

# The Treaty of San Francisco From the Perspective of International Peace Movements in Early Twentieth-Century America

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The leaders of the Meiji Restoration believed in their master, Yoshida Shoin (吉田松陰), who claimed that in order for the islands of Japan not to be a colony of the powerful Western states, Japan had to conquer nearby countries. This led to Japan's invasion of the Ryukyu Islands, Taiwan, Korea, and Manchuria, which ultimately led to the Manchurian Incident of 1931, the Sino-Japanese War, and the Pacific War. Surprisingly, the subject and the timing of each and every one of these acts of war were in the same order of Yoshida Shoin's proposal on preoccupation. The Sino-Japanese war of 1894 was romanticized as clearing the barbaric culture by civilization, and the Russo-Japanese war of 1904 was romanticized as the realization of Eastern Peace. However, Japanese policies of aggressions were first deemed illegal by international law during the 1931 Manchurian Incident by the investigations of the League of Nations. The Japanese Empire received the recommendation by the League of Nations to restore to original state, but declined and exited from the League of Nations. Following their exit, they started the Sino-Japanese War and the Pacific War and eventually lost in 1945. The goal of the San Francisco Peace Treaty of 1951 was to punish Japan's aggressions. However, as the Cold War between the East and the West started to arise in 1948, the punishment was eased, and their punishment for the aggressions on the Ryukyu Islands, Taiwan, and Korea was nearly unasked for. This paper examines the issues of the San Francisco Peace Treaty in the views of the international law of the League of Nations, established by Manley O. Hudson of Harvard University and others in U.S. academia and judiciary.

**Keywords:** Yoshida Shoin's "preemptive occupation" of the neighboring countries, First Anglo-Japanese Agreement, The Inquiry, Manley O. Hudson, the Progressive Codification of International Law, The League of Nations' verdict on the Manchurian Incident, James W. Garner, *HarvardDraft Convention on the Law of Treaties 1935*

## Introduction

At the time of ratification of the San Francisco Peace Treaty with Japan in 1951, the Korean Peninsula was suffering from the turmoil of war between South and North Korea. Sixty-six years later in 2017, the military tensions arising from the North Korea's nuclear testing remain high. The importance of the Korea-U.S.-Japan alliance in opposition to the North Korean provocation cannot be emphasized enough in the present situation. The San Francisco Peace Treaty was the foundation which brought about the current alliance of the three

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nations. In the face of North Korea's increasing provocation, a critical assessment of this Peace Treaty could in fact prove to be a dangerous pursuit.

In the wake of the Japanese Emperor's unconditional surrender on August 15, 1945, the U.S. government under President Truman set up the MacArthur Command Post in Tokyo and proclaimed its intention to punish severely the fascism perpetrated by Imperialist Japan. However, as the East-West Cold War situation was intensified around 1948, the U.S. dramatically reduced the degree of punishment of Japan to help address the circumstances (Ota Osamu, 2003). The initial plan was to move all of munitions, war industry facilities, within Japan to the neighboring damaged countries (such as Korea), but there was a drastic pivot in policy to restore Japan's economic foundation as soon as possible, to be utilized in confronting North Korea and China. On June 25, 1950, the Democratic People's Republic of Korea advanced southward into Republic of Korea territory and ignited the Korean War with the support of Russia and China.

At the time of San Francisco Peace Treaty talks on September 4, 1951, the Korean Peninsula remained engulfed in war. After the signing of the San Francisco Treaty, Japan played an important role for the U.S. as a military and economic base in carrying out the Korean War.

On the other hand, amidst the volatile situation in East with the ending of one war and the beginning of yet another, Korea was subjected to a double sacrifice. On top of receiving no compensation for the damages and suffering under colonization following forced annexation by Japan in August 1910, Korea was fated to endure the cruelty of war as a battlefield of the intensifying Cold War between East and West.

Through American mediation, Korea and Japan became allies with the signing of the San Francisco Peace Treaty in 1951. Starting in 1952, Korea-Japan negotiations were initiated at the urging of the U.S. government. However, it took some 13 years and 10 or more formal talks before the "Korea-Japan Agreement" was finally ratified in 1965. And yet, a discrepancy in the interpretation of the 1910 "annexation" remains to date, leaving the uneasy sentiments of both nations unresolved.

One might claim justifiably that the ongoing cold currents between Korea and Japan must be eliminated to confront North Korea's incessant provocation as of late from the perspective of the Korea-U.S.-Japan alliance. But this might be risky logic leading to the snare of double denial. In contrast, if the issues of the "Past" between Korea and Japan are resolved appropriately, it would have an enormous effect in bolstering the unity of the allies. It is in fact due to this potential positive effect that we are raising the question of the problematic issues in the San Francisco Peace Treaty with Japan 67 years ago, even amid the grave situation stemming from the North Korean nuclear testing in 2017.

## **Basic Structure of 19th-20th Century Korea-Japan Relations—Diplomacy for Endorsement by Neutral Powers vs. Japan's Occupation Policy**

### **Imperialist Japan's Policy of Preemptive Occupation of Neighboring Countries**

In the paper I submitted on October 28, 2016 at the first international conference of the Columbia University on "Beyond the San Francisco System", I introduced Yoshida Shoin's *Imprisonment Record* (幽囚録, 1854) as the ideological background of Imperialist Japan (Yi, 2017).<sup>1</sup>

<sup>1</sup> San Francisco Peace Treaty with Japan and the problems with the "Colony" Korea: Criticizing the Unjust Condoning of the Japanese Colonization of Korea Despite the Judgements of Illegality of the 1905 Protectorate Treaty by the League of Nations and the United Nations (Proceeding paper). This is included at Yi Tae-Jin (April 2017), *The History That Has Not Ended—The Historical Awareness Needed to Settle Colonization* (pp. 143-146), Taehaksa Publisher. English version was published at the *Cultural and Religious Studies*, May, 2018.

Yoshida Shoin stressed in his writing that for an island country like Japan to survive in the steamship era, it must quickly learn and adopt Western mechanical civilization to increase its strength and “preemptively occupy” its neighboring countries ahead of the Western global powers.<sup>2</sup> He even specified in detail the areas to be occupied in advance. First, in anticipation of Russia coming down from the northeast, he advocated cultivating Hokkaido and utilizing this base to advance into the Kamchatka Peninsula. After occupying the Ryukyu (琉球) and Taiwan in the west, Japan should advance northward into Joseon (Korea) and Manchuria. By ruling over these two areas and doubling its strength, Japan should take China and then spread through the Pacific Ocean to reach Australia and California on the American west coast (Yi, 2007).<sup>3</sup>

Yoshida Shoin was executed in 1859 for violating the shogunate law. However, the group of young lower-class warriors he taught in Hagi, the center of Chōshū Domain, took the lead in overthrowing the shogunate regime with the backing of Chōshū daimyo Mōri Takachika and became the driving force of the Meiji Restoration. They dominated the political sphere and deployed their teacher’s “Imprisonment Record” as a central basis of governing policy, thereby bringing to fruition the “preemptive occupation” of the neighboring countries one by one. In the initial stage the Meiji regime cultivated Hokkaido (1869), annexed the Ryukyu Islands (1872), and advanced to Taiwan (1874). Continuing onward against Korea, Japan precipitated the Unyeo (Ganghwa Island) incident in 1875, seeking the opportunity of invasion.

Following this, a cabinet system of government was introduced in the 1880s to reinforce the government management system, and a conscription system was implemented to increase military strength. Japan provoked the Sino-Japanese War in 1894 in an effort to advance to Joseon (Korea) and Manchuria and realized its “preemptive occupation” policy in earnest, but this attempt failed due to the “Triple Intervention” (of Russian, Germany, and France). Nonetheless, Japan expanded its military strength over the next 10 or so years and provoked the Russo-Japanese War in 1904, finally succeeding in advancing to Korea and Manchuria. After building up even greater strength through the colonization of Korea and rule over Manchuria, in 1931, Japan provoked the Manchuria Incident and in 1932 Shanghai Incident, pursuing a policy to divide China and begin its invasion. Finally, Japan instigated the Sino-Japanese War in 1937 and ultimately provoked the U.S. to launch the Pacific War in 1942. Thus, the origins and circumstances of the Pacific War were foretold 83 years earlier.

In the process of adopting Western civilization, the Meiji government followed the models of France and the U.S. until the 1870s. Initially it temporarily maintained the modernization efforts pursued by the Tokugawa shogunate in its waning days. However, beginning in 1880s a drastic change in the basic process took place. With internal discord having been almost completely eradicated by this time, a cabinet system was implemented in 1885 and imperial law under the Emperor’s regime was promulgated, thus resulting in a nationalistic state in all aspects. In lieu of the French and American free civilization systems, Germany’s

<sup>2</sup> This “policy of aggression” has usually been referred to as *Seikanron* (征韓論: “the Korean expedition reasoning”), but that is not suitable because it only refers to the invasion of Korea. Even if the (Chinese character) “Korea” (韓) part of “Korean Expedition” (征韓) is interpreted to refer to foreign countries, it still does not contain its full meaning. This paper will refer to such as the “preemptive occupation of neighboring countries”.

<sup>3</sup> Yi Tae-Jin (April 2007), “Yoshida Shoin (吉田松陰) and Tokutomi Soho (徳富蘇峰)—Modern Japan’s Ideological Base in the Colonization of Korea” (pp. 144-146). This paper was originally presented at a 2013 Academic Conference celebrating the joint statement between the academics of Korea and Japan and was published in *Theory of Korean History* (韓國史論), 60, Seoul National University Department of National History. The Japanese version by Youngho Byun (辺英浩) and Omiya Hideki (小宮秀陵) was published at the *Tsurubunkadayigamu Fenkyukiyowoo* (都留文科大学研究紀要), 80.

nationalistic state system was pursued and even reinforced to produce Japanese-style imperialism. During this process, the philosophy of Yoshida Shoin functioned as the central axis of the nationalistic state.

