

# 国際法の受容から見た近代日韓関係

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A Study of Modern Korean-Japanese Relations based on their Reception  
of International Law

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## I . Introduction

Koreans traditionally perceived the Japanese as savage barbarians whose main interests lay in warfare and violence. As such, the Japanese were looked down upon as being dangerous and temperamental neighbors, to be avoided if possible and any contact with them to be kept to the minimum. Moreover, Koreans hold great, if not downright excessive, pride in the fact that they once held a culturally superior position as compared to the Japanese; and it cannot be denied that this bloated sense of national pride in part caused Koreans to ignore the true essence of the Japanese people and the changes that they went through.

The Japanese, on the other hand, is said to have viewed the nations of the Korean peninsula as being culturally more advanced. However, they did not always view such “ advanced ” countries with respect and awe. In fact, most Japanese intellectuals decried the role of the occupants of the Korean peninsula as being mere conduits of continental culture.

To make a long story short, there has always existed between the Koreans and the Japanese what may be referred to as the “ 3Ds, ” i.e., disregard, distrust, and dislike, and it is precisely these factors that have operated to hinder the forging and development of a harmonious relationship between Korea and Japan.

One of the greatest mistakes that Koreans made with regard to their island neighbors was that they looked down upon the latter as lacking any unique culture of their own and being talented solely in the duplication of foreign culture. What the Koreans failed to realize, however, was that the level of duplication or mimicking that the Japanese proved themselves to be capable of could be attained only with a substantial accumulation of knowledge and technology. Rather, the Koreans blindly and steadfastly held to their view of the Japanese as being mere mimics and hence undeserving of serious consideration. This failure to realize that the Japanese had amassed a great deal of knowledge and technology in their quest for duplication would eventually come back to haunt the Koreans in the form of Japanese dominion over Korea spanning more than three decades. In 1876 , Japan forced Korea to open her doors. In 1910 , Japan deprived Korea of sovereignty and installed its own Government-General in Korea. Looking back on this period of 34 years from a legal perspective based on international law, it appears that one reason Korea lost

her sovereignty stemmed from the failure to properly learn and study the prevalent international law of the period.

## II . The introduction of *Wanguo Gongfa*

As is well known, the notion of a Sinitic-barbarian distinction prevailed within the Confucian East Asian sphere for several centuries until the introduction of modern international law. The Sino-centric order was principally based on hierarchical interstate relations, and while it functioned properly in times of Chinese superiority, it was significantly less stable during periods of Chinese weakness. Korean leaders showed a deep-seated proclivity to place themselves in the order called for by the China-centered international system in East Asia. In contrast, Japan attempted to negate and challenge the existing form of international society, one example of which is Japan's invasion of Korea in 1592 , when Japanese armies under orders from Toyotomi Hideyoshi arrived on Korean shores under the pretext of borrowing a road for purposes of attacking and conquering the Ming dynasty. After the Meiji Restoration of 1868 , the Japanese government took the position that the old diplomatic paradigm between Japan and Korea - which had existed for 250 years through the intermediary of the Chief Lords of Tsushima - had merely been private intercourse by minor officials. The Meiji government went on to assert that all future conduct of commerce and diplomacy would be based on Western international law. As indicated by the above attitude, the Japanese government desired to unilaterally repudiate the norms of Japan's previous international relations within East Asia. This was because one of their goals was to craft a new paradigm of Korean-Japanese relations, and they believed that this goal could not be achieved under the old international system based on Sino-centric order; rather, new legal concepts were necessary, of which the Western international law appeared to be the ideal source and tool.

Among China, Korea, and Japan, China was the first to open its doors when it succumbed to Western pressure by concluding the Treaty of Nanjing in 1842 . Japan was next, opening its ports by concluding the Treaty of Kanagawa with the U.S. in 1854 . This was the first treaty in history between Japan and a Western nation, and signaled the end of the policy of national seclusion adopted more than two centuries ago. During this process, two things deeply impressed the Japanese government. One was the military might represented by the squadron of four " black ships " under Commodore Matthew C. Perry (1794 ~ 1858) , the acting representative of the U.S. in the demand for the opening of Japanese borders; and the other was the assortment of legal terminology of international law that the U.S. officials kept referring to during the negotiations for the treaty. When the treaty was finally signed, the Japanese had learned a new and unforgettable lesson - in the new world order, the maintaining of sovereignty and territorial integrity would depend on gunboats and a knowledge of the so-called Law of Nations.

