotan and Habomai group of islands be with Japan.¹⁹ Putyatin also demanded that Sakhalin be recognised as exclusively Russian territory. But this was not acceptable to Japan. First round of talks did not lead to signing of any agreement. Putyatin left Nagasaki, but returned again after a few months for finalisation of talks and conclusion of treaty. Negotiations this time were held at Shimoda where the treaty was finally signed. It is to be noted that prior to signing of this Treaty, a similar treaty of commerce and navigation was signed by Japan with U. S. A. The Diplomatic Dictionary asserts that Russia could derive from Japan the same privileges in the field of commerce and navigation which the US could extract from her only under military threat. According to the dictionary it was a successful display of diplomatic skill by the Russian Plenipotentiary.²⁰ For the Dictionary, it was an honest acknowledgement of facts which *prima facie* testify to the position of equality of parties and sovereignty over the islands being recognised in favour of Japan in the most *bona fide* manner.

Provisions of the Shimoda Treaty consisting of nine Articles were imbued with the spirit of peace and friendship. Article I declares that "permanent peace and friendship is established between Russia and Japan." Both sides extended to each other various trade facilities and expanded the right and privileges of their nationals resident in other's territory. Sakhalin remained as before under joint Russian-Japanese possession (Art. 2).²¹ Formal diplomatic relations between Russia and Japan were established under another Russo-Japanese Treaty signed three years later in 1858. This treaty reconfirmed the Treaty of 1855 (Art. I).²²

18. *Ibid.*

19. *Ibid.*, p. 558

20. *Ibid.*, p. 559.

21. *Ibid.*

22. *Ibid.*, pp. 559-560

arrived at Nagasaki and proposed to the Shogunate Government that the two countries open trade with each other and also establish borders in Sakhalin and the Kuriles, he stated the following Russian position:

The Kurile Islands north of Japan have long belonged to Russia and are under Russian rule. One of them, Etorofu, is inhabited by Kurilians and by some Japanese. In addition, there have been Russian fishermen living on this island. All this arouses some doubt as to whether the island is Russian or Japanese territory. If Japanese high officials and myself, as Russian Plenipotentiary, confer to determine this issue, the border between the two empires will naturally be established.¹⁶

Subsequently when the Shimoda Treaty was signed Russia unequivocally recognised Japanese sovereignty over the whole of Etorofu. One uneasy problem in analysing former Soviet publications is that they are often found to have been specially tailored to suit particular official Soviet position. When positions changed, contents of the publications changed too. Yet truth can be inferred from what had been said or had not been said. One such publication which describes the circumstances under which the Treaty of Shimoda was signed is the Russian Diplomatic Dictionary of 1950.¹⁷ The Dictionary makes a very interesting study of the Treaty and is more indicative of the actual positions of the two countries relating to the disputed islands.

The Dictionary provides evidences that the Shimoda Treaty bears great testimony to the atmosphere of amity that existed at that time between Japan and Russia. Both the Governments were interested in mutual friendship and peace which was established by the Treaty. The Dictionary highly valued the Treaty as a turning point in Russo-Japanese relations. Both U.S.A. and U.K. were at that time making all out efforts by applying various means to create strong influence in Japan which the Shogunate Government was busy resisting. According to the Dictionary, Japanese Government's attitude was friendlier to Russian than to U.S.A. or U.K. Taking advantage of this attitude the Russian Government was interested in putting its relations with Japan on strong treaty foundations. When in

16. *Ibid.*, p. 19

17. *Diplomatichiski Slavar*, *op. cit.*, pp. 558—560.

Northern Kuriles. It is quite possible that both Japan and Russia had their early influence in these islands, with the Russians achieving dominant influence in the North and the Japanese in the south. Under the circumstances prevailing in the 17-19 centuries, the questions who discovered what island and how long their stay continued and when one was displaced by other and for how long are difficult to answer for the purpose of settling the issue of title. Questions relating to occupation and prescription as determinants of ownership are also not easy to answer. Japanese or Russian influences varied from island to island. If Japanese control was more on the Southern Kuriles, it was perhaps due to physical proximity of them to Japan's main land Hokkaido. It is interesting to note that historically Habomai group of islands and Shikotan, two of the disputed islands which are southern most of the Kurile chain did not come to be known as Kuriles proper. They were considered as adjoining islands of Hokkaido. Russians at best called them Lesser Kuriles.¹⁵