Toward the end of 1880s, efforts to highlight Yoshida Shoin were initiated, and around the time of the Sino-Japanese War in 1894, the journalist Tokutomi Soho (徳富蘇峰) published a revised biography at the request of and with the support of the Chōshū faction. Yoshida Shoin was made to be the central figure establishing Japan's Imperialism (Yi, 2007, pp. 171-178).<sup>4</sup> It was not by accident that Yoshida's philosophy of Imperialism spread as the outward expansion of the Japanese Empire was taking place in earnest. Concurrently, there were indeed leaders such as Katsu Kaishū (勝海舟) advocating a protective national defense system which would enable Japan to become a powerful trading nation under the peaceful coexistence of the world system. However, the combined influence of the Chōshū and Satsuma was so dominant that no one was powerful enough to be of any influence.

### China's and Japan's Differing Conceptualization of Korea's Neutrality

The introduction of steamships by the Western powers in the early half of the 19th century posed a grave threat to every East Asian country. While Japan was establishing the preemptive occupation of neighboring countries as its national strategy, Korea and Japan discussed Korea's becoming a neutral country as a strategy. In 1879, Qing Dynasty Beiyang minister (北洋大臣) Li Hongzhang (李鴻章) sent an extremely important letter<sup>5</sup> to Joseon head of privy councilor Yi Yuwon (李裕元). In this letter, he stated that Korea needed to become a neutral country similar to Belgium and Denmark in Europe in order to engage in trade with Britain, Germany, and the U.S. while restraining Japan and warding off Russian avarice. He pointed out that though those two countries are small, they were recognized as neutral countries via treaty agreements, preventing any country from invading them recklessly. He expected that Korea, if a neutral country, could serve as a left bulwark for China.

Yi Yu-won was rather skeptical about this. He responded, "Although it is a fact that 'Western public law (author: "international law") forbids any country to plunder or destroy another country without any due reason', in the event our country Joseon (Korea) is invaded without cause by another country. Is it likely that many countries would collectively come forward to censure the invasion?". Furthermore, he asked, "Despite the fact Turkey was spared the threat of eradication by the strength of the public (international) law, what does it mean that the public (international) law was not applied when the Ryukyu Kingdom (琉球國) was annexed to Japan?" "Is that because the Japanese people were so cruel and sly that the public law could not be applied to them for their despising many other countries and behaving waywardly as they pleased?". And also, "Although Belgium and Denmark are so small as to be like warts interposed between many other large countries, they have managed to be preserved by the mutual restraints among the powerful and weak countries. However, the Ryukyu king was not able to sustain his country in spite of its several centuries of history. Is that due to the fact that his country was secluded and separated so far from many other countries that public law did not apply?". In this manner, he pointed out critically the difference of the realities in the Eastern and Western hemispheres. He was fully aware that even though desirable, the task of making Joseon a neutral country would not an easy task at all.

<sup>4</sup> Tokutomi Soho's (徳富蘇峰) *Yoshida Shoin* (吉田松陰), revised edition (改訂版), 1908.

<sup>5</sup> *The Veritable Records of King Kojong* (Vol. 16), July 9, 1879. Yi, Tae-Jin, "Korean Empire's negotiations with Western powers to obtain loans and diplomatic endeavors seeking their approval Korea's neutrality—In regards to the ceremony in 1902 on the 40th Anniversary of Emperor Gojong's Coronation". Proceeding paper for the International Academic Conference hosted by the National Palace Museum, October 12, 2017.

Joseon hurried to establish diplomatic ties with the Western powers under King Gojong's policy of "Opening and Accepting Advanced Civilization" regardless of the advice from Li Hongzhang. After concluding a Treaty of Amity with Japan in February 1876, Joseon Korea concluded the Treaty of Amity and Commerce with the United States of America in May 1882 and subsequently signed treaties with Britain and Germany later that year. In the following four years, it also signed treaties of amity and commerce with Italy (May 1884), Russia (May 1884), and France (May 1886). This successive conclusion of treaties was aimed primarily at establishing Joseon's status as an independent self-reliant nation and moving away from its traditional relationship with China—that is, the tribute and investiture system. The Korean government's policy to become a neutral country on its own is not confirmed by the records of this era. Rather, Japan wanted Korea to retain neutral country status during this era.

Inoue Kowashi (井上毅), who played a critical role in developing the basis of Japan's Imperial Constitution as a staff officer of Ito Hirobumi, drafted the *Political Strategy on Korea* (朝鮮政略) for policymaking.<sup>6</sup> This plan asserted that to prevent any Western country from taking over Korea, it would be ideal for Japan, Korea, and Qing (China) to become allies together; however, under the premise that China or Korea could not become allies, the "other alternative" of making Korea a neutral country would be necessary. In other words, five countries (Japan, Qing (China), the U.S., Britain, and Germany) should confer together to make Korea a neutral country. Following the example of Belgium and Switzerland, Korea should be made a country which would not intervene in other country's matters nor face intervention by other countries, protected by these five countries collectively. If any of these five nations were to destroy the plan, the other four nations would censure the culprit for its crime; and if any country other than these five were to invade Korea, these five countries would ally together to protect Korea.

Inoue Kowashi's *Political Strategy* was a transitional plan aimed at incapacitating traditional Chinese influence over Korea. That was the measure to keep Korea in a neutral zone under the common protection of the five countries for the time being until Japan became strong enough to occupy Korea alone. Though the policy of joint protection by the five countries never came to fruition, the Japanese government's efforts to refer to or define Korea's "independence" at every opportunity shared this common intent.<sup>7</sup>

### **Korean Negotiations With Western Powers to Obtain Loans and Diplomatic Endeavors Seeking Their Approval for Korea's Neutrality**

Imperialist Japan instigated the Sino-Japanese War in 1894, putting Yoshida Shoin's "preemptive occupation" strategy into full-scale action. In the face of this unexpected war, Korea made every effort to protect its sovereignty. In early June 1894, the Japanese army installed a brigade in Seoul without due notice, requesting that the Joseon (Korea) government reform its internal affairs. To international society, Japan

<sup>6</sup> *Nikangaikyoshiryoshushei* (日韓外交史料集成), Compiled by Kim Jung-Myong, Appendix to book 2. "Inoue (井上) Minister of Legislative Bureau (法制局長官)'s *Political Strategy on Korea* (朝鮮政略)". Inoue Kowashi at the time was the Minister of the Legislative Bureau in Changsawon (参事院; To be Internal Legislative Bureau 内閣法制局).

<sup>7</sup> Similar to Inoue Kowashi's *Political Strategy on Korea*, on making Joseon a protectorate state at the August 7th Internal Conference after starting the Sino-Japanese War on July 25th, 1894, the following matters were suggested: (1) to allow Korea's sovereignty as an independent nation both nominally and virtually; (2) to recognize as an independent nation in name, but for the Japanese Empire to govern the nation both directly and indirectly for either a limited or an unlimited amount of time and not allowing foreign influence; (3) for Japan and China to ensure the security of the Joseon territory; (4) to approve the state to be a neutral state like Belgium or Switzerland. The four options above were referred at Yoo Young-Ik (1990), *Study on the Political Reform in 1894* (甲午更張研究) (p. 27), Ilchogak.

propagated the idea that this war was between civilization and barbarism, asserting that “civilized” Japan was fighting against “barbaric” Qing China to save Joseon from the barbarians. Though nominally declaring Korea’s “independence”, Japan in fact sought Joseon to be its protectorate (Yoo, 1990, pp. 25-27). With the Joseon government not yielding to the Japan’s request at all, about 50 days later on July 23rd, at 12:30 am, Japan invaded the royal palace where the Korean monarch resided (Gyeongbok Palace), confining the king as a virtual captive. This happened just two days before Japan started the war against Qing China. Under the circumstances, the Korean ruler requested that the Korean diplomatic minister to the U.S. ask the American president Grover Cleveland to protest Japan’s invasive behavior on the basis of the 1st article of *The Treaty of Amity and Commerce Between Corea and U.S.A* (Lee, 1976).<sup>8</sup> President Cleveland actually sent a personally handwritten letter to the Japanese government, and Japan, at that time facing the pending problem of “treaty revision” with the Western powers, gave up on its protectorate proposal including the request to deprive Korea of its diplomatic rights (Yoo, 1990, pp. 56-57).<sup>9</sup>

Japan won the war against Qing China in just seven months and was rewarded with Taiwan and the Liaodong Peninsula as the spoils of war, highlighting for a moment the full fruition of its “preemptive occupation” policy after almost 10 years of military build-up in earnest. However, Japan was forced to give up the Liaodong Peninsula, yielding to the “Triple Intervention” of Russia, France, and Germany in a major setback of its “preemptive occupation” strategy. The Japanese military tried to retain even a small portion of the bases it secured in Korea during the war. By the 1880s, there were already telegraphic lines that spread north-south and east-west across the Korean Peninsula. The Japanese troops used these lines during the war, and they wanted to remain in Korea to maintain the lines, looking forward to their future use.<sup>10</sup> But the Joseon king repeatedly requested their complete withdrawal, leading the Japanese military to create a state of emergency and establish a pro-Japan government, during which process they committed the brutal act of killing the Joseon Queen in October 1896.<sup>11</sup>

After the Sino-Japanese War, Joseon King Gojong (高宗) overcame numerous ordeals and proclaimed the Great Han Empire on October 12, 1897, in an effort to renew the nation. He placed great emphasis on two aspects to solidify the basis of Korea as a sovereign country, namely, the introduction of foreign loans to modernize industry and diplomatic endeavors to get the endorsement of Korea’s neutrality. Both objectives were pursued fervently among the Western powers, but their success was uncertain because during the same period, Japan was actively engaged in war preparation against Russia to materialize the “preemptive occupation” of Korean Peninsula once again.

