26–7), which will realise articles 11, 12, 13, and 14. Furthermore, the Cultural Impact Assessment project for the Biratori Dam construction, which is funded by the national government and developed in the town of Biratori, can be considered as the realisation of articles 28, 29, 31, and 32 (Nakamura 2013).

Some slow progress has been seen in implementing new Ainu policies since the ratification of UNDRIP in 2007. Without constant pressures from activists, the government might not have even ratified UNDRIP and the awareness among the general public on Ainu issues would have been lower. In regards to the Biratori Dam construction, Kaizawa correctly states that tree planting would be more efficient for flood control and more environmental-friendly than constructing a dam. Furthermore, unlike the case-by-case policies and projects, the enactment of a new Ainu law will establish the strong framework of the government's responsibility (Uemura 2009). Nevertheless, all of the above-mentioned policies and projects can be realised without the enactment of a new Ainu law, and some Ainu have benefited or will benefit from the policies. Thus, the existing legal framework can make some progress for indigenous rights. In addition, the Ainu do not need to have a consensus.

The enactment of a new Ainu law is not the only way to guarantee their indigenous rights. Certainly, a grey zone exists between the realisation of indigenous rights and the enactment of an indigenous law. In the post-war era, indigenous legal issues have not been widely discussed and Japanese citizens have also lacked a meaningful co-existence with such peoples (Uemura 2009; Tsunemoto 2011). The government needs to assume its responsibility to educate the general public and promptly implement Ainu policies. Consequently, the policy planners and the general public would benefit from making constructive and practical suggestions, rather than to further one-sided critiques.

References

ACFAP. (Advisory Council for Future Ainu Policy). 2009. Final report. URL: http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1_en.pdf (accessed 15 May 2013).

Ichikawa, M. 2013. Iken chinjutsu yoshi [Statement summary]. Hokudai kaiji bunsho kenkyukaii [The research group on documents disclosed from the Hokkaido University]. URL: http://hmjk.world.coocan.jp/trial/trial003.html (accessed 27 March 2013).

Kayano, S. (editor) 1997. *Ainu-go ga kokkai ni hibiku* [*The Ainu language is heard in the Diet*]. Tokyo: Sofukan.

Kayano, S. (editor) 1998. *Ainu bunka wo densho suru* [*Passing down Ainu culture*]. Tokyo: Sofukan.

Kobayashi, Y. 2009. *Okinawa to Ainu no shinjitsu: Kobayashi Yoshinori sanjo! Nihon minzoku toha nanika*? [*The truth of Okinawa and the Ainu: Kobayashi Yoshinori shows up! What is the Japanese nation?*]. Tokyo: Okura Shuppan.

Levin, M.A. 2001. Essential commodities and racial justice: using constitutional protection of Japan's indigenous Ainu people to inform understandings of the United States and Japan. *Journal of International Law and Politics* 33: 419–526.

Maruyama, H. 2012. Ainu landowners' struggle for justice and the illegitimacy of the Nibutani Dam project in Hokkaido Japan. *International Community Law Review* 14: 63–80.

Maruyama, H. 2013a. Japan's post-war Ainu policy. Why the Japanese Government has not recognised Ainu indigenous rights? *Polar Record* 49 (249): 204–207.

Maruyama, H. 2013b. Disregard for the conservation of Ainu culture and the environment: the Biratori Dam project and Japan's current policy toward the Ainu. *Alternative: An International Journal of Indigenous Peoples* 9 (1): 74–86.

Matoba, M. 2009. *Ainu senju minzoku' sono shinjitsu: Gimon darakeno kokkai ketsugi to rekishi no netsuzo* [*'The Indigenous Ainu', its truth: too many doubts on the formal recognition and fabricated history*]. Tokyo: Tenden sha.

Nakamura, N. 2013. Towards a culturally sustainable environmental impact assessment (EIA): the protection of Ainu cultural heritage in the Saru River Cultural Impact Assessment, Japan. *Geographical Research* 51 (1): 26–36.

Onai, T. 2010. Problem awareness and survey outline. In: Onai, T. (editor). *Living conditions and consciousness of present-day Ainu*. Sapporo: Hokkaido University, Center for Ainu and Indigenous Studies: 1–7.

Porter, C. 2008. After the Ainu shinpo: the United Nations and the indigenous people of Japan. *New Voices: A Journal for Emerging Scholars of Japanese Studies in Australia* 2: 201–219.