Under the circumstances as described above in February, 1855 at Shimoda the Treaty of Commerce, Navigation and Delimitation was signed which recognised Japanese sovereignty over the disputed islands. This was not merely treaty in recognition of Japanese sovereignty, it was also a recognition by the Russians of the 'peaceful and continuous display of effective authority and jurisdiction' by the Japanese on the disputed islands. It appears that Japan in mid-fifties could, in the absence of any treaty, claim to have acquired those islands by prescription. Considering the apparent weakness of Japan in those days compared to a power like Russia, it would be unwise to suggest that Russia would agree to Japanese sovereignty over the islands by treaty provision, had it not been already established by other means. While negotiating the terms of the Treaty of Shimoda Russian Plenipotentiary only raised some doubts about the ownership of Etorofu, northern most of the four disputed islands, and that too in a bargaining manner. When in 1853 Russian Plenipotentiary Evfimii V. Putyatin

15. *Ibid.*, pp. 12-13.

between Japan and Russia and which also confirmed the Treaty of 1855,²⁶ heralded a new era in Russo-Japanese relations. For the next fifty years Russo-Japanese relations developed peacefully and without any territorial dispute which could not have been resolved by diplomatic means. This period was marked by expansion of trade links between the two countries and signing of necessary agreements in this regard.²⁷ One of the major developments of this period is resolution of the issue of claims and counter-claims over Sakhalin. Long diplomatic discourses and efforts led to the conclusion of the Treaty for the Exchange of Sakhalin for Kuriles.

The above Treaty was signed in 1875 in St. Petersburg. Article 2 of the Treaty provides that

..... in exchange for the cession to Russia of the rights on the island of Sakhalin, as mentioned in Article 1, His Majesty the Emperor of all the Russias, on behalf of Himself and His heirs, cedes to His Majesty the Emperor of Japan, the group of islands known as the Kuriles, which He now possesses, together with all the rights of sovereignty derived from this possession, so that henceforth the said group of the Kuriles shall belong to the Empire of Japan. This group comprises the eighteen islands named below : (1) Shumushu.....and (18) Uruppu, so that the boundary between the Empire of Japan and the Empire of Russia in this region shall run through the strait which lies between Cape Lopatka on the Peninsula of Kamchatka and the island of Shumushu.²⁸

It is noteworthy that like the Treaty of Shimoda, this treaty also defined the Kuriles as the group of eighteen islands from Uruppu northward, and regarded Etorofu and the islands south of it as Japanese possessions.

Relations between Japan and Russia developed smoothly until Russo-Japanese War broke out in 1904, ending in Japanese victory and in the conclusion of a peace treaty at Portsmouth which transferred sovereignty over Southern Sakhalin to Japan. While there is little scope in this study to analyse the circumstances of out-break of the war and signing of the treaty, it may be suggested that Russia as a defeated party had not enjoyed full freedom in consenting to the provisions of the treaty. This naturally planted seeds of discontentment amongst the Russians.

26. See f. n. 22.

27. *Dilomatichiski Slavar*, op. cit., pp. 559-562.

28. *Japan's Northern Territories*, Northern Territories Issue Association, op. cit., p. 21.

The Treaty of Portsmouth has much to do with present Russian position as regards the ownership of the disputed islands. Russia argues that Japanese aggression in 1904-05 nullified all previous accords and any reference by Japan to 1855 Treaty and all other treaties concluded since then for establishing her rights over Etorofu, Kunashiri, Shikotan and Habomai group of islands is unacceptable. The Treaty of Portsmouth, no doubt, is not above controversy. But the more important question is, what was the legal position of the disputed islands before 1905 and whether any party by its action or non-action was capable of altering that position.

As we have discussed earlier, rights of Japan over Etorofu, Kunashiri, Shikotan and Habomai were established not merely by treaty provisions, but also by occupation and prescription. The Treaty of Shimoda was not a treaty of cession of territory by Russia to Japan. It was primarily a treaty of delimitation of territory i.e., indentification and recognition of border between the two countries which passed through Uruppu and Etorofu. On the other hand, the Treaty for Exchange of Sakhalin for Kuriles was a treaty of mutual cession. In this Exchange Treaty also there was tacit recognition of the fact that islands of Etorofu, Kunashiri, Shikotan and Habomai, though by name may be called Kuriles or Lesser Kuriles, were parts of Japan. The Treaty specifically mentioned names of eighteen islands which were handed over to Japan in exchange of South Sakhalin. Sovereignty over Etorofu, Kunashiri, Shikotan and Habomai *ab initio* resided with Japan while sovereignty over Kuriles (18 islands) resided with Russia which she transferred to Japan in 1875 Treaty.

Japanese aggression in 1904-5 might have caused damage to the validity of the Exchanged Treaty but not to other treaties concluded before it. Even if Russia bases her claims on breach of trust by Japan in view of her alleged aggression and on subsequent loss of validity of all antecedent treaties, it will not apply to the legal position of Etorofu, Kunashiri, Shikotan and Habomai group of islands which belonged to Japan even before 1855. As noted earlier, the question of delimitation of Kuriles did not pose much of controversy while working out the provisions of 1855 Treaty.