Even after the assassination of the Korean Queen, the Japanese troops attempted to conceal the crime and did not loosen their surveillance of the king’s palace. It was only some three months later that the Joseon

<sup>8</sup> It is assumed that the dates of the Korean minister Seung Soo Lee’s meetings with U.S. Secretary of State Walter Q. Gresham were on June 22nd, 28th and July 5th. Yur-bok Lee (1976), “American Policy toward Korea during the Sino-Japanese War”, *The Journal of Social Sciences and Humanities*, 43, 85-86.

<sup>9</sup> On January 8th of 1895, Japan requested for the Korean Legation to the United State to delegate all work to the Japanese Legation. The emperor of Joseon on two separate occasions made a request to the U.S. Legation to Joseon for the U.S. government to get involved and stop Japan’s controversy. Afterwards, the request did not reoccur.

<sup>10</sup> The telegraph infrastructure in the Korean peninsula was already established by the 1880s as the Joseon government cooperated with the Chinese and the Japanese to secure the following: West road telegraph (1885), South road telegraph (1887), North road telegraph (1891), and during the war the Japanese military installed additional telegraph wires in operation areas.

<sup>11</sup> The Japanese attempted to frame the Daewongun, the emperor’s father, as if he killed the queen because they had knowledge that Daewongun did not approve of the queen. Moon Ja Kim (金文子), *Josen Oubi Satsugai to Nihonjin* (Murder of the Queen of Joseon and the Japanese), Gobungen (高文研), 2009, Tokyo.

monarch managed to leave his palace to relocate his residence to the Russian Legation (February 6, 1896). The loan negotiation diplomatic maneuvers started in June that year when the celebration delegation was dispatched for the coronation of Russian Emperor Nikolai II in Moscow. Russia, with its financial situation being unfavorable due to the construction of Siberian railroad, instead introduced the Korean delegate seeking loans to the French government. The Korean ruler built a new palace in the span of a year (Gyeongun Palace, presently Deoksu Palace) and left the Russian Legation to return to this palace. Thereafter on April 2nd, he invited French Minister to Korea Collin de Plancy and Bishop Gustave Mutel (in charge of the Korean Diocese of Missions étrangères de Paris) seeking French help.<sup>12</sup> After proclaiming the Korean (“Great Han”) Empire in October, Emperor Gojong assigned Yi Yong-ik (李容翊), the Head of the Mint and the Administrative Supervisor of all Offices under the Royal Household (典圖局長兼宮內府各官事務監督), to be the driving force in attracting foreign capital (Jeon, 1999).<sup>13</sup>

For the next five years or so until August 1903, the Great Han Empire government proceeded with loan negotiations with the French La Banque de L’Indo-Chine, Syndicat du Yunnan (雲南), the Russo-Chinese Bank operated with French capital, and the Syndicat de Corée set up by Belgian investors, among others, progressing to the point such that respective representatives from each of them visited Seoul. Korea offered them tariffs and the export rights for red ginseng as security for their investments in setting up a central bank to issue notes, constructing railroad facilities, and developing mines. The loans amounted to 10 million dollars and five million Yen, and negotiators were very amicable. In particular, the deal with the Yunnan syndicate progressed so well that they entered into a contract on April 16, 1901. However, once this progress was revealed, Japan protested vigorously. With the launch of the Katsura Tarō (桂太郎) cabinet in August that year, Japan put all its diplomatic efforts into establishing alliances with the British, resulting in the announcement of the Anglo-Japanese Agreement on January 30, 1902 (Chiba Isou, 2012, pp. 78-84).<sup>14</sup> This agreement, in its first article, defined that the two parties would mutually guarantee the political, commercial, and industrial interests of each other—the British interests in China and the Japanese interests in Korea.<sup>15</sup> This agreement was entirely in recognition of the Korean government’s success in loan negotiations. Cognizant of Russia’s support for Korea in negotiating the loans with French and Belgium investors, the diplomatic collusion between Britain and Japan thus materialized. Since Britain at that time in the world wielded enormous influence on the mobilization and control of global capital, with the official announcement of the “Anglo-Japanese Agreement”, the investors of France and Belgium could not escape from the influence of this collusion. Subsequent efforts were made by the Great Han Empire government and the syndicate of investors in Korea to resolve their issues but these proved to be of no avail in the end.

<sup>12</sup> It is regarded as mediated talks expressed by the Russian government.

<sup>13</sup> The information regarding the negotiations to obtain the loans is purely dependent on: Jeon Jeong-Hae (1999), “The Industrialization Policy and the Utilization of French Capital and Manpower During the Kwangmu Era”, *Kugsagwan noch’ong* (國史館論叢), 84. Refer to Section 2 on attempts to obtain the French loans.

<sup>14</sup> It was during the 4th Ito Hirobumi cabinet in April 1901 that Japan started to negotiate alliances with the British. After the first Katsura cabinet was launched in June of the same year, negotiations with the British government finally made headway, and once the British government proposed offers, detailed negotiations most likely started.

<sup>15</sup> In the English language, the arrangement on January 30th of 1902 between the British and the Japanese was noted as an “Agreement”, and in Japanese it was noted as the “Nihon-Eigoku Kyoyaku (日英協約—Alliance Between Japan and Great Britain)”. The Anglo-Japanese Alliance (日英同盟) cannot be regarded as the official designation. In the 1st section of this agreement, “Britain will gain mostly from China, and the Japanese should gain profit from China and in addition from Korea politically as was commercially and industrially”. This shows the limits attempted to be placed on preventing Korea from receiving foreign loans.

In the middle of May 1900, when the loan negotiations with Syndicat du Yunnan were progressing actively, Hayashi Gonsuke (林權助), the Japanese diplomatic minister to Korea, dispatched many telegrams to his country's Minister of Foreign Affairs. The Korean government's "Directive to the Korean Minister in Tokyo regarding the Signing of a Treaty with Belgium" issued on June 22, 1900 was sent in its entirety in his (Hayashi's) report to the Minister of Foreign Affairs.<sup>16</sup> The Great Han Empire sought to conclude the Treaty of Amity and Commerce between Belge and Corea and thereby establish diplomatic relations with Belgium, a newly industrialized nation with secure neutral country status in Europe, in order to get advice on obtaining loan aid and also neutral country status. On top of these two reports, another one was sent on September 24th on "Korea in the process of neutrality negotiations" to Tokyo, relating to the rumor among the diplomatic ministers in Seoul that the Korean diplomatic minister to Tokyo was in contact with Japanese government seeking Korea to become neutral under the auspices of the world powers.<sup>17</sup> The actual signing of the Belgium-Korea Treaty took place on March 23, 1901.<sup>18</sup> The Great Han Empire's loan negotiations and diplomatic maneuvers to get approval of its neutrality were carried out in secret by the emperor's closest staff in fear of Japanese spying. Yet the Japanese Legation in Seoul managed to secure information on all the important actions by the Korean government without missing anything and continued to report thus to their government, interfering in Korean affairs habitually.

As it proceeded with loan negotiations around 1900, the Great Han Empire (Korean Empire) had already joined major international organizations as it prepared to become a neutral country by fulfilling the required conditions one by one. On January 1, 1900, it joined the Universal Postal Union, and starting in latter part of 1902, it joined the International Red Cross and succeeded in getting qualified to send a delegate to the Hague International Peace Conference.<sup>19</sup> Around this time, the Korean diplomatic minister to Japan Cho Byeongsik (趙秉式) and Russian special envoy Carl Friedrich Theodor von Waeber were deliberating on the plan to get approval of Korea's becoming a neutral country from the Japanese government. The year 1902 marked 40 years since the Korean Emperor ascended the throne. The Emperor decided to hold the "40th Enthronement Anniversary Felicitous Occasion Ceremony" on October 18, 1902, as if granting the Crown Prince's beseeching on February 10th for the congratulation ceremony. February 10, 1902, was the date when Anglo-Japanese Agreement started to be in effect, but the emperor could not stop the multi-year diplomatic

<sup>16</sup> *Records of the Japanese Legation to Korea* (駐韓日本公使館記録), 1900. On the commercial treaty signing with Belge, Confidential Information number 58, Hayashi Diplomatic Minister (林公使), Minister of Foreign Affairs (外務大臣).

<sup>17</sup> *Records of the Japanese Legation to Korea*, Korean Translation Book 15, VI. Confidential Information, Central Agency (本省) European Words (歐文) rounding telegraphs (控) 二 (177). 一, 二 (177). On the hearsay of Korea's Negotiations on Neutrality. 1900.9.14. Midnight 12 o'clock, Hayashi (林), Tokyo, Aoki (青木).

<sup>18</sup> An agreement was signed with Denmark, another neutral state, on July 15, 1902.

<sup>19</sup> On November 17th-18th of 1905, the Japanese Empire deprived the Korean Empire of its diplomatic rights by enforcing the "Protectorate Treaty" and examined all major treaties that the Korean Empire had with other nations. On December 1st of the same year, the Japanese were able to uncover that the Korean Empire had the following "Special Treaties" with international organizations: (1) Universal Postal Treaty; (2) Red Cross Treaty; (3) Convention with respect to the Laws and Customs of War on Land concluded in the Hague Conference 1899; (4) Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864; (5) Convention relating to hospital ships of December 21, 1904. In addition, on December 5th, the Japanese also uncovered that Korea joined the Universal Assembly of Train Rails on December (萬國鐵道公會, Congris International des chemin de fer) 15th of 1903, and was paying a yearly membership fee of 50 francs. *Record of the Japanese Legation to Korea*, 26, 一. Telegraph sent from the central agency (本省往電) 一~四 (355) (Case of Examining Korean Empire's Joining of International Treaties) Document number 502, Sent on Meiji Year 38 (1905), December 5th, 3PM, Hayashi Minister (林公使), Tokyo Gatsura (桂) Minister.



efforts to get approval of Korea's neutrality.<sup>20</sup> He sent out invitation cards to eight nations with whom diplomatic relations had been established, calling for their special envoys to attend the international event commemorating the enthronement anniversary.