Tsunemoto, T. 2011. *Ainu minzoku to kyoiku seisaku: Atarashii Ainu seisaku no nagare no nakade* [*The Ainu and education policies: In the trend of new Ainu policies*]. Sapporo: Sapporo daigaku huzoku sogo kenkyujo.

Uemura, H. 2009. *Ainu seidaku no arikata ni kansuru yushikisha kondankai'heno ikensho* [*Suggestions to 'Advisory Council for Future Ainu Policy'*]. Tokyo: Shimin gaiko senta. URL: http://www005.upp.so-net.ne.jp/peacetax/20090518.doc (accessed 15 May 2013).

UN. (United Nations). 2007. United Nations Declaration on the Rights of Indigenous Peoples. URL: http://www.un.org/esa/socdev/unpfii/en/drip.html (accessed 15 May 2013).

Exploring Japan's Ainu policy in the light of human rights law: a reply to the commentary on my papers from Dr. Naohiro Nakamura

Hiroshi Maruyama

College of Liberal Arts, Muroran Institute of Technology, 27-1 Mizumoto cho, Muroran, Hokkaido Japan (maruyama@mmm.muroran-it.ac.jp)

Received May 2013; first published online 27 June 2013

doi:10.1017/S0032247413000430

ABSTRACT. In order to explore further Japan's Ainu policy, this reply firstly outlines the differences in opinions that between Dr. Nakamura and myself, and secondly addresses some of the main points of my paper published in this journal. Dr. Nakamura takes into consideration domestic circumstances instead of international human rights law, while I emphasise that Japan's international obligations lies in its adherence to international human rights law and that domestic law must conform to international obligations for the Ainu. My paper chronologically summarises Japan's post-war Ainu policy and investigates who and what has influenced this policy and the law.

Introduction

The Ainu have been suffering from discrimination and oppression under the Japanese legal system and policies toward them from the late 19th century. This was clearly evident in the 1899 Hokkaido Former Aborigines Protection Act. It was not until 1997 that the act was replaced by the New Ainu Law. However, as of today the Ainu have no indigenous rights; rights that should be protected under international human rights law.

Japan's Ainu policy is still totally dependent on the Japanese government not the Ainu themselves.

The commentary on my papers, by Dr. Naohiro Nakamura is a welcome chance for the international readers of *Polar Record* to appreciate the problems concerning Japan's Ainu policy (Nakamura 2013). In order to explore those problems, I respond to the commentary on my paper in *Polar Record* by firstly outlining the differences in opinions we have, and secondly further addressing some of the main points of my paper (Maruyama 2013).

Differences in opinion

There are three main differences in our arguments. First of all, Dr. Nakamura attempts to take into consideration domestic circumstances and compliance with the annex of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to account for Japan's passivity in protecting and promoting Ainu indigenous rights, while I place highest priority on the observance of international human rights law including the International Covenant on Civil and Political Rights (ICCPR) for the Ainu. Given that Japan has ratified ICCPR, its domestic regulations must conform to its international obligation, particularly regarding Ainu issue. In principle, human rights should be applied to all nation-states, however different are the regimes (UN Declaration of Human Rights article 2). Further, other researchers also defend Japan's Ainu policy, as shown by the final report of the Advisory Council for Future Ainu Policy (2009) as well as the final report of *Utari Taisaku no Arikata ni Kansuru Yushikisha Kondankai* [High-Level Panel of Experts on Ainu Policy, 1996]. They totally dismiss the status of the ICCPR which requires all parties, including Japan, to observe it as a legally binding document. As a member of the international community Japan must observe UNDRIP in addition to international human rights law including ICCPR. This will follow firstly by taking up Article 1 of the UNDRIP:

> Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

In addition, he frequently uses the term 'ratification' with reference to UNDRIP but it is not a binding document and hence 'ratification', which is a legal process for international commitment, is not applicable to it.