The Chinese government had shown keen interest in international law before either Korea or Japan. Shortly before the eruption of the Opium War (1839-1842) , Lin Zexu (1785 ~ 1850) , the imperial commissioner in charge of the opium-suppression campaign in Guangdong, had Dr. Peter Parker, an American medical missionary, translate those portions from Emerie de Vattel's *Le Droit*

*des Gens* that pertained to contrabands of war. The passages thus translated acknowledged that every sovereign state had the right to foreign nationals from importing noxious products into its territory by declaring those products to be contraband. Commissioner Lin, citing the above, prevailed unsuccessfully upon the British government to stop exporting opium to China.

In 1864, William A.P. Martin, an American missionary in China, rendered a Chinese translation of *Elements of International Law* (1836), originally authored by Henry Wheaton, as part of his efforts to bring Christianity to China. The translation was intended to be used as textbooks at Tongwenguan for the training of foreign service officers, and 300 copies were published under the Chinese title of *Wanguo Gongfa* ( " Public Law of All States " ). Some of these copies were later distributed to the provinces for use by local officials, and had the effect of contributing to the spreading of international law in East Asia.<sup>1</sup>

In the year following the publication, Martin's Wheaton translation was introduced to Japan, whereupon the translated version was retranslated into Japanese and then immediately and voluminously copied and circulated. Japanese officials and intellectuals alike were engrossed in Wheaton, which was the only treatise on international law available in Japanese. It remained the bible on the subject for Japanese diplomatic authorities and was viewed as the symbol of modern knowledge.

The impact that the book made is demonstrated by a story featuring Sakamoto Ryoma (1835 ~ 1867), a famous patriot of the late Bakufu era. According to the story, one day he was walking along a road when he met a friend who was armed with a long sword. Sakamoto advised his friend that in actual battle, a short sword would be more advantageous. Then they went their separate ways. Later, the two met again, whereupon Sakamoto told his friend that irrespective of the length of one's sword, a pistol was infinitely more superior in armed conflict. Again, they went their separate ways thereafter. When they met for a third time, Sakamoto professed his view that no weapon was as important as *Wanguo Gongfa*. This story serves as an illustration of *Wanguo Gongfa's* stature in Japan during those times.<sup>2</sup>

In Japan, both Wheaton's original version and its Chinese translation continued to be translated into Japanese for several years. By 1876, which was when Japan compelled Korea to open its borders, the list of books pertaining to international law had grown substantially. Thus, while prior to 1870 Japan's knowledge of international law had been rather scanty and shallow, after 1870 Japan acquired the capability to utilize and apply international law to various settings. In this regard, it is singularly estimable that the Japanese scholars of the period engaged in translating both *Wanguo Gongfa* and its original, *Elements of International Law*, while also publishing interpretive commentaries thereto.

### III . Reception of international law in Korea

In late 1875, Japan, armed with gunboats and a working knowledge of the Western world's international law, provoked the Kanghai incident under the pretext of carrying out a sea survey. Unsurprisingly, the incident closely mirrored Commodore Perry's intrusion of Japanese waters in 1855, an event closely studied and analyzed by the Japanese for years thereafter. The Japanese had learnt their lesson well; Korea was able to offer little resistance, and Japan successfully com-

pelled Korea to open her borders and sign the Treaty of Kanghwa of 1876 purported to be based on Western international law. The treaty signaled the beginning of a new and radically different relationship between the two countries, as it superseded the previous relationship that had been based on a concept of Sino-centric order and replaced it with principles and rules governed by modern international law.

The Korean leaders at the time, however, had no idea of the significance of the terms and conditions of the treaty and failed to grasp the true nature of the drastic changes that the treaty would inevitably bring about. Rather, they mistakenly perceived the treaty as merely clarifying and reaffirming the traditional status of Korea vis-à-vis Japan and remained passive and unresponsive regarding the implementation and execution of the terms and conditions of the treaty.