Shortly after sending the special delegation to Russia for Emperor Nikolai II's coronation in June 1896, urban renewal in Seoul started to get underway on September 30th. With the first diplomatic minister to America, Bak Jeongyang (朴定陽) and his staff having served in Washington D.C., the modern city characteristic features of that city were introduced into Seoul, the capital of the Great Han Empire. Major roads were widened, streetcars began to run, and citizens' parks were established in three places. Above all, in the city center the main palace (Gyeongun Palace, now Deoksu Palace) was rebuilt and the front of its east gate was made the converging point of all the radial roads, modeled after the "Presidential Palace" (White House) in Washington D.C. as a new city plan. This palace, different from previous traditional palaces, displayed the peculiar layout of having traditional Korean-style buildings in the eastern section and Western-style buildings in the western section. In August 1898, the status of the network of railroads to be installed newly throughout the country was reported to the emperor and surprisingly it was reported that two railroad lines traversing east and west through the mountainous North Korean region had already been constructed. The plan foresaw the cultivation of mines. In the same year, the emperor raised the status of the central city of northwest region, Pyongyang, to "Seogyong" (西京, Western capital), where an urban improvement project was to be undertaken including the construction of a palace. This city was planned to be the center of northern territory land development. The inducement of foreign capital loans pursued over the years was to be used particularly for this kind of land development.

The German journalist Siegfried Genthe, after visiting Seoul in 1901, expressed his enthusiastic attention stating with unstinted praise,

The coexisting Asiatic and progressive Western aspects of civilization in Seoul makes me wonder how could the people of the land of morning calm, supposedly not yet awake from sleep, accept new Western inventions without hesitation making it possible to look around while riding trams with a speed running after the wind through winding streets between thatched houses? (Genthe, 1905, p. 201)

He pointed out that in Shanghai and Beijing, even with Westerners residing there quite a long time, only rickshaws were running through the streets much to their shame. Isabella Bird Bishop, a Fellow of the Royal Geographic Society of the United Kingdom, exclaimed on her third visit to Seoul that so many buildings have been erected all over as to make it impossible to find one's way out, concluding her book by looking forward to the bright future of Korea. It was quite evident that the Korean emperor invited the Western powers on the occasion of the congratulation ceremony to let them witness firsthand how the Great Han Empire was accepting Western civilization enthusiastically in order to gain momentum for their approval of Korea's neutral country status.

Unfortunately, a wide outbreak of cholera on August 1902 forced the postponement of the event to April 4th of the following year. It was postponed again in March to the fall as the cholera situation did not improve. On August 15, 1903, the Korean emperor sent in secret a personally handwritten letter to the Russian emperor to conclude a military alliance in advance because of the likelihood of war between Russia and Japan. Diplomatic endeavors to get the approval of Korea's status as a neutral country continued even thereafter to the

<sup>20</sup> *Diary of Royal Secretariat* (承政院日記), 1902 (Gojong's reign year 39), March 17th.

International Peace Conference but the essence was on its way to being changed to a declaration of neutral country status in wartime. Thus the Great Han Empire's diplomatic efforts to get the approval of its neutral country status could not break the wall of Japan's "preemptive occupation" strategy. Japan was preparing with its marked military buildup over 10 years for a revenge war against Russia, which had played the central role in the Triple Intervention (after the Sino-Japanese War). The Russo-Japanese war broke out on February 6, 1904, with Japanese raids on the Russian warships anchored in Incheon harbor and Port Arthur. It was actually the reattempt to realize the "preemptive occupation" strategy for taking Korean Peninsula and the Liaodong Peninsula.

### **Early 20th Century Western International Peace Movements and Japan's Expansionist "East Asian Peace Advocacy"**

The 20th century has been referred to an imperialist age under the law of the jungle, yet a simultaneous international peace movement to counter this was in progress. In 1900 in America, Andrew Carnegie donated 40 million pounds to fund the International Peace Movement and in June of the same year, the Nobel Foundation was founded, with the awarding of an annual peace prize commencing in the following year. All of these symbolized the dawning of a new era.

The first Nobel Peace Prize was given to two people: Jean Henri Dunant, the founder of the International Red Cross and the proposer of the Geneva Convention; and Frédéric Passy, the founder and president of The First French Peace Society. Subsequent awards included the Inter-Parliamentary Union, Permanent International Peace Bureau, International Federation of Arbitration, the Hague Tribune, The League of Nations, and other organizations or societies contributing to the realization of international peace or the contributors to the foundation and advance of the above entities. The academic endeavors for international peace led to the foundation and activities of the Institute of International Law (Institute de Droit Internationale). The recipient of the fourth Peace Prize, the Institute de Droit Internationale is notable because of process by which it came into being.

This institute was founded in 1873 by Gustave Rolin-Jaequemyns and Gustave Moynier after their first meeting in Ghent, Belgium. The two of them belonged to the five-member committee of the International Red Cross upon its foundation under the direction of Henri Dunant. They attended a meeting aimed at improving the lack of the Red Cross spirit displayed in the care of wounded during the Franco-Prussian War 1870-1871 and ended up founding the Institute geared toward academic pursuit of advancing international law and establishing such legal authority. In the same year, the International Law Association headquartered in London was founded with branches in France, the Netherlands, and Russia, holding frequent meetings of experts and outsiders altogether to develop international law (Sinohara Hatsue, 2010). This trend gained momentum to establish the Academy of International Public Law, which published *La Revue Générale de Droit International Public* (RGDIP).<sup>21</sup>

In the U.S. as well, the American Society of International Law (ASIL) was founded in 1906.<sup>22</sup> Since its foundation, it has striven over a century for the realization of international peace so fervently that it has come to be regarded as "a cornerstone of a just and peaceful world". It was an organization by the legal profession striving to resolve international conflicts through official conflict-resolution mechanisms rather than resorting

<sup>21</sup> Antoine Pillet, Paul Fauchille, A. Pedone were at its core.

<sup>22</sup> <https://www.asil.org/about/asil-history>.

to war.<sup>23</sup> Since this society was started with the intention of contributing directly government foreign policymaking, it was unique in that initially its annual meetings were held in the White House with the president making a speech. It is well known that such effort within the U.S. by a group of opinion leaders to establish foreign policy striving for the accomplishment of international peace order led to the foundation of The League of Nations through President Woodrow Wilson.

Meanwhile, in the latter 1880s Japan sent students studying overseas at government expense to the Netherlands to study international law and on their return, the Foreign Ministry directly founded its Institute of International Law. It started publishing *International Law Magazine* (國際法雜誌) in 1902. Japan was intrigued with the subject of treaty revision to address the “inequities” of the various unequal treaties of amity, commerce, and navigation signed with the Western powers since the 1850s. Japan could not help but pay high attention to international law at the government level. More fundamentally, as it pursued its “preemptive occupation” strategy, Japan faced an overwhelming need to learn about and study international law issues, in particular wartime international laws, which it would encounter (Baek & Yi, 1999). Just in time, when the Boxer Rebellion broke out in 1900, the world powers in common dispatched troops and Japan took this as a good opportunity to be regarded as a model country observing international law. Upon learning the Western powers’ decision to dispatch forces, Japan sent the most troops of all and made them observe military discipline strictly, much to the praise of other countries as being a model country. In the background, however, the Japanese government was checking Russia’s exploitation of rights and interests in Manchuria while pursuing its strategy to engulf the Korean Peninsula exclusively by itself. The “Anglo-Japanese Agreement” of January 30, 1902 was the major achievement of the strategy. In setting up its strategy, the Japanese government quoted “East Asian Peace” as a pretext for all its actions.

The purpose of the Sino-Japanese War in 1894 was primarily for Japan to replace China’s traditional influence and control over Joseon Korea. Japan stressed the independence of Korea and East Asian Peace in this war, asserting that Korean independence signified the state of no Chinese influence in the Korean Peninsula, leading to the abolishment of conflicts among the three countries of Korea, China, and Japan. Japan did not hesitate to praise itself stating “it exerted all its efforts to strive for achieving East Asian Peace, acknowledging the independence of Korea as the foundation of East Asian Peace”. In the imperial edict proclaiming the war, it states “in pursuit of achieving the national objective make sure to exercise all your efforts wholly within the allowed limits of the international law, utilizing every power and deploying all the measures”. It is quite interesting that international law is mentioned.<sup>24</sup> As it began to execute in earnest its strategy of “preemptive occupation”, Imperial Japan concealed its policy of aggression by cloaking itself under the pretext of “East Asian Peace” to avoid the rebuke and reproach from the international peace movement prevalent in the West.

Some 10 years after the Sino-Japanese War, the Japanese Empire initiated the Russo-Japanese War in February 1904, once again putting forth the word “peace”. Four days after the initial surprise attack, the emperor promulgated a “war declaration edict” containing the inevitable reasons for starting war. It stated that

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<sup>23</sup> Ibid. Starting from 1895, the people who were involved in setting U.S. diplomatic policy got together at Lake Mohonk. After much debate, at the 11th meeting in 1905, they have decided to establish the academic conference and to issue the *American Journal of International Law*. In January of the following year The Constitution of the American Society of International Law was adopted at the New York City Bar Association Office.