Second, Dr. Nakamura argues that the Japanese Government is searching for the foundation of new Ainu policies in the existing legal frameworks and trying to guarantee some elements of indigenous rights, while I believe legislation based on international human rights law should be omnipotent. In general, policy should be made based on law because Japan is a nation-state under the rule of law. In other words, law normally precedes policy in Japan. Historically, as Kayano (1994) mentions, 'it was the modern Japanese state that, from the Meiji era on, usurped our (Ainu) land, destroyed our culture, and deprived us of our language under the euphemism of assimilation'. The Japanese government was responsible for making the policies toward the Ainu based on the legal system including the reprehensible act of 1899 that resulted in enormous Ainu suffering. Further, at present Japan's policy of modern development including dam construction does not guarantee indigenous right to free, prior and informed consent (FPIC) recognised by intergovernmental organisations, international bodies, conventions and international human rights law. As a result, the Nibutani Dam and Biratori Dam projects in the heart of Ainu culture continue to destroy Ainu culture and natural resources for the Ainu. With this in mind, it can be argued that Japan should finally emancipate the Ainu from their state where they have no indigenous rights under the New Ainu Law by newly legislated domestic law based on legally binding international human rights law.

Third, regarding determination of policy for the Ainu, Dr. Nakamura seems to lean heavily toward ethnic Japanese, including the authorities, as mentioned at the end of his commentary that policy planners and the general public (who are thought to be ethnic Japanese) would benefit from making constructive and practical suggestions. I, on the other hand, stress that preference be given to the ordinary Ainu, who have been suffering from discrimination and oppression under the Japanese legal system and policies. The 1997 court's decision on the Nibutani Dam Case (1997), namely that Japan should have taken into maximum consideration Ainu culture but, instead, wrongfully disregarded Ainu's right to culture in the case of the authorisation to build the dam, is the greatest testament to this. The decision was concluded with the acceptance of both the Ainu plaintiffs and the defendants that included the government. The first priority for legislation and policy making regarding the Ainu, therefore, should be placed on the original draft of the New Ainu Law, which begins with an appeal for official recognition of Ainu's indigenousness, respect for their ethnic pride and protection of their collective rights in the preamble and moreover which was unanimously adopted by the Ainu Association of Hokkaido in 1984, as outlined in my paper. However, the original draft has been neglected by the authorities and researchers in Japan.

Main points of my paper

Firstly, it shed light on the two symbolic domestic laws: the Hokkaido Former Aborigines Protection Act of 1899 and the New Ainu Law of 1997. One was a symbol of the assimilation policy and was part of Japan's colonisation of Hokkaido, a place where the Ainu lived long before Japanese settlers. The other, which came into effect instead of a much better option, aims at promoting Ainu culture and disseminating information about it without including such a basic tenet as recognising Ainu's right to culture. It explicitly infringes Article 27 of ICCPR that legally binds the parties, including Japan, to protect this right. However, my paper did not directly refer to ICCPR regarding discussions of the New Ainu Law, because I wanted to investigate who and what has influenced Ainu policy and the law as mentioned at the end of the abstract of my paper.

Instead, it described how large is the gap between Ainu claims for indigenous rights and the intentions of the authorities concerned with the New Ainu Law, including the High-Level Panel of Experts on Ainu Policy and the Japanese Society of Cultural Anthropology. In other words, it can be said that the above-mentioned authorities, who were subsequently joined by the Advisory Council for Future Ainu Policy, and are led by ethnic Japanese, have been the driving influence on Ainu policy and the law. By contrast, Doudou Diene, UN special *rapporteur*, reports on the New Ainu Law on behalf of the Ainu that they want to see included in this law the recognition of their status as indigenous peoples, the promotion of their indigenous rights in conformity with international human rights law and to fight against the discrimination they face (Diene 2006: 13–14). Unfortunately his reports have never been realised. The Sapporo District Court specifically stated in the Nibutani Dam

case in 1997 that the Ainu have the right to enjoy their culture and that they are also indigenous to Hokkaido. However, the subsequent decisions based on petitions presented by the Ainu plaintiffs were made without referring to recent international developments in indigenous rights in the field of human rights nor by building on the jurisprudence of the Nibutani Dam decision. In this respect, the courts are among the authorities concerned that have influenced and will continue to influence Ainu policy and the law.

Secondly, the paper drew attention to Japan's reluctance to recognise the Ainu as indigenous people and to vote for UNDRIP in terms of a trend in the international community that centres on the UN. Some evidence for this was given in the paper:

> It was not until June 2008 that the Japanese government accepted the unanimous resolution to designate the Ainu an indigenous people in the northern part of Japan in particular Hokkaido by both Houses of the Diet in the wake of UNDRIP. Before the resolution, the government had asserted that the collective rights stipulated in UNDRIP could not be recognised within Japan because of the individualism-based constitution. Even after the adoption of the resolution, the government hesitated to make a decision as to whether or not the term 'indigenous peoples' used in the Diet is synonymous with 'indigenous peoples' under UNDRIP.