In November 1877, the Japanese government sent an envoy, Hanabusa Yoshimoto (1842 ~ 1917), with a view to ensuring compliance with and fulfillment of the Kanghwa treaty. Presenting *Wanguo Gongfa* and *Songcho Jijang* to Cho Yong Ha (1845 ~ 1884), the Minister of Rites, Hanabusa provided an explanation of diplomatic functions and privileges and demanded the grant of permanent residence in Seoul for the purpose of stationing diplomatic representatives. Again, Hanabusa's conduct was a mirror image of that of Townsend Harris, the first American Minister to Japan, who in 1850 had instructed the Japanese regarding the law of nations.

As far as existing official records reveal, Korean leaders became aware of the *Wanguo Gongfa* for the first time in 1877 - 13 years after its publication - when Hanabusa brought a copy of the book with him. On the other hand, in light of the fact that it was common practice at the time for four or five Korean envoys to be dispatched to China each year, it may reasonably be speculated that *Wanguo Gongfa* was actually imported earlier than 1877. Even assuming that *Wanguo Gongfa* found its way into Korea before 1877, however, it is nonetheless doubtful whether Korean scholars would have shown more than a passing curiosity in the book and the ideas contained therein. At the time, Korean power elites, obsessed with the traditional Sino-centric view of the world, lacked interest in non-conforming concepts and theories and were prone to look askance at views heterodox to existing notions and ideas. Under such circumstances, it was practically impossible for any self-respecting scholar in Korea to stoop so low as to bring in and translate an original English copy of *Wanguo Gongfa*; and printing interpretative commentaries regarding such material was unimaginable.

According to existing records, only four books that were Chinese translations of material dealing with international law were introduced into Korea during the period between Korea's forced opening of its ports and Korea's loss of sovereignty to Japan. These consisted of *Wanguo Gongfa*, *Songcho Jijang*, *Gonfa Pienlan*, and *Gonfa Huitong*. Of these, *Wanguo Gongfa* figured especially prominently in that it served as a type of guideline for Korea's diplomatic officials in the early stages following the opening of Korea's borders.

Within the ranks of Korea's diplomatic officials, an individual named Kim Hong-Jip (1835 ~ 1896) showed the greatest interest in *Wanguo Gongfa*. His duties brought him into frequent contact with his Japanese counterparts, and thus he was often on the receiving end of Japanese demands ostensibly based on the rules and principles of international law. As a result, he came to hold a staunch belief that the acquisition of an in-depth understanding and knowledge of interna-

tional law was necessary in the modern diplomatic setting. In July 1880, Kim was officially dispatched to Japan as an Ambassador for the purpose of negotiating various tariff issues. During his one month stay in Japan, he spent most of his spare time studying and learning about international law and the practical application thereof to contemporary issues. As a part of his efforts, he conversed with various Japanese bureaucrats in order to glean relevant knowledge and information and even contacted Chinese foreign service officers stationed in the Chinese legation in Tokyo for assistance. The latter included renowned Chinese officials such as Ho Ju Chang, Minister, and Huang Tsun Xien, Counsellor. In the course of several discussions, Kim paid particular attention to issues relating to a sovereign authority's independent right to place taxes with regard to goods from international trade. This led to his belated realization that international law, although crafted by and from the perspective of the so-called strong nations of the West, nonetheless also contained aspects favorable to weaker or smaller nations in that it could, if properly utilized, positively operate to protect their rights. When Kim returned to Korea, he had become a passive advocate of international law, frequently voicing his views on the need to study international law. While his opinions were received with favor, no particular effort was actually made to act upon them; and Kim's interest in international law proved to be too short-lived and shallow to make much difference. Rather ironically, Kim's only significant accomplishment from his visit to Japan was his bringing back of a copy of *Chaoxian Celü*, a treatise authored by Huang which purported to contain information for the benefit of Korea but actually was created with the purpose of maintaining Chinese influence over Korea. This booklet would later have a profound effect on Korea's diplomatic policies.

#### IV. Naive Expectations Regarding the Treaty System

Huang, in his treatise *Chaoxian Celü*, advised that the most urgent task for Korea was to defend itself against potential aggression from Russia, and urged Korea to "become intimate with China, develop a friendly association with Japan, and conclude an alliance with the United States." The Chinese strategy underlying Huang's *Chaoxian Celü* was to persuade Korea to enter into treaty relations with the U.S. and other Western powers so as to apply the principle of the balance of power to Korea - it was hoped that this would ensure the maintaining of China's traditional suzerainty in Korea.