Negotiations and signing of the Treaty were delayed for other reasons, one of which was position of the parties in relation to Sakhalin. Sakhalin, therefore, was left unresolved in 1855 Treaty.

In the *Minquiers and Ecrehos Case* concerning disputed sovereignty over a group of islets and rocks in the English Channel, claimed by both France and the United Kingdom, the International Court of Justice exhaustively examined the history of the region since 1066. However, its decision was based primarily on relatively recent acts relating to the exercise of Jurisdiction and local administration as well as the nature of legislative enactments referable to the territory in question. And upon these grounds, British sovereignty was upheld. The Sovereign acts of the United Kingdom relating to the istets far outweighed any such activities by the French authorities and accordingly the claims of the latter were dismissed.²⁹ This argument of the Court clearly favours Japanese ownership of the disputed islands.

Prominent French publicist De Visscher attempted to render the theoretical classifications more consonant with the practical realities by the introduction of the concept of historical consolidation.³⁰ This idea is founded on proven long use, which reflects a complex of interests and relations resulting in the acquisition of territory.³¹ Such long use of Etorofu, Kunashiri, Shikotan and Habomai group of islands was clearly evident in the early fifties of the last century when the Treaty of Shimoda was concluded.

Japanese sovereignty over the disputed islands was further consolidated by the 1855 Treaty and also by more activities undertaken by the Japanese Government and the people on the islands. There was no doubt or confusion in the mind of any individual or any state about the permanency of the developments relating to the ownership of Etorofu, Kunashiri, Shikotan and Habomai. The whole of the second half of 19th century witnessed this

29. ICJ Reports, 1953, p. 47; 20 ILR, p. 94.

30. De Visscher, *Theory and Reality in Public International Law*, 1968, p. 209.

31. *Ibid.*

undeniable fact. The Japanese sovereignty over Kuriles other than Etorofu, Kunashiri, Shikotan and Habomi as it was derived from the Treaty of Exchange in 1875 differed in nature from her sovereignty over the four disputed islands. While not questioning Japanese sovereignty over the whole of Kuriles after 1875, it can be argued that her sovereignty over the four disputed islands rested on more solid foundations, so as not to be nullified by any act whatsoever.

As situation stood by the turn of the century, both the rules of prescription and the provisions of treaty overwhelmingly led to a general conviction that Etorofu, Kunashir, Shikotan and Habomai as under Japanese sovereignty was in conformity with international order, which is a requirement for the acquisition of valid title to any territory.³²

It is interesting to note that Russian Government after October Socialist Revolution in 1917 did not take any step to revoke the 1905 Portsmouth Treaty which was apparently imposed upon Russia. On the contrary, the new socialist Government signed with her counterpart in 1925 a "Convention Embodying Basic Rules of Relations between Japan and the Union of Soviet Socialist Republics." In Article 2 of this Convention, the Soviet Government agreed that the Treaty of Portsmouth of 1905 should remain in full force.³³ It may be assumed that for the new Soviet Government desiring for its own sake to establish friendly relations with the neighbours, this was a tactical move to declare adherence to a treaty which common sense suggests it was unwilling to accept. But this cannot be said of the 1875 Treaty, not to speak of the 1855 one.

III

Position at the out-break of the Second World War was that the Kuriles and Southern Sakhalin formed parts of Japan. Of them, Japanese sovereignty over Southern Sakhalin was not free from controversy. Since eighteen islands of Kuriles were exchanged for South Sakhalin in 1875 and

32. L. Oppenheim, *International Law*, M. Lauterpacht, ed., 8th edn., Vol. I (1966), p. 576.

33. *Diplomatichiski Slavar*, *op. cit.*, p. 745; *Japan's Northern Territories*, Northern Territories Issue Association, *op. cit.*, p. 22.

South Sakhalin was later awarded to Japan by the controversial treaty of 1905, foundations of Japanese sovereignty over these Kurilian islands became weaker. But Japanese sovereignty over the disputed islands, i.e., Etorofu, Kunashiri, Shikotan and Habomai was in no way affected by these developments.

Outcome of the Second World War brought about fundamental change in the territorial issues discussed above. End of the War left the whole of Japan occupied by the Allied Powers, namely, USA and USSR. The USSR entering the state of belligerency with Japan during the closing days of the war occupied Southern Sakhalin and the whole of Kuriles including Etorofu, Kunashiri, Shikotan and Habomai.³⁴ Although it was the declared policy of the Allied Powers not to deprive vanquished Japan of its sovereignty over its four main islands and other minor territories as would be determined by the Allies, Soviet Union refused to withdraw its troops from the now disputed islands over which Japanese sovereignty had been consolidated over the years and which had become parts of Japan proper ever since.