<sup>24</sup> *Records of The Japanese Legation to Korea* (駐韓日本公使館記録) (Vol. 3, p. 4). Tonghak rebellion (東學亂) and Sino Japanese Relations III(7), 1894. 8. 1.

the Russian occupation of Manchuria broke the state of East Asian Peace and that Japan tried to confer with Russia for a peaceful resolution repeatedly but Russia was unresponsive, and that Japan ended up unavoidably mobilizing land and naval military forces. It used the word “peace” as many as five times. At the outset of the war, Japan drafted *Protocol* (議定書, 1904) as the legal basis for establishing military bases within Korean territory. Article 1 stipulated, “the two imperial countries of Japan and Korea maintain unchanging amity for good and to consolidate the East Asian Peace, the Korean Imperial government is to trust the Japanese Imperial government so surely as to utilize Japan’s advice and assistance in improving government administration”.

A more noteworthy point can be found in the preface of the “First Anglo-Japanese Agreement” which was signed to neutralize Korea’s negotiations for foreign capital loans and diplomatic efforts to acknowledge Korea’s neutrality. It states that the agreement was “actuated solely by the desire to maintain the ‘status quo’ and general peace in the Extreme East”. Japanese diplomatic minister Hayashi Gonsuke (林權助) stated in notifying the Korean emperor about this that “its purpose is to maintain the East Asian Peace and to hope for the growth in commerce and industry with the Western powers in two countries of China and Korea”.<sup>25</sup> Furthermore, following the conclusion of the Portsmouth Agreement in September 1905, the Second Anglo-Japanese Agreement was on October 9th, again stipulating in its 1st article the goal of “securing the peace of East Asia and India region as a whole”. In the official document notifying the Korean government, it states “thinking of the East Asian Peace, in particular the future happiness to be enjoyed by your country and our country, I am overwhelmed by this happiness to be enjoyed together and I inform Your Highness of the fact of the agreement having been concluded”.<sup>26</sup>

In light of the international peace movement fervently spreading around 1900, Imperial Japan concealed the aggressive essence of its “preemptive occupation” strategy perpetrated since early Meiji Restoration by utilizing the term “East Asian Peace” to support its invasion of Korea.

### **The League of Nations’ Position on Japan’s Policy of Aggression—The Case of International Law Commission Chair Manley O. Hudson**

#### **Manley Hudson’s Perspective on the League of Nations and International Law**

Woodrow Wilson, inaugurated as America’s 28th President in March 1913, was a man who advocated international peace. A political science professor at Princeton University who later became university president, Wilson sympathized with the domestic peace movement in the U.S. at the time. In spite of the warnings given by America’s first president (Washington), he came to the conclusion that the U.S. should become involved in European politics and take the lead in establishing a new peaceful international order. In 1915, one year after the outbreak of World War I, President Wilson had Colonel Edward M. House establish “The Inquiry; The Commission of Inquiry into the Terms of Peace”, which mobilized American academics and legal scholars to study measures to establish peace. In October 1918, a total of 123 professors assigned in 16 branches through the so-called “The Black Book” participated and took part in its activities. Among the eight people assigned to prepare the legal basis of the new international organization, the role of Harvard Law School Professor<sup>27</sup> Manley O. Hudson (1866-1960) was most noteworthy.

<sup>25</sup> Ibid. Vol. 18 III. Telegraphs to and from the Central Agency (本省往來電報) 一・二 (28). The explanation to the royal audience on the Japan-Great Britain Agreement (日英協約), 1902. 3. 1.

<sup>26</sup> Ibid. Vol. 26. Ministry of Foreign Affairs, Sent (往) (30) “Informing Japan-British New Agreement” Telegraph No. 134, 1905.

<sup>27</sup> Bemis Professor of International Law, Harvard Law School.

In the latter half of the 19th century, the Western powers were engaged in fierce competition to secure colonies, leading to the outbreak of war throughout the globe. Japan added to the flames by initiating the Sino-Japanese War in 1894. The Western nations would set aside specific weaker countries and sign excessive arbitrary “treaties” that would mutually protect their ability to infringe upon the weaker countries’ interests. As the mutual compromises and negotiations among these countries in pursuit of their own interests became more and more entangled, the situation became worsened and ultimately led to the outbreak of World War in 1914. The resulting tragedy which stemmed from the lack of law and order was unparalleled. This war caused casualties and damages to a degree never seen before in human history. While the founding of the League of Nations in 1919 came about due to President Wilson’s closely involved leadership, it was also the fruit of the international peace movement among Western intellectuals which began around 1900. The League of Nations was humanity’s first organization to pursue a peace system on a global scale, and its most important mission was the legal resolution of disputes between countries. Toward this end, the League of Nations established the Permanent Court of International Justice in 1920. For this special tribunal to be operative, the foremost task was to enact international laws that any country would accept.

Hugo Grotius (1583-1645) of the Netherlands, having suffered through the chaos of 30 years of war in the first half of the 17th century, is well known to have been a pioneer in establishing international law in search of peace in resolving disputes between countries. Afterwards, various scholars such as Emer De Vattel and Georg Friedrich Von Martens played prominent roles in the academic pursuit of international law. Nonetheless, until then, international law was merely a subject of individual study and not something that was internationally recognized nor the result of a consensual process. As such, the international law Professor Manley Hudson took upon the challenge of formulating international law by initiating a codification project in 1927. This turned out to be the League of Nations’ greatest contribution to humanity.

Manley Hudson was a brilliant young legal scholar (age 33 as of 1919) who earned the trust of President Wilson and his advisor Colonel House (Kenny, 1977).<sup>28</sup> At the invitation of Colonel House in 1918 he came to Washington D.C. and joined the international law branch of “The Inquiry”, where he played a critical role in formulating the Covenant of the League of Nations and the statutes of the Permanent Court of International Justice, thereby defining the framework of the League of Nations. Furthermore, he served as the American delegation’s legal advisor to President Wilson at the 1919 Paris Peace Conference. There, he interacted with prominent global leaders including the League of Nations’ eventual first Secretary General Sir Eric Drummond and helped to oversee the legal issues of the League of Nations.

Hudson wrote extensively about the international law of the League of Nations. In December 1920, after the U.S. Senate voted against joining the League of Nations, he wrote a paper urging the U.S. to sign the Agreement for the Permanent Court of International Justice.<sup>29</sup> He also wrote a paper reporting on the individual efforts of Americans on behalf of the League of Nations and pressuring the U.S. government to pass a resolution of support.<sup>30</sup> In 1925, he wrote two papers asserting the grave importance of the international law

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<sup>28</sup> The description of Professor Hudson’s activities regarding the League of Nations is based upon the following paper: James T. Kenny (1977), “Manley O. Hudson and the Harvard Research in International Law 1927-1940”. *International Lawyer*, 11(2), 320-329.

<sup>29</sup> “The United States and the New International Court” (1922, Foreign Affairs).

<sup>30</sup> “American Cooperation With the League of Nations”, 1924, World Peace Foundation Pamphlets Vol. VII No 1.

codification project. One pertained to the current status in the development of international law,<sup>31</sup> while the other focused on the prospects of international law in the 20th century.<sup>32</sup> The former was delivered on April 25, 1925, at the Second Conference of Teachers of International Law held in Washington D.C., while the latter was given in June the same year at the Jacob Schiff Foundation Lectures at Cornell University. Both papers brought attention to the need for “codification” and were intended to serve as the justification and the theoretical basis for the codification project which was launched in 1927.

In those two papers, Hudson posited that Grotius’ achievement in embodying the spirit of the “natural law” (reason) in the 17th century was overwhelmed by the deluge of the “law of nations” stemming from 19th century situational realism, leading to disorder to the extent of resulting in a global war. As such, in order to rectify the situation, the pendulum needed to swing back to allow the 20th century’s version of Grotius’ achievement to manifest itself. Given that the earlier paper was presented before teachers of international law, it emphasized that while the overall responsibility for breaking new ground fell to jurists, it was important that legal teachers should be devoted to such accomplishments so that hope would not diminish. And yet overall it devoted much space to explaining the mission of 20th century international law. Hudson described codification as the fundamental basis of international law, and he asserted that such codification must be initiated in order to renovate the philosophy of international law.

Just prior to this lecture, at the Fifth Meeting of the General Assembly of the League of Nations, a committee to pursue new paths in international law was established, with 16 representatives meeting in Geneva in April 1925 to determine 11 research areas. Hudson’s lecture included a report on the results of that committee meeting; however, his lecture finished by pointing out that their consciousness of “codification” was loose, and he stated his views on the manner by which codification should be pursued: First, a global restatement of currently existing international law similar to what the American Institute of Law was pursuing; second, a method of unification of each country’s national laws; and third, the creation of an entirely new body of international law. The third task he cuts short says it is a path which must be chosen (pp. 12-13). He stated that the current state of each country’s laws had changed too much to be considered over the past decade or more, and since the time of Grotius there had never been a greater need for a change in law than at present. The opportunity to realize such was dependent upon the vision and the pride of those practicing the great profession of international law, and he urged not only international law specialists but also the teachers of international law to take an active interest.

Some two months after the first lecture, he delivered the second lecture at Cornell University with points similar to the first, but this lecture differed in that it was much more of an academic thesis in style. The earlier paper, having been lecture notes, did not have a table of contents, but this paper had the following content headings, very logically written in the following order:

(I) The Ter-centenary of Grotius;

(II) Current Philosophy of International Law (The Philosophy of the Law of Nations);<sup>33</sup>

<sup>31</sup> Contemporary development of international Law, address before the Second Conference of Teachers of International Law, April 25, 1925, Washington D.C., *American Journal of International Law*, 19 (3), July 1925. This conference was made possible by the support of the Carnegie Endowment for International Peace.

<sup>32</sup> “The Prospect for International Law in the Twentieth Century”, Jacob Schiff Foundation Lectures at Cornell University, June 1925. Cornell Law Quarterly.