At the time, anti-American sentiment still lingered in the heart of Koreans due to the *General Sherman* incident in 1866 and the invasion of the Kanghai Island by the American fleet in 1871, both of which had been aimed at forcing Korea to open her ports. While neither attempt succeeded, a number of Korean lives had been lost and most Koreans looked upon the U.S. with hostility and distrust. Accordingly, China deemed that before it could convince Korea to establish diplomatic relations with the U.S., it was first necessary to take measures to mitigate the animosity that Korean leaders harbored against the U.S.. It was against this backdrop of political motives and considerations that Counsellor Huang wrote *Chaoxian Celü*, which he presented to Ambassador Kim during the aforementioned discussions. Unsurprisingly, this short booklet painted a rather misleading picture of the U.S., depicting it as a sort of jolly giant which, notwithstanding its considerable military might, was nonetheless an anti-imperialistic, Christian and moralistic figure

that willingly lent its support to smaller nations against untoward aggression from others. The ploy worked, and Huang's booklet greatly contributed to alleviate the Korean government's anti-American sentiment. Thus it came about that under Chinese urging and guidance, Korea concluded the Korean-American Treaty of Amity and Commerce in May 1882 - the first treaty in history between Korea and a Western nation. While the treaty was ostensibly termed the "Korean-American Treaty," the actual negotiations were conducted between China and the U.S., with Korea merely playing the role of a passive bystander. As would be expected, the Chinese negotiators primarily had Chinese interests in mind, and the treaty in its final form was geared more to the advantage of China as opposed to that of Korea.<sup>3</sup> The negotiations eventually came to an end, and Shin Hon (1810 ~ ?) , the Commander of the Royal Guard, attended the final stage of the negotiations in order to sign the prearranged treaty in his capacity as the Chief Korean Plenipotentiary. Although the treaty was reduced to writing in both Chinese and English, the Korean authorities had little choice but to rely solely upon the Chinese version in interpreting and understanding the terms and conditions of the treaty. One reason for this was their lack of positive involvement in the treaty negotiations; another, perhaps more fundamental, reason was that they had neither the legal expertise nor the linguistic skills required to read and comprehend a document composed in English legal terminology.

Unfortunately for Korea, however, there existed several discrepancies between the English version of the treaty and its Chinese interpretation. The most notable and serious misinterpretation concerned the latter part of Article 1 , which declared as follows:

“ If other powers deal unjustly or oppressively with either Government, the other will exert their good offices on being informed of the case, to bring about an amicable arrangement, thus showing their friendly feelings. ”

Korean government officials, including King Kojong, believed that Article 1 meant that the U.S. would henceforth be absolutely bound to assist Korea in the event of an international crisis in Korea. This misunderstanding stemmed from the Chinese version's inclusion of the phrase , “ *pilsu-sangjo* ” ( 必須相助 ) , which literally means “ compulsory provision of aid to each other ” and denotes an absolute and unconditional obligation to provide aid to the other party.<sup>5</sup> As can be seen from the above, however, the English version of Article 1 contained no language corresponding to “ *pilsu-sangjo* ” ; and from the perspective of the U.S., the above portion of the treaty implied no special obligation on its part and was merely intended to express in diplomatic terms the existence of a state of friendliness between the two countries. Overall, the treaty did not commit the U.S. to secure the independence of Korea from China; and the attitude assumed by the U.S. was to regard Korea as independent for the purpose of treaty relations and to treat any issues between Korea and China as beyond the scope of U.S. concern.

Following the execution of the treaty, Korea's expectations and hopes vis-à-vis its relationship with the U.S. greatly grew. Contrastingly, however, within three years of the treaty, U.S. had begun to view Korea as being little more than a Chinese satellite, almost wholly dependent on China for its politics, economics, and culture.<sup>6</sup> Reflecting this new view, the American legation in Seoul, which had formerly consisted of representatives holding the title of envoy extraordinary

and minister plenipotentiary, were replaced in July 1884 with other officials holding the lower titles of minister resident and consul general.