Russia claims that there exists a series of international agreement, i.e., Cairo Declaration (1943), Yalta Agreement (1945), Potsdam Declaration (1945), San Francisco Peace Treaty (1951) and Japan-Soviet Joint Declaration (1956) which restored "historical status quo"³⁵ in the Far East and confirmed Russian sovereignty over all the northern islands occupied by the Soviet forces at the end of World War II. While the wartime allies in these agreements undoubtedly resolved to strip Japan of the territories which she had acquired by violence and aggression, and the allies actually did so by San Francisco Peace Treaty, territories so taken away from Japan, i.e., South Sakhalin and Kuriles (amongst others) were not awarded to Russia by express treaty provisions. San Francisco Peace Treaty which accounted for

34. It is notable that the Soviet Union and Japan signed a treaty of neutrality in 1941. The two countries did not enter into war against each other until the very last days of the war. It is only in pursuance of the Yalta Agreement of 1945 (kept secret until the end of the war) that the Soviet Union had opened her Pacific Front hardly two weeks before Japan surrendered unconditionally.

35. *Border and Territorial Disputes*, *op. cit.*, p. 306.

the final disposition of territories annexed by Japan at different times was signed by most of the allies and Japan. Notable exception was Soviet Union.³⁶ While Japan lost sovereignty over South Sakhalin and Kuriles, Soviet sovereignty over them was not recognised either. Nevertheless, Soviet claim to sovereignty over these islands caused little controversy. Controversy and dispute erupted over sovereignty on Etorofu, Kunashiri, Shikotan and Habomai which Japan refused to regard as parts of Kuriles as understood by the San Francisco Treaty.

Japan renouncing her rights over South Sakhalin and Kuriles by the San Francisco Peace Treaty also gradually compromised with the *fait accompli* that sovereignty over these islands belonged to Russia, though no peace treaty as yet conferred such sovereignty upon Russia. On the other hand, Japan from the very outset has firmly and consistently protested any idea of sovereignty of Russia being extended to Etorofu, Kunashiri, Shikotan and Habomai. Her position is based on the fact that these islands are not included in the term "Kuriles" which Japan has been stripped of by the San Francisco Treaty. Japan argues that "Kuriles" as used in various international agreements essentially exclude these islands because they have always formed parts of Japan and were never parts of any foreign country.

While Russia consistently refers to the international agreements and treaties, as mentioned above, to base her claims over the disputed islands, contents of these agreements and their interpretation by various parties to the agreements have become substantially relevant to the problem. The crux of the problem is that while Russia argues that the term "Kuriles" as mentioned in the agreement include the islands in dispute, Japan vehemently opposes it and has never accepted the Russian version. Tokyo's contention is that since geographical limits of Kuriles have not been defined in any of the agreements and since Etorofu, Kunashiri, Shikotan and Habomai as the disputed islands have always intended to mean eighteen islands of Kuriles

36. Soviet Union refused to sign the Treaty because it *inter alia* failed to recognise Soviet sovereignty over South Sakhalin and the Kuriles which was already under her occupation.

north of Etoruof. The issue of geographical limits of Kuriles was twice attempted to be raised before the International Court of Justice. On both the occasions, Russia refused to take the issue to the Court.³⁷

Deadlock over the disputed islands is of such grave dimension that no formal peace treaty could yet be signed between USSR and Japan after the World War II which interestingly leaves both sides still officially at war,³⁸ though diplomatic relations between them were restored by a Joint Declaration in 1956. All efforts have so far failed to solve the territorial issue and hence no peace treaty is in sight. This calls for a fresh appraisal of the international agreements relating to the issue.

Cairo Declaration of 27 November 1943 (point V) declares, "it is [the three Great Allies]³⁹ purpose that Japan shall be stripped of all islands in the Pacific which she has siezed and occupied since the beginning of the First World War in 1914 ... Japan will also be expelled from all other territories which she has taken by violence and greed". Historical facts as described above put it beyond all doubts that the disputed islands were never taken by Japan by "violence and greed."

Yalta Agreement of 11 February 1945 states:

... 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 condition that ... The former rights of Russia violated by the treacherous attack of Japan in 1904 shall be restored, viz., ... The Southern part of Sakhalin as well as all the islands adjacent to it shall be returned to the Soviet Union. ... The Kurile islands shall be handed over to the Soviet Union.⁴⁰

A careful study of the above clause reveals that the stress is on the restoration of the former rights of Russia which had been violated by Japan in 1904. In this context when it has been stipulated that Kuriles, names of islands to be included in the term not specified, shall be handed over to the

37. Whiteman, *Digest of Internatinal Law*, 1964, p. 3.

38. Russell Warren Howe, "First Soviet-Japan Summit: The Ice is Melting," *Dialogue*, Dhaka, April 5, 1991.

39. Cairo Declaration related to war in the Pacific was signed by Nationalist China, U. S. A and U. K.

40. For the text of the Agreement see, *Japan's Northern Territories*, Northern Territories Issue Association, *op. cit.*, pp. 78-79.