<sup>33</sup> In the Table of Contents, the heading is as stated within the ( ) but in the actual text, the heading is “Current Philosophy of International Law of Nations”.

### (III) Methods of Developing International Law.

In Section (I), he repeatedly stressed that the importance of Grotius' 17th century *De Jure Belli ac Pacis* being predicated on the philosophy of natural law by using phrases, such as the "Law of natural philosophy", "A law of nature", "Nature's God", and "A universal law of reason". In Section (II), he enumerated how as the American New World was being opened, the Christian spirit underlying Grotius' natural law mentality was forgotten and that the situation changed. He argued that in 1781, as the Continental Congress of the American colonies acknowledged "the law of nations", the interests of the "family of nations" led to much confusion and chaos within the system of law such that the philosophical foundation of international law was lost, and a new philosophical basis needed to be established. He pointed out that the problems with the fierce competition over colonization reached to the level of a global world war and just like the challenges of the Thirty Years' War that Grotius faced three centuries ago, the current challenges must be overcome and diminished. In Section (III) he again wrote about codification as being a necessary step for the operation of the Permanent Court of International Justice but comparing to the earlier lecture, he wrote in much greater depth and detail in analyzing the three methods for codification. Toward the end, Hudson asked the question, "What then may we say of the prospect for international law in the twentieth century?" and then offered the following view:

The nineteenth century made the peoples of the world into an international Community. The twentieth century must convert that community into an organized society. The law of nations which will serve such a society must be in large degree a law of the twentieth century's own making. It was not handed down to us by Grotius, it was not distilled for us by the eighteenth century naturalists, it has not sprung out of the social and industrial conditions of the nineteenth century. It must be the creature of our twentieth century thinking, it must grow out of our own efforts, blind though they may be, to meet twentieth century needs. The building of such a law of nations offers us a romantic opportunity for achievement. The foundations of our law, its aims and its philosophical roots, must be re-examined. At the same time we must meet the legal demands of a work-a-day world which is as much in the throes of transition as was the world of 1625. If we cannot match Grotius' achievement, we may at least copy his method and share his daring, and I think we may hope to make the twentieth century as significant as he made the seventeenth. (Hudson, 1925a, p. 459)

Thanks to Manley Hudson's efforts, in 1927 "The Research in International Law" was initiated in cooperation with the Faculty of the Harvard Law School.<sup>34</sup> Thus, work on the codification of international law—the League of Nations' most important activity—was implemented. The experts group selected seven research subjects.<sup>35</sup> In the same year, the League of Nations General Assembly held the first meeting for the Progressive Codification of International Law and agreed to pursue the seven subjects in a step-by-step manner. Professor Hudson, as the director of the project to pursue these codifications subject, led the participation of the Faculty of the Harvard Law School (Kenny, 1977, p. 320).

### **The League of Nations' verdict on (Japan's) Invasion of Manchuria (1933)**

As the Russo-Japanese war ended in June 1905, Japan, having won a complete victory, gained control of the Russian bases at Port Arthur and Dairen in the Liaodong Peninsula. At Port Arthur, it acquired a railroad line leading to Changchun—i.e., a Southern Manchurian railroad—and thereby was able to establish authority over a fixed area in the vicinity of the rail line. An even bigger prize was the exclusive dominion over the Korean Peninsula. On November 17-18 of 1905, the Japanese government mobilized armed forces and forced a

<sup>34</sup> *The American Journal of International Law* (Vol. 29); Supplement: Research in International Law (1935), p. 1.

<sup>35</sup> The seven areas were: nationality, territorial waters, diplomatic privileges and immunities, the responsibility of states for damages done in their territories to the person or property of foreigners, piracy, exploitation of products of the seas, procedures for the calling of international conferences and the drafting of treaties.

“Protectorate Treaty” upon the Great Han Empire. While the treaty nominally was signed to allow Japan to act as Joseon’s proxy in foreign affairs, it established a Residency-General in the name of “Governance Improvements” (施政改善) which became deeply involved in domestic administration.

Once war broke out in February 1904, the Japanese troops dispatched to the Korean Peninsula initiated martial law and Korea had already been captured in essence. Aware of the overall situation in advance, Korea had already declared itself to be an outside neutral party prior to the outbreak of the war and received approval for such from the five parties but Japan merely ignored this and deployed overwhelming military strength (Wada Haruki, 2004, pp. 264-268).<sup>36</sup> The “Anglo-Japanese Alliance” of January 30, 1902 made such illegal actions possible. As was described earlier, Britain and the U.S. took at face value Japan’s declaration of intent to block Russia’s southward expansion and serve as the flag bearer of “East Asian Peace” and were unsparing in their support. On October 12, 1905, Prime Minister Katsura Taro (桂太郎), in his dual role as Foreign Affairs Minister, signed an agreement with the American railroad king Edward Harriman to jointly invest in a railroad network in Southern Manchuria and expand both Japan’s and America’s influence within the area. It is assumed that this agreement was designed to have U.S. President Theodore Roosevelt’s Administration support the Japanese government in the Russo-Japanese War while accepting Japanese control over the Korean Peninsula. However, the promise to jointly control Southern Manchuria quickly proved to be a false promise. Japanese Foreign Minister Komura Jutarō (小村壽太郎), upon returning from attending the Portsmouth Conference as Japan’s representative on October 16 of that same year, busied himself in destroying the “Katsura-Harrimann Agreement” (Chiba Yisao, 2012, pp. 124-125). This displayed the ridiculous nature of Japan’s true intentions. The U.S. and England afterwards pursued discussions to have Manchuria become a neutral commercial region, but the Japanese government pursued an appeasement policy with Qing China and Russia while turning its back upon Korea, the U.S., and England on the Manchurian issue.

With its victory in the Russo-Japanese war, the Japanese government scored a huge success with its “preemptive occupation” of Korea and Manchuria. According to the *Imprisonment Record* by Yoshida Shoin, the mentor of the Meiji Restoration powers, the next step was for Imperial Japan to build its strength in Korea and Manchuria and then advance into the Chinese mainland. Related to this, it is noteworthy to look at the warning, issued by the head representative of the Provisional Government of Korea’s Paris delegation at the 1919 Paris Peace Conference, to American President Wilson and the rest of the five powers in its “Petition” that Japan would advance through the Asia-Pacific region in the near future. At the Premiers of the British Empire on Conference at London in June 1921, the Korean Mission to America and Europe presented the “The Appeal of The Korean People for Liberation From Japan and for the reconstitution of Korea—As an independent state”, which pointed out the possibility that Japan would try to establish colonies in Australia and along the America’s Pacific Coast and that eventually large-scale conflict between Japan and the Anglo-Saxon powers would be inevitable.<sup>37</sup>

Japan’s territorial ambitions flared up as World War I was breaking out in 1914. As war broke out, Japan used the Anglo-Japanese alliance and provided assistance to the allies. In August of that year, it issued a

<sup>36</sup> According to Japanese materials and studies, the only two countries that showed interested in the declaration of neutrality were Britain and Italy. However, thorough proof in this book shows a total of six nations interested in such: Britain, the United States, Germany, Denmark, and Italy.

<sup>37</sup> The author has copies of the following: one page of the official letter and 16 pages of the plea articles. The Korean delegate to London Kihwan Hwang’s report to the Provisional Government of the Republic of Korea is included in *The 36 Years of Korean History During Japanese Invasion* (Vol. 6), July 27th, 1921, National Institute of Korean History.



declaration of war against Germany and sent army troops to occupy the German ports in the Shandong Peninsula in Jiāozhōu (including Zingdao) and its navy occupied the German's South Sea Islands. On January 18th of the following year, it demanded 21 preferential conditions from the Yuan Shikai government, which included turning over German interests in the Shandong Peninsula to Japan, acknowledging Japan's interests in Manchuria, and leasing Southern Manchuria and part of Inner Mongolia to Japan. In this manner, Japan, without being a country pursuing international peace, was able to stand of the side of the allies and utilize World War I as an opportunity to manifest its "preemptive occupation" strategy and expand its territory.

After the war, President Wilson invited Chinese representatives to the Peace Conference in an effort to resolve the China problem. The Chinese delegation wished to have the German interests in the Shandong Peninsula returned to China. However, Japan, having been on the side of the allies, announced that it would not join the League of Nations if Shandong was returned to China, putting President Wilson in a predicament. As the proposer of the founding of the League of Nations, President Wilson realized that his leadership would be dealt a big blow if Japan decided not to join the League of Nations, since one of the "Big Five" nations—Italy—had already said it would not join because of the Fiume independence issue in the Balkan Peninsula. President Wilson felt that if Japan did not join the League of Nations, there would be no way to control it and the position was to acquiesce to Japan's 21 preferential conditions (Lee, 1987, p. 141). Given that Japan even used its entry into the League of Nations as an opportunity to further materialize its territorial expansionist policy, which obviously runs counter to League of Nations' basic intent, it meant that this situation could not remain for long. The 1931 Manchurian Incident served as an opportunity for the League of Nations to confront Japan's endless aggression.

After the end of the World War, Japan established the Southern Manchuria Railroad Company and used this as the basis for establishing the Gatou Commandery (關東都督府) to maximize Japan's authority in Southern Manchuria. However, in principle the Portsmouth Treaty provisions only allowed for limited activities in the marginal part along the railroad as needed to operate the railroad. Throughout most of Manchuria, Chinese warlords battled for control of territory. As such, Japan could not be content with controlling just the areas nearby the railroad. Japanese government tried to expand its influence in the region by launching joint cultural efforts centering around the Huabei (華北) region, but this did not work out as planned due to resistance by some Manchurian warlords. Therefore, some radical officers of the Kanto Army Command initiated the Manchurian Incident on September 18, 1931 and launched an independent Manchurian state. The League of Nations could not ignore this blatant act of aggression.