In fact, the final report of the Advisory Council for Future Ainu Policy, which drew up a blueprint for the future Ainu policy of the Japanese government, continues referring to 'Ainu no hitobito' [Ainu individuals], rather than 'Ainu minzoku' [the Ainu people]. This wording is consistent with the fact that the final report avoids a discussion about the indigenous rights of the Ainu based on international human rights law.

To conclude, Japan's international obligation lies in its adherence to international human rights law including ICCPR, and domestic law must conform to international obligations. Otherwise Japan fails to comply with obligations that it commits to without reservation. The Constitution of Japan declares in its preamble, 'We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognise that all peoples of the world have the right to live in peace, free from fear and want'. Further article 98 (2) of the Constitution of Japan states that treaties concluded by Japan based on the established laws of nations shall be faithfully observed. That is why I concluded my paper in *Polar Record* by asking for the implementation of the two recommendations in relation to international human rights law including ICCPR.

Conclusion

Progress has been made in human rights through the establishment of international declarations, conventions and treaties in the international community. However, the Japanese government has often been blind to those instruments and consequently has adopted its Ainu policy with only the domestic context in mind. As a result, there are major discrepancies between Ainu policy based on the New Ainu Law and international human rights law and moreover article 98 (2) of the Constitution. The Japanese government, which inflicted agony on the Ainu through its colonist past, is required to correct these discrepancies for the Ainu, as Japan is a nation-state under the rule of law in the international community.

References

Advisory Council for Future Ainu Policy. 2009. Final report. Tokyo: Comprehensive Ainu Policy Office of the Cabinet Secretariat. URL: http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1_en.pdf (accessed 19 May 2013).

Diene, D. 2006. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. United Nations: United Nations Commission on Human Rights: (Mission to Japan. UN Document E/CN.4/2006/16/Add.2/2401/2006) (URL: http://wiggum.isp.northwestern.edu/~j-kath/UN%20report%20-%20Japan.pdf (accessed 20 May 2013))

Kayano, S. 1994. *Our land was a forest. An Ainu memoir.* Boulder: Westview Press.

Maruyama, H. 2013. Japan's post-war Ainu Policy. Why the Japanese Government has not recognised Ainu indigenous rights? *Polar Record* 49(2): 204–207.

Nakamura, N. 2013. Realising Ainu indigenous rights: a commentary on Hiroshi Maruyama's 'Japan's post-war Ainu policy. Why the Japanese Government has not recognised Ainu indigenous rights?' Polar Record doi:10.1017/S0032247413000417

Sapporo District Court. 1997. Decision on Nibutani Dam Case. URL: http://www.geocities.co.jp/HeartLand-Suzuran/5596/ (accessed 19 May 2013).

Utari Taisaku no Arikata ni Kansuru Yushikisha Kondankai [High-level panel of experts on Ainu policy]. 1996. Hokokusho [Final report]. URL: http://www.mlit.go.jp/common/000015022.pdf (accessed 19 May 2013).

The early history of Peter I Island

Rip Bulkeley
38 Lonsdale Road, Oxford, OX2 7EW (rip@igy50.net)

Received April 2013; first published online 22 May 2013
doi:10.1017/S0032247413000387

Sources

None of the logbooks or officers' journals of the 1819–1821 Russian Antarctic expedition, commanded by Junior Captain Faddei Faddeyevich Bellingshausen, have yet been found. The discovery of Peter I Island was recorded in two reports from the commander, on Sheet 13 of a 15-sheet track chart of the expedition which he prepared during the voyage home (Belov 1963: 32), in his subsequent book (Bellinsgauzen 1831), and in narratives penned by four other eye-witnesses.

Discovery

Peter I Island was sighted by the Imperial Russian Navy at 3 p.m. on 21 January 1821. It was the first ever discovery of land to the south of the Antarctic Circle. The local time of day is reliable, because a noon observation had recently been taken on HIMS *Vostok*, Bellingshausen's ship. The date is also certain, but curious in several respects. The expedition had re-entered the western hemisphere more than a month