Soviet Union, it may be assumed that by Kuriles Yalta Agreement has meant those eighteen islands which were once under Russian sovereignty but at a later stage handed over to Japan in exchange of South Sakhalin. This interpretation is closer to position of the disputed islands as earlier established under international law.

From a legal point of view, the Yalta Agreement was only a declaration of common objectives made by the leaders of Great Britain, the Soviet Union and the United States. On this point, the United States Government, one of the participants in this Agreement, said in an Aide-Memoire to Japan, dated September 7, 1956, that it "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 territories."⁴¹ Furthermore, Japan is not a party to the Yalta Agreement nor is there any mention of the Yalta Agreement in the Potsdam Declaration (made few months later) which Japan accepted. Therefore, Japan is not legally bound by it.⁴² Final disposition of territories was to be made by a formal peace treaty concluded after the war was over. Such a treaty with the participation of both Japan and Russia has not yet been signed.

Potsdam declaration of 26 July 1945 by China, USA and UK which was also signed by Russia on 9 August 1945 stated in Article 8, "the terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honsu, Hokkaido, Kyusu, Shikoku and such minor islands as we determine."⁴³ It is evident that the Declaration also leaves final Disposition of territories to a future time. The Potsdam Declaration enumerated certain specific areas and "such minor islands as we determine," as territories to remain under Japanese sovereignty. Which these "minor islands" were, was to be decided by the allies. In reply to a Japanese inquiry the US Government officially indicated that the allies had

41. *Japan's Northern Territories*, Ministry of Foreign Affairs, *op. cit.*, p. 7.

42. *Ibid.*, p. 8.

43. For the text see, *Japan's Northern Territories*, Northern Territories Issue Association, *op. cit.*, pp. 80-82.

never determined which these "minor islands" were to be. Whether or not the terms of Potsdam Declaration had been complied with was to be finally determined in a peace treaty. Japan surrendered on the terms of the declaration and the war came to an end with the allies also under an obligation to observe the terms of the Potsdam declaration.⁴⁴

Of the international agreements referred to by Russia as the basis of her claims over the disputed islands, San Francisco Peace Treaty of 8 September 1951 occupies an important place. This treaty was supposed to incorporate all previous agreements amongst the allies and to finally dispose of all territorial issues. So far as the disputed islands are concerned, Article 2(c) of the Treaty stipulates that "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."⁴⁵

It is clear that by the above provision of the Treaty Japan relinquished her rights over Southern Sakhalin and the Kurile island, but curiously the Treaty contained no provision indicating to which country these areas should finally belong. Since the Treaty of Portsmouth is referred and since there was an understanding amongst the allies that these territories should ultimately go to the Soviet Union, and the territories were then actually under Soviet control, it was only too natural that the Treaty would proclaim Soviet sovereignty over them. Absence of such provision in the Treaty became one of the fundamental reasons why Russia along with Poland and Czechoslovakia refrained from signing it, while most of other wartime allies did sign the Treaty. The United States whose views prevailed in the San Francisco Conference maintained that ownership of these territories would be determined by some future international solvents.⁴⁶ Such a position of the US Government could perhaps be explained by post-War US-Soviet relations characterised by confrontation rather than cooperation.

44. *Ibid.*, p. 34.

45. For the text see, *Ibid.*, pp. 86-88.

46. Whitemen, *Digest of International Law*, pp. 566-567.

The former Soviet Union, for its part, took unilateral measures to include these regions in its own territory, and continues to exercise administration over them. In terms of international law, such unilateral measures have no legal effect in transferring title.

Subsequent developments, however, confirmed the obvious fact that the territories renounced by Japan under Article 2(c) of the Peace Treaty were to go to Russia. Even Japan when negotiating the provisions of a separate peace treaty with Russia in the mid-fifties accepted the *fait accompli*. Nevertheless, this did not solve the problem of ownership of the disputed islands as discussed above, because the San Francisco Peace Treaty also like other international documents did not define the geographical limits of the Kurile islands.