After the September 1931 outbreak of the Manchurian Incident, the League of Nations dispatched the Lytton Commission, which filed a report in the following year. The League of Nations General Assembly went through the formal process and issued a "Verdict" to the Japanese government on February 24, 1933. The League of Nations Agreement states that the territory and political autonomy of members nations are to be respected (Article 10). In the event of war or the threat of war, valid actions are to be undertaken to maintain peace between countries whether or not they are members (Article 11). As such, the verdict was to return affairs to their original state and this recommendation was sent to the Japanese government. The Japanese government could not accept this and thus became the first nation to leave the League of Nations. Thus, Japan's departure from the League of Nations was essentially the same result as having been excluded from the start.

The League of Nations' verdict drew great attention in international law circles. In 1933, the World Peace Foundation published the book *The Verdict of the League—China and Japan in Manchuria* regarding the

League of Nations' verdict. This book includes "The Official Documents with Notes and an Introduction by Manley O. Hudson". Among these documents, the introduction includes "Significance of the Assembly Report" dated March 15, 1933. In the verdict, it cites Paragraph 4 of the Article 15, stating the truth of the conflict and the utmost appropriateness and fairness of the recommendation and that the complete formality of the verdict and publishing of the verdict would have considerable significance in the future plans for global peace. The importance of the documents lies in the statement of Five Goals of Effort,<sup>38</sup> with the first document being divided into four sections: a survey to determine the truth of the situation, the results of the survey to determine the reality of the dispute situation, chief characteristic of the dispute, and the statement of the recommendation. The second document is the Resolution of the Special Assembly (February 24, 1933). The following third through sixth documents include the procedural steps and all of the related articles, supporting provisions, agreements, treaties, chronologies, and a list of basic formal documents. The thoroughness of this book in documenting the circumstances and verdict in such exemplary fashion demonstrates how important the Manchurian Incident was as the League of Nations' first test case. The Manchurian Incident was a significant event in human history in that it was the manifestation of the aggressive spirit of Japan's "preemptive occupation" policy confronting mankind's first global peace institution, the League of Nations. The complete nature of the verdict and its publication made a significant contribution to global example. The verdict made the point that such infringement upon China's territorial rights without the declaration of war must be reversed and the situation returned to its original state. The guaranteeing of territorial rights was the most important requirement of the League of Nations Agreement provisions, and it was something the League of Nations could not ignore.

### **The League of Nations' *Draft Convention on the Law of Treaties* and With the Judgment of 1905 Protectorate Treaty to be Invalid**

The final achievement of the "codification" project of the League of Nations was a report on the Treaty Law of 1935. In 1925, the League of Nations' Committee of Experts for the Progressive Codification of International Law determined that prior to an in-depth study on treaty law, a preliminary study on the "Procedure of International Conferences and Procedure for Conclusion and Draft of Treaties" should be undertaken. In April 1927, the Committee of Experts recognized the importance of this task, and the implementation committee nominated Professor James Garner to be the reporter for the group.<sup>39</sup>

Born in Mississippi, James W. Garner (1871-1938) graduated from agricultural college and completed his doctorate studies at the University of Chicago and Columbia University.<sup>40</sup> With his doctorate degree in political science, he was first hired by the University of Pennsylvania and taught there for several years before moving to the University of Illinois at Urbana where he taught for many years. At the University of Illinois, he primarily taught international law, foreign policy, and comparative government theory, and in 1926 an opportunity arose for his involvement with the League of Nations. He read the article, "the Functional

<sup>38</sup> "Five goals of Effort": (1) the effort to halt hostilities; (2) the effort to restore the *status quo ante*; (3) the effort to obtain the fullest possible information; (4) the effort to conciliate Japan and China; and (5) the effort to crystallize world opinion.

<sup>39</sup> His team is listed as follows: assistant reporter: Mr. Valentine Jobst; advisers: Benjamin, Philip C. Jessup, Charles M. Barnes, Howard T. Kingsbury, Clarence A. Berdahl, Hunter Miller, Clyde Eagleton, Jesse S. Reeves, John A. Fairlie, John B. Whitton, Richard W. Flournoy, Jr. George W. Wickersham, Green H. Hackworth, George H. Wilson, Chesney Hill, Lester H. Woolsey, Charles C. Hyde, Quincy Wright (18 people total).

<sup>40</sup> The description on James Garner which follows is based on *Lives of Mississippi Authors, 1817-1967* (Editor James B. Lloyd, University of Mississippi, Jackson, 1981) James Garner (Written by David G. Sansing).

Observation of the Codification of International Law” in the *American Journal on International Law*. This was probably a preliminary study by the Expert Committee of the League of Nations in 1925 and it appeared to have been done in preparation of the “Procedure of International Conferences and Procedure for Conclusion and Draft of Treaties”. In 1927, after publishing the “extremely high-level study” entitled “Prize Law during the World War”, James Garner was nominated to be a member of the advisory board to work with the Faculty Harvard Law School for the codification of international law. At the end of this process, he was selected as the “reporter” of the team researching the Treaty Law, which was set the 7th additional subject of the codification project in 1932. He played the central role in producing the *Harvard Draft Convention on the Law of Treaties*, which cited the following three treaties that could not have become effective from a historical perspective.<sup>41</sup>

(1) 1773 Treaty coerced by Russia to divide Poland as the Russian army was besieging the Polish parliament;

(2) 1905 Protectorate Treaty signed under the threat on the Korean emperor and high officials by the Japanese ambassador plenipotentiary with the aid of armed forces;

(3) The 1915 Treaty U.S. government trying to get approved while U.S. military forces occupied the Haitian parliament.

Regarding the second treaty, the analysis was primarily on the basis of the 1906 thesis of French international law scholar Francis Rey.<sup>42</sup> The youthful international law scholar Rey read in the newspaper the fact that Japan had enforced this treaty on Korea and collected relevant materials to write within several months a thesis to denounce its lawlessness. He compared the treaty to the earlier “Protocol” demanded by Japan from Korea (Protocol, 1904) and pointed out the following unfair facts: First, in Section 3 of the Protocol, Japan guarantees the independence and territory of Korea, and in Section 5 it states both countries would not have any treaties with any third-party country without the mutual consent of the other party. With respect to these provisions, it was thus a violation that Japan signed the Portsmouth Treaty with Russia in September 1905 without any notice to Korea. The Protectorate Treaty, coming just one year and seven months after the Protocol, threatened Korea’s independence and thus was invalid, and he emphasized that the forced signing of this treaty was clearly an illegal act. In the *Draft Convention on the Law of Treaties* reported by James Garner, the research team used Rey’s thesis as the basis for judging that the Protectorate Treaty of 1905 was a treaty which could not have gone into effect from a historical perspective.

This author has discovered the reason why James Garner research team’s adopted the study by Francis Rey as major basis for its finding (Yi, 2017, pp. 288-289). Garner’s French was fluent such that he was invited to France to lecture on a number of occasions, receiving in fact the *Chevalier de la Legion d’honneur* from the French government. On the one hand, Francis Rey participated in the 1919 Paris Peace Conference as the member of the French Legation and was the Secretary-General of the Donau River International Law Committee in the 1930s. One can presume the likelihood of the two people meeting during James Garner’s frequent visits to France (Unno Hukuju, 1993). This could have been primary reason for the change in the League of Nations’ position clearly recognizing Japan’s policy of aggression in the 1930s following its harsh investigation from 1931-1933 of the Manchuria Incident and the resulting verdict. The *Draft Convention on the Law of Treaties* was, of course, completed shortly after the 1933 League of Nations’ verdict on the Manchurian Incident.

<sup>41</sup> Supplement to *The American Journal of International Law*, Vol. 29, 1935. Codification of International Law, Research in International Law. p. 1157 (*Harvard Draft Convention on the Law of Treaties*).

<sup>42</sup> “Situation Internationale de la Corée”, *Revue générale de droit international public* (RGDIP) Vol. 13, 1906, Paris.

Manley Hudson, the overall head of the “codification” project, sent Garner the following letter after receiving the published report from James Garner on November 7, 1935.

Your handsome volume on Treaties has just reached my hands, and I can’t tell you how thrilled I am. It looks absolutely superb. What grand fun it has been to work with you. I shall remember it as long as I live as one of the happiest episodes of my life. (Yi, 2017, pp. 291-292)

### Conclusion

The Japanese Empire spurred the construction of a new East Asia ruled by the emperor of Japan with the instigation of the 1931 Manchurian Incident and the establishment of a new Manchurian state to exert complete control over Manchuria. In response, the League of Nations immediately dispatched a mission to investigate, and in 1933, the action was judged to be an illegal violation of territorial infringement and the “Recommendation” was made to restore the situation to the original status. As a result, Japan seceded from the League of Nations and poured its energy into militarism. Under the slogan of the “Greater East Asia Co-Prosperity Sphere”, it initiated the Sino-Japanese War of 1937 and followed this by launching the Pacific War with an attack against the United States in December 1941. In a half-century, the philosophy of “preemptive occupation” of neighboring countries put forth by Yoshida Shoin at the end of the shogunate period under the slogan of *Sonnōjōi* (for the emperor and expulsion of barbarians) had been transformed into the theory to construct a new East Asia ruled by the Japanese emperor around the 1890. Given that the Shinto (神道), imperial doctrine (皇道主義) asserted that the Japanese emperor was the center of the world (Yoshida Asako, 2016),<sup>43</sup> the outbreak of the Pacific War was inevitable.