The most lamentable of the many shortcomings that beleaguered Korea around this period was its inability to effectively contact and communicate with the Western powers of the time. This inability paved the way to the subsequent Japanese takeover and Korea's loss of sovereign authority - which might have been curtailed in part or in whole had the inequity of the coercive event been relayed to the international community - with the result that Korea had to endure Japanese rule for almost forty years thereafter. In contrast to Korea's practical shutoff from the rest of the world, Japan, armed with numerous legal arguments developed from copious analysis of international law and conveniently translated into English and French, actively engaged in persuading the Western world that its occupation of the Korean peninsula was fair and just as a legal matter. As a result of such efforts, Japan began making a name for itself within the Western community; and later, after Japan defeated first China, then Russia, in the Sino-Japanese War and the Russo-Japanese War, respectively, it became the first non-Western country to gain full international status and full recognition as a "civilized power" - despite the fact it was Japan that triggered the two wars in the first place by engaging in imperialistic expansion activities.

Meanwhile in Korea, King Kojong and the Korean government had pinned their hopes of maintaining Korea's independence through the execution of various treaties with Western powers. When Korea became a Protectorate of Japan in 1905, however, they were greatly disillusioned with international law and adopted a cynical attitude, frequently stating that a single canon is more valuable than the entire bulk of international law.

## V. Efforts to apply international law

The Korean-American Treaty of 1882, the Imo Korean Soldiers' uprising of 1882, and the Kapsin Coup of 1884 intensified the Korean leaders' interest in international law, and they desired to gain more knowledge of international rules and modern legal systems.

In October 1882, Ji Suk-Young, a scholar of Korean literature, suggested to King Kojong that the courts collect material pertaining to *Wanguo Gongfa* and *Chaioxian Celü* and keep them organized at a single location so as to provide young students with the opportunity to study and research international relations and other relevant issues. He further suggested that of these students, those with sufficient talent and capability should be officially recruited to serve the interests of Korea.

Yu Kil-Jun, an American-educated progressive reformer, published *Soyu-gyunmun* (Travels in the West) in April 1895 based on his experiences in Japan and the United States. Yu's discussion of the rights of sovereign states in his book closely paralleled that included in *Wanguo Gongfa*, strongly indicating that he had read the latter beforehand. Yu argued that tributary relations should not be confused with suzerain relations, and that confusion regarding the two concepts stemmed from a lack of knowledge of international law. Yu, while conceding that Korea had historically been a tributary of China, contended that it had never been a vassal and that under international law, a nation could be a tributary and still remain a sovereign and independent state. It is worth noting that Yu was one of the first to deny China's claim to suzerainty over Korea by

applying the principles of international law. Later, when Japan began drastic advances into Korea based in part on the terms of a treaty between the two countries, Yu challenged the validity of this treaty by contending that it had been concluded under duress.

In May 1896, the Korean Education Office published *Gongfa Huitong* - a Chinese translation of *Das moderne Völkerecht der zivilisierten als Rechtsbuch dargestellt*, originally authored by J.K. Bluntschli in 1880 - and distributed copies to high ranking officials. Later, when Japan took advantage of China's waning influence over the Korean peninsula by openly engaging in conduct for the takeover of Korea, Korean intellectuals and officials categorically condemned Japan's imperialistic activities, citing Chapters 96, 405, and 409 of the *Gongfa Huitong* to argue that a treaty born of coercion is ineffective as being null and void from its inception.

In 1915, Park Eun-Sik, a scholar of Korean history, published a book titled *The Painful History of Korea*. In his book, Park noted that before the Japanese annexation, Korea had concluded numerous treaties with the Western states and had faithfully carried out the provisions therein as a member of the international community, placing faith in the protection seemingly granted by international law to a state against untoward acts of aggression from others. He further pointed out that despite the above, Japan nonetheless succeeded in first depriving Korea of sovereignty, and then in annexing Korea to Japan - while not a single Western state intervened in any manner in favor of Korea. Park then bitterly asked: "Where was the justice of public law? In light of such inaction, can we realistically expect the assistance of Western powers henceforth in recovering Korean sovereignty?"