Peace Conference at San Francisco, however, was aware of Japan's position and did nothing to refute it. While the draft treaty was being discussed, the Government of Japan submitted materials to the United States showing that the Habomai Island group and Shikotan were parts of Hokkaido, that Kunashiri and Etorofu, unlike the Kurile Islands, had never belonged to a foreign country. Japan's official view is that her position was clearly stated at the Peace Conference and it is quite natural for Japan to consider that the Habomais, Shikotan, Kunashiri and Etorofu are not included in the term "Kurile Islands." This understanding is also in accordance with other international arrangements binding upon Japan.⁴⁷

The US Senate's observation at the ratification of the San Francisco Peace Treaty has important implications for the ownership of the disputed islands. The Senate ratifying the Treaty observed:

As part of such advice and consent the Senate states that nothing the treaty contains is deemed to diminish or prejudice, in favor of the Soviet Union, the right, title, and interest of Japan, or the Allied Powers as defined in said treaty, in and to South Sakhalin and its adjacent islands, the Kurile Islands, the Habomai Islands, the island of Shikotan, or any other territory, rights, or interests possessed by Japan on December 7, 1941, or to confer any right, title, or benefit therein or thereto on the Soviet Union; and also that nothing in the said treaty, or the advice and consent of the

47. *Japan's Northern Territories, op. cit.*, p. 10.

Senate to the ratification thereof, implies recognition of the part of the United States of the provisions in favor of the Soviet Union contained in the so-called 'Yalta agreement' regarding Japan of February 11, 1945.⁴⁸

United States Department of State Aide-Memoire on Yalta Agreement and Kuriles (7 September 1956) is more significant. It observed:

With respect to the territorial question, as the Japanese Government has been previously informed, 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 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 the question, as was stated by the Delegate of the United States at San Francisco, to 'international solvents other than this Treaty.'

The United States has reached the conclusion after examination of the historical facts that the island of Etorofu and Kunashiri (along with the Habomai Islands and Shikotan which are a 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.⁴⁹

It may be argued that US position hardened towards Russia due to new developments in international politics and balance of power position. However, the views of the United States as a major party to all international agreements which Russia refers to for supporting her ownership of the disputed islands are not without legal consequences. It is of utmost importance that the US interpretation of the impugned international agreements which is also supported by other western allies and her position in relation to the disputed island conform to the historical facts as upheld by Japan. This is strong evidence of nullity of Russian sovereignty over the disputed islands which never in history formed parts of Russian territory.

IV

Since Russia refused to sign the San Francisco Peace Treaty, it became necessary for her to conclude a separate peace treaty with Japan in order to

48. Whiteman, *op. cit.*, p. 560.

49. For text see, *Japan's Northern Territories*, Northern Territories Issue Association, *op. cit.*, pp. 89-90.

settle *inter alia* the territorial issues. Main obstacle, as it could be foreseen, to signing of such a treaty became the disagreement over the ownership of Etorofu, Kunashiri, Shikotan and Habomai islands. Russia was prepared to hand over to Japan only Shikotan and Habomai group. Japan found it impossible to agree to such a territorial settlement and no treaty, therefore, could be concluded. Both sides, thereupon, decided to reestablish diplomatic relations by Joint Declaration and to continue negotiations for a formal peace treaty which would settle territorial issues. Paragraph 9(1) of the Joint Declaration (October 19, 1956) stated, "after normal diplomatic relations have been restored between Japan and the Soviet Union, the negotiations on the conclusion of a peace treaty shall be continued."

Had Japan agreed to a final settlement on the basis of return of only Shikotan and Habomai, the peace treaty could have been possibly signed. The declared desire of the USSR to continue negotiations after the reestablishment of diplomatic relations bears testimony to her readiness to open talks on other two islands, i.e., Etorofu and Kunashiri as well. Japanese view was that those negotiations would concern mainly the territorial issue, since the problems normally included in a peace settlement were resolved in the Joint Declaration. And in this case, the problem involves the islands of Kunashiri and Etorofu, as it had already been agreed that the Habomais and Shikotan would be returned to Japan upon the conclusion of a peace treaty between the two countries. The claim of Russia that the territorial question has been completely settled runs counter to the only possible implication of paragraph 9 of the Joint Declaration, otherwise there could be no logical reason for agreeing to continue negotiations for a peace treaty. Paragraph 9 obviously refers to the territorial question in substance.⁵⁰

Within a few years of the signing of 1956 Joint Declaration, the conclusion in January 1960 of the new Japan-US mutual cooperation and security treaty brought about a hardening of the Russian position on the disputed islands. Closer US-Japan relations made the prospect of a peace

50. *Japan's Northern Territories, op cit.*, p. 12.

treaty between Japan and Russia uncertain. Any hope of Russia's readiness to discuss the issue of the disputed islands being converted to accepting their actual legal position was thus shattered by the reality of international politics.

During the sixties when economic relations between Japan and Russia flourished satisfactorily, there was no significant development in diplomatic arena to look for ways to settle their territorial dispute. Only when the then Soviet Foreign Minister Andrei Gromyko visited Japan in January 1972 to attend the Second Meeting of the Japan-Soviet Foreign Ministers regular consultations, it became possible for him to give consent for opening negotiations for a peace treaty for the first time in years. Consequently, negotiations for a peace treaty started afresh long after they were discontinued more than a decade ago.