Japan’s challenge to the United States ended in August 1945 in just four years with its “unconditional surrender”. The United States and the allied nations thoroughly responded to the combined fascism of the Axis of Germany, Italy, and Japan. Edwin E. Pauley was dispatched by President Truman to Tokyo, Japan, on November 13, 1945, to be the United States’s representative to the Allied Reparations Committee. The delegation surveyed the situation and issued an interim report on December 7th. The essence of the report was that in order to prevent the resurrection of Japanese militarism, Japan’s surplus industrial facilities should be dismantled and transferred to the countries that were invaded by Japan. Regarding Korea (South Joseon), it was suggested to President Truman that as part of the war reparations, the Japanese industrial facilities which were used to “exploit the natural resources and people of Joseon” should be repatriated to South Joseon (Korea) to stimulate an “independent Joseon economy”. The mission’s report was abided by the Cairo Declaration and the spirit of the Potsdam Declaration. In accordance with Washington’s Japanese reparations national policy, General McArthur’s military administration organized the Special Economic Commission in 1946 and began the necessary tasks, working under the premise that the Korean people must receive compensation for the damages and losses suffered under Japanese colonialization. In the end, Japan was obligated to pay South Joseon in the amount of 40,364,888,600 yen (Ota Osamu, 2003, p. 3). However, as is well known, the position of the U.S. government drastically changed after August 1947.

<sup>43</sup> Hirada Atsutane (平田篤胤; 1776-1842) is well known in contributing to the Japanese National Belief, Shintoism, in the late 1880s. Hirada Atsutane claimed that the Sun is where the greatest God, Amaterasu Oomi Gami (天照大御神) and eight million other gods live, the earth is a place where the Emperor rules the people, and the emperor is the king of the entire world. In the book, *World’s Origin*, Hirada claims that the Japanese Islands are the sons of the Gods (Izanagi, Izanami), and the other countries were made by the waves of the oceans. Yoshida Asako (吉田麻子), *Hirada Atsutane—The Dead The Alive The God*, Heihonshi Shinsho (平凡社新書) 819, Heihonshi, 2016. pp. 52, 59, 64-67.

On January 28, 1947, President Truman dispatched Clifford Stewart Strike to Japan as the head of the Japanese Reparations Special Investigation Commission. The first report by Strike was submitted to the McArthur Command on February 18. The essence of the report was that if the “severe” Japanese reparations policy pursued so far was to continue, the Japanese economy would suffer and the financial burden of the United States would increase as a result of the increase in Japanese occupation costs, resulting in the increase in the burden of U.S. taxpayers. The second Strike report, which was published on March 10, 1948, added “the logic of the taxpayer” to reduce the burden of U.S. taxpayers by cutting or abandoning restitution. As the Cold War system rigidified, the “Cold War logic” brought about a change in the overall interests of the Far East (Ota Osamu, 2003, pp. 38-39). In August, the Far East Committee (Ota Osamu, 2003, p. 37) made the decision that only the allied countries would receive reparations from Japan and since South Joseon was not a member of the Far East Committee, it would not receive a portion of the reparations.

In the fall of 1948, China’s People’s Liberation Army defeated Chiang Kai-shek’s National Revolutionary Army in Manchuria, which was followed by a foray into Beijing in January 1949 and then the establishment of the People’s Republic of China in October 1949. America’s Japanese reparations policy, in light of the changing situation in China and the growing crisis of the communization of the Far East, changed directions of 180 degrees.

With the outbreak of the Korean War in June 1950, Secretary Dulles published the seven principles for strengthening Japan, including the “abandonment of Japanese reparations” on September 22. Based on this, in May 1951, a joint U.S.-U.K. Peace Treaty with Japan proposal was drafted. Following the U.S. Department of State’s comments, dated June 1 for this draft, a revised U.S.-U.K. joint draft came out on June 4, with Korea even having been deleted from the signatories list. The San Francisco Peace Treaty was signed by the representatives of 48 countries on September 8, 1951 and was promulgated on April 28, 1952 (Ota Osamu, 2003, pp. 322-323).

At the 1st “Beyond the San Francisco Treaty” Conference at Columbia University in October 2016, I criticized the injustice of a series of measures against South Korea in April 1951 based on the fact that the *Draft Convention on the Law of Treaties*, the result of the “codification” project of the League of Nations in 1935, found that the signing of the “Protectorate Treaty of 1905”, as the decisive step in the Korean colonization process, was enacted as an illegal treaty that could not have gone into effect.<sup>44</sup> The International Law Commission, affiliated with the “codification” project of the League of Nations, was founded by Manley Hudson in 1946 after the establishment of the United Nations. The commission submitted to the U.N. General Assembly in the December 1963, *A Report on the Law of Treaties* which pointed to the same cases of illegal treaties as before, and it was adopted by a General Assembly resolution.<sup>45</sup> This paper is intended to reaffirm my earlier position and add two additional points.

The principles pursued by the Truman government of the United States in the San Francisco Peace Treaty cannot be viewed as having followed the spirit of the League of Nations or the United Nations. The policy of the U.S. War Reparations Mission, headed by Edwin E. Pauley at the end of 1945, inherited the spirit of the

<sup>44</sup> YI Tae-Jin, “The San Francisco Peace Treaty and the Problems Regarding Japan’s Exemption from Blame for the Colonization of Korea”, *International Conference Beyond the “San Francisco System”: Seeking a Peace Regime in East Asia*, Proceedings of the Papers, The Center for Korean Research, North East Asia Peace Center, October 28-29, 2016. This presentation paper was published at the Cultural and Religious Studies, May 2018.

<sup>45</sup> *Yearbook of the International Law Commission 1963* (Vol. II, p. 197). New York: United Nations, 1964.

League of Nations, but the second Strike Report used the burden on U.S. taxpayers as logic to avoid criticism. Not only with the first League of Nations in human history, the United States played a leading role in the new establishment of the United Nations to strengthen the organization's capabilities during World War II. It was largely the American leadership that led to the establishment of the contents of the U.N. Covenant, the U.N. Charter, and the foundation of international law. In the case of the League of Nations, the senate refused to join so the headquarters was in Geneva on the European continent, but the newly inaugurated United Nations moved to New York. In this respect, the decision of the League of Nations and the United Nations concerning the "Protection Treaty of 1905", which was a decisive instrument of the Korean colonization of Japan, should have been respected.

There are many points to understand about the actions of the League of Nations for the Manchurian Incident. The San Francisco Peace Treaty limited Japan's war reparations the damages of the Sino-Japanese War and the Pacific War. The Sino-Japanese War of 1937 was the consequence of the 1931 Manchurian Incident and it is very likely that the United States' actions were in response to the verdict of the League of Nations (1933) on this matter. The verdict directly targeted the aggression of the Manchurian Incident itself, but it was a belated recognition of Japan's foreign aggression for "East Asian Peace". In this paper, the presenter would like to express serious distaste for the of the "preemptive occupation" strategy mentioned at the core of the Japanese Imperial foreign policy. The verdict of the League of Nations belatedly addressed Japanese aggression. Its subject was essentially the same as the Russo-Japanese War of 1905, which ultimately led to Korea's becoming a protectorate. Everything was done in the name of "East Asian Peace". The assertion that Korea was not capable of self-modernization without having become Japan's protectorate has been revealed to be false with a recent variety of studies on the Great Han Empire's modernization efforts. Had not Korea's political leaders already warned Western leaders about the threat of Japan in the Pacific region in Japan at the time of the founding of the League of Nations in 1919? Even more noteworthy, had not the international law officials of the League of Nations pointed out in the *Draft Convention on the Law of Treaties* in 1933, shortly after the verdict was released, that the 1905 Protectorate Treaty was an illegal treaty that could not have gone into effect? It is hard to believe that the Truman administration was not aware of these critical judgments at all.

The United States government, who ended the 1951 San Francisco Peace Treaty, wished to normalize diplomatic ties between Korea and Japan. In this treaty, Japan was exempted from the responsibility for the illegal Korean colonialization for 40 years. Thus, even though the Korean War was ongoing, Korea-Japan formal talks began at the urging of the U.S. government. However, progress was not made. The drastic difference in the two countries' stances on 1905 Protectorate Treaty and the 1910 Annexation Treaty remained unresolved for more than 10 years. While the Korea-Japan Agreement was finally signed in 1965, the differing interpretations of the past history by the two countries still remains an unresolved situation with the two sides drawing no closer. This was the result of the San Francisco Treaty, which gave Japan an exemption from guilt.

It was the "situational logic" of the Cold War system that influenced the U.S. government's policy with the "taxpayer- burden logic" in the San Francisco Peace Treaty. In the author's 2016 presentation, in light of the changes taking place in East Asia since the collapse of the Eastern bloc in the late 1980s, including the reforms to open China, the change of Russia's withdrawal, the opinion was presented that the San Francisco Peace Treaty should be reevaluated in order to minimize current tensions between Korea and Japan. While North Korea's nuclear threat is a legacy of the Cold War regime, it cannot be viewed as part of the Cold War

system as it is still a problem to be dealt with in a different dimension. Rather, if the alliance relationship between Korea-U.S.-Japan is important in order to actively cope with the issue of the North Korean nuclear issue, the consideration of the factors that worsen the ethnic tensions between Korea and Japan must be taken into consideration. The *Report on the Law of Treaties* which was adopted by the United Nations Assembly in 1963 two years before the signing of the Korea-Japan Agreement, was clearly the successor of the League of Nations' 1935 *Draft Convention on the Law of Treaties* report. In this report, the 1905 Protectorate Treaty was judged as one of the four treaties that could not be considered to have gone into effect.

The United States not only should prioritize the American national interest but also, having been the leader in establishing the League of Nations and the United Nations, should strive to establish an international order driven by the true spirit of the organization committed to ensuring actions to preserve international peace take precedence in the event of acts of aggression. If Korea and Japan, both major players in East Asia, are to become closer allies, then the strict reexamination of the history of these nations will have to prevail. This would lead us on the path to the true peaceful coexistence of East Asia (2017.11.6).

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