In this regard, it should be noted that Emperor Kojong, naively believing based on the Korean-American Treaty of 1882 that the United States would willingly rise to Korea's assistance where necessary, repeatedly pleaded with President Theodore Roosevelt to take action on behalf of Korea against the Japanese aggression.<sup>7</sup> King Kojong emphasized in particular that the Protectorate Treaty that Korea signed in 1905 with Japan was void and null in its entirety. His pleas fell on deaf ears, however; President Roosevelt refused to provide any sort of aid to Korea and in fact expressed support for the Japanese efforts.

## VI. VI. Conclusion

With the conclusion of the Treaty of Kanghwa in 1876, Korea formerly emerged as a subject of international law and stood shoulder-to-shoulder with the Western nations on equal footing under the legal formalities of Western international law. However, such superficial equality was nothing but a legal lip-service in a period in which the strong preyed upon the weak, based on social Darwinian principles.

After the opening of Korea's ports, the primary diplomatic task facing Korea was to find a way to maintain and ensure Korea's sovereignty and territorial integrity, while concurrently developing Korea's economic and military strength. This task, however, proved to be too onerous for Korea, which had once been known as the hermit kingdom for its aversion to foreign contact.

During the approximately 30 year period from 1876, the year Korea opened its ports, to 1910, the year Korea was annexed to Japan, Korean scholars failed to produce a single translation of a Western book regarding international law. It goes without saying that they also produced nothing



in terms of interpretative or explanatory commentaries regarding books on international law. This dismal failure is an attestation to the non-existence of a central Korean diplomatic policy at the time. Even though Korean officials and intellectuals had high, or even excessive, expectations of international law and the system of treaties, no substantive efforts were made either to properly study them or to foster an environment for their study; and this procrastination remains one of the greatest tragedies in the history of Korea's modern diplomacy.

Between 1876 and 1910, Korea concluded a total of 114 bilateral treaties with eleven countries including Japan, England, and the United States, and 6 multi-lateral treaties involving more than two participant nations. In particular, Korea executed more than 20 treaties with Japan during this period (the last one being the Treaty of Annexation of Korea to Japan in August 1910, which denied Korean sovereignty). All of these treaties were clearly one-sided in favor of Japanese interests, and revealed Japan's imperialistic tendencies in general and Japan's desire to establish dominance over Korea in particular. The treaties were merely intended to serve as the stepping stones for Japan's eventual takeover of Korea and, as history proves, were resoundingly successful. Unlike Korea, Japan had clear-cut diplomatic objectives regarding its peninsula neighbor. After acquiring both the military might and the knowledge and understanding of international law necessary for the fulfillment thereof, Japan caused Korea to execute various treaties with it while also distributing propaganda to Western nations in order to justify its actions regarding Korea. These propaganda took the form of legal arguments developed from international law and were provided in both English and French. Korean representatives, who had almost no knowledge of international law, were hard put to counter such arguments even in the rare case where they could communicate in mutually understandable language.

The striking contrast between the two countries during this period may be attributed at least in part to the degree of success that each had vis-à-vis the adoption and use of international law. While both countries, albeit to different degrees, welcomed the concepts and theories of international law, they differed widely in their subsequent conduct and behavior. Japan devoted substantial time and effort to gaining a knowledge and understanding of international law, as evidenced by the countless number of books, treatises, and interpretive commentaries produced by Japanese scholars and officials during this period; Korea, on the other hand, failed to produce even a single translation of a Western book dealing with international law. The inevitable result was that Japan acquired a profound mastery of international law while Korea had hardly a scholar able to read it. Based on the above, Japan may be viewed as an example of success regarding the reception of international law; Korea, as an example of failure. It must be noted that Korea's failure with regard to the reception of international law did not passively remain a failure to bring in Western legal theories and concepts. Rather, it caused the frustration of Korea's diplomatic missions in the face of the biggest national crisis in Korean history and eventually led to the enslavement of Korea for almost half a century.

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<sup>1</sup> In addition to *Wanguo Gongfa* (萬國公法), there were several books on international law that were translated into Chinese, e.g., *Guide diplomatique ou Précis des droits et des fonctions des agents diplomatique et consulaires*, authored by Charles de Marten in 1876 (translated as

*Songcho Jijang* (星軺指掌); *Introduction to the Study of International Law*, authored by Theodore D. Woolsey in 1877 (translated as *Gonfa Pienlan* (公法便覽)); and *Das moderne Völkerecht der zivilisierten als Rechtsbuch dargestellt*, authored by J.K. Bluntschli in 1880 (translated as *Gonfa Huitong* (公法會通)).