At this stage Japanese Prime Minister was invited to Moscow. Prime Minister Tanaka paid an official visit to Russia, starting from October 7, 1973. This was the first time that an incumbent Japanese Prime Minister had visited Russia in seventeen years and naturally the visit was characterised by the observers as turning point in the negotiations for a peace treaty.

The Joint Communiqué of October 10, 1973 issued by the two countries at the end of Tanaka's visit states that "the two sides recognised that to conclude a peace treaty by resolving the yet unresolved problems remaining since World War II would contribute to the establishment of truly good-neighbourly relations between the two countries and conducted negotiations on matters concerning the content of such a treaty . . ."

Tanaka-Brezhnev negotiations eventually confirmed that the Northern Territorial Issue was an unsettled post-War issue that must be ultimately resolved by a peace treaty. Stated in more specific terms, Tanaka twice proposed to his counterpart Mr. Brezhnev, during that Summit Meeting, to confirm that the four-island issue was one of the "yet unresolved problems

remaining since World War II" referred to in the above Communiqué. Brezhnev concurred on both occasions.⁵¹

Negotiations unfortunately did not progress further. Rather, prospect of a peace treaty suffered yet another set-back when Soviet Union took serious exception to a proposed Sino-Japanese treaty of peace and friendship. When such a treaty was eventually signed in August 1978, some of its provisions earning Soviet displeasure,⁵² Soviet position in relation to the disputed islands and to conclusion of a peace treaty with Japan hardened further.

It may be assumed, however, that Soviet Union was not unaware of the actual legal position of the disputed islands and perhaps, if her attitude to negotiation is any indicator, she was moving, slowly though, towards accepting that position. But once again it received a serious blow from politics as perceived in Moscow. In the eighties, the Soviet Union became so categorical as to assert repeatedly that Etorofu, Kunashiri, Shikotan and Habomai group of islands are parts of the USSR and the territorial issue between her and Japan is settled and closed for ever.⁵³

V

Ascendance to power in mid-eighties of reformist leader Mikhail Gorbachev brought about radical change both in internal and external policies of the Soviet Government. With that, Northern Territorial Issue got sharper focus which revived hopes for a negotiated settlement of the issue conforming to historical facts and to the norms of international law. New Soviet policy was manifest in increased diplomatic contacts between the two countries. Foreign Ministers visited each other's countries more than once and prepared grounds for Summit Meeting. These contacts were followed by *a de facto* recognition by the Soviet authorities of the existence of territorial dispute between the two countries which they have been denying of late.

51. *Ibid.*, p. 14.

52. *Border and Territorial Disputes, op. cit.*, p. 315.

53. *Ibid.*, pp. 315—319.

A Japanese specialist on Soviet-Japanese relations Hiroshi Kimura described the new development as follows:

At first the Soviet Union allowed Japanese spokesmen to use the Soviet media to inform the Soviet people that unsolved territorial issues exist between the two countries. Examples include the televised speech by Japanese Ambassador Toshiaki Muto on the Emperor's birthday (April 29, 1988); the speech by former Prime Minister Yasuhiro Nakasone at the Institute of World Economy and International Relations (IMEMO); and the publication of the same speech in IMEMO's major organ, *World Economy and International Affairs* (MEiMO), as well as in an unedited television interview (July, 1988). Some Soviet scholars and think-tank people began to argue that, facing continued Japanese insistence on the unresolved territorial issue, the Soviet Union should at least acknowledge that the problem exists. Some examples of such acknowledgement are statements by Dmitri Petrov (head of the Japan department of the Institute of Far Eastern Studies) in *International Life* (July, 1988); Yuri Bandura (deputy editor) in *Moscow News* (October 30, 1988); and Leonid Miechin in the *New Times* (November 4, 1988), and so forth. Moreover, those people who are considered to be Gorbachev's brain-trust and whom I call "semiofficial" policy-makers, began to make similar statements. One of the best examples is an article by editorial writer Alexander Bovin of the Soviet government organ *Izvestiia*. Bovin insisted that "It is necessary for the Soviet Union to acknowledge the existence of the territorial issue and announce that we are ready to discuss it." During his second visit to Tokyo in December 1988, Soviet Foreign Minister Shevardnadze agreed on establishing a peace-treaty working group at the vice-Foreign Minister level for discussion on a peace treaty between Japan and the USSR. Considering the Soviet Foreign Minister's visit to Japan as a watershed in the Soviet attitude toward the Northern Territories issue, Sergei Agafanov, *Izvestiia's* Tokyo correspondent, wrote about a year later; "If we call the things by their names, then a year ago the Soviet side agreed for the first time in recent years to discuss the territorial question with Japan, *departing from the thesis that such an issue does not exist at all.*" (emphasis-added).⁵⁴

In their September 1990 talks in Tokyo, Soviet Foreign Minister Edward Shevardnadze and his Japanese counterpart Taro Nakayama hailed a "new era" in their long-troubled relationship. Mr. Shevardnadze said he agreed with the statement of Nakayama that "We have come to an end of a very long tunnel."⁵⁵

54. Hisroshi Kimura, "Changing Factors in Recent Soviet-Japanese Relations," *Acta Slavica Japonica*, Tomus IX, 1991, Sapporo, Japan, pp. 160-161.