- <sup>2</sup> Another example is the story of Enomoto Dakeaki (1836 ~ 1908) . In 1863 , which was before Japan was able to master the basic concepts and theories underlying international law, Japan placed an order with the Netherlands for the construction of 15 gunboats. When placing this order, Japan also dispatched 15 selected personnel to Netherlands for education in international law. One of the 15 individuals thus dispatched included Enomoto. During his stay in the Netherlands, Enomoto’s studies focused mainly on the Dutch translation of *International Maritime Law*, a legal treatise authored by Theodore Ortolan, a French legal scholar. After Enomoto returned to Japan, he was appointed the second-in-command of the navy of Bakufu, in which position he utilized his knowledge of maritime law in building the foundation for the modernization and enlargement of the Bakufu navy. During the early stage of the Meiji Restoration, Enomoto Dakeaki sided with the Bakufu; thus, when the Meiji government forces invaded and occupied Edo, he refused to surrender his ships and chose to flee to Hakodate of Hokkaido, along with the vast bulk of his fleet. Ensnared there, he continued his fight against the new government for 18 months in what came to be known as the Boshin War (Jan . 1868 ~ June 1869) . Despite his valiant efforts, however, the fortunes of war went against him, and the government urged him to capitulate. When it became apparent that the war was lost, Enomoto sent his main adversary, Kuroda Kiyotaka (1840 ~ 1900) , his personal copy of *International Maritime Law*, telling the latter that the book was of immense value with no other copy thereof in existence in Japan and pleading that the book be handled with care. It is remarkable that a man facing impending death could be so concerned about a book on international law as to have it delivered for safekeeping to his greatest enemy and would-be executor, and this incident may be viewed as yet another example of the importance placed on international law by the Japanese at the time.
- <sup>3</sup> “ China had drafted the treaties with the Western powers and the Koreans had thought that she would know best, but they now know that she acted only in her interests. ” F.C. Jones, *Foreign Diplomacy in Korea*, Harvard University Press , 1935 , p.352.
- <sup>4</sup> This language is also found in Article 1 of the Sino-American Treaty of 1858: “ ... and if any other nation should act unjustly or oppressively, the United States will exert their good offices on being informed of the case, to bring about an amicable arrangement of the questions, thus showing their friendly feelings. ” On the other hand, Article 2 of the Japanese-American Treaty of 1858 contains notably different language: “ The President of the U.S., at the request of the Japanese government, will act as a friendly mediator in such matters of difference as may arise between the Government of Japan and any European Power. ”
- <sup>5</sup> The Chinese version of the latter part of Article 1 of the Korean-American Treaty of Amity and Commerce is as follows: “ 若他國有何 不公輕 藐之事 一經照知 必須相助從中 善為調處 以示友誼關切... ”
- <sup>6</sup> “ Korea has always had a King who has been invested as such by China. But, though she had made independent treaties with foreign countries, yet she is still practically tributary to China,

and Li Hungchang, representing the Chinese Government, exercises the controlling influence over the public and foreign affairs of Corea and is in constant communication with the King and his government. ” Dennby to Bayard, October 12 , 1885 , *Dispatches*, Vol. LXXVI, No . 12 .

- <sup>7</sup> In 1905 , King Kojong sent a letter to President Roosevelt, requesting U.S. intervention in favor of Korea against Japanese aggression. In support of his request, King Kojong invoked the latter part of Article 1 of the Korean-American Treaty of 1882 , as follows: “ ‘ If other powers deal unjustly or oppressively with either government, the other will exert their good offices, on being informed of the case, to bring about an amicable arrangement, thus showing their friendly feelings. ’ ” Our Government at the present time feels forced to inform your Government that we are being dealt with “ unjustly and oppressively ” by the Government and people of Japan and to appeal to the president of the United States of America and your Government to, in accordance with the above quoted article of the Treaty, use your good offices in bringing about an amicable and just settlement.... ” The National Archives of the Russian Federation, Fond No . 818 , OPIS No . 1 , Delgo No . 130 , List No . 1-8 , 1905