55. Rober Thomson, "New Era in USSR-Japan Relationship," *Dialogue*, Dhaka, (Financial Times Service), September 21, 1990, p. 5.

On the other hand, public opinion in Russia, so long dormant, but fast making itself felt as result of the policy of *glasnost*, was not sufficiently supportive of returning the islands to Japan. Gorbachev's political rivals beat nationalist drum to block any attempt by him to return particularly Etorofu and Kunashiri, northern two of the four disputed islands, to Japan. Consequently, when Gorbachev visited Japan in April 1991, nothing substantial came about to make any break-through in the territorial impasse. Perhaps Gorbachev could at best hand over only Shikotan and Habomai in exchange of peace treaty and economic aid. But Japan was not ready to accept it as she had not accepted the same offer made about forty years ago. Nevertheless the Gorbachev visit was not without political and legal consequences. In the Joint Communiqué issued by the two countries, names of the four disputed islands were mentioned for the first time and the need for negotiations for settling the territorial issue was underscored.⁵⁶

In the meantime, during a visit by the Japanese Foreign Minister to Moscow in October 1991, the USSR took unilateral decision to recall one-third of troops deployed on the Kuriles, while reaffirming its wish for a total withdrawal from the disputed islands. Japan welcomed this decision as a very positive step and expressed hope for more such actions on the part of Soviet Union. The two Ministers in Moscow agreed to lift visa restrictions on Japanese wishing to visit the Kuriles and on residents of the islands wanting to travel to Japan.⁵⁷ These actions indicated a recognition by the Russians of genuineness of the problem and their willingness for meaningful negotiations for a settlement.

Meanwhile, the USSR as a state disintegrated and the Russian Republic took the place of the former Soviet Union so far as the disputed islands were concerned, with Boris Yeltsin at its head. Factions manoeuvring for power in the Russian Republican Government vied with each other in beating the nationalist drum, making it hard for Yeltsin to countenance any yielding of territory.⁵⁸ A group of Russian communist and nationalist deputies of the

56. *Newsweek*, 6 May 1991, p. 16.

57. *Bangladesh Observer*, 18 October 1991.

58. *Ibid.*, 15 October 1991.

Russian Parliament warned that Yeltsin risked unleashing Third World War if he returned the disputed islands to Japan. Fifty-two such deputies in an open letter to Yeltsin published in several conservative Russian newspapers warned, "Reviewing the results of World War II could push the people of the world towards World War III. It is immoral to deprive Russia of parts of her territory without the knowledge of the Parliament and a popular referendum. It is criminal violation of the Constitution of the country."⁵⁹ In the wake of such sentiments expressed at home, whatever small section of the people they may belong to and however politically motivated, Yeltsin's proposed visit to Japan in September 1992, presumably for a final settlement of the territorial issue on the basis of historical facts as upheld by Japan, could not be materialised. And the stalemate continues.

VI

Analysis of historical facts and application of relevant norms of international law to these facts lead us to the conclusion that Japan has better title to the disputed islands of Etorofu, Knashiri, Shikotan and Habomai group. Japan had been exercising sovereign rights over them even before Shimoda Treaty was signed in 1855. By Shimoda Treaty Russia formally recognised Japanese sovereignty over the islands. There is no evidence in history of any incident or action by any state which altered this legal position. Soviet occupation of the islands during the closing days of the World War II was not supposed to bring any change to Japanese sovereignty over her own territories but was a temporary act of war.

Kuriles as figured in various international agreements and which Japan renounced by the San Francisco Peace Treaty in 1951 did not include the disputed islands, though two of them, namely, Etorofu and Knashiri, geographically could be termed as parts of Kuriles chain. These documents, however, did not define the geographical limits of the Kuriles and never intended to include the four disputed islands in the term "Kuriles" for the purpose of determining their ownership.

59. *Ibid.*, 19 July 1992.

Change in Soviet politics in the late eighties led observers to believe that the Soviet Union was aware of the actual legal position of the disputed islands. But internal political unrest accompanied by upsurge of Russian nationalistic sentiments did not allow its leaders to settle the issue with Japan. Restoration of economic and political stability in present Russia may help a settlement of the territorial dispute with Japan in conformity with the historical facts and norms of law.