

THEORY,  
LAW &  
POLICY  
OF  
CONTEMPORARY  
JAPANESE TREATIES

L. Jerold Adams

**THEORY,  
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JAPANESE TREATIES**

by  
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## ABBREVIATIONS

The following abbreviations have been used in the footnotes to denote the treaty series, collections or lists from which the data for this study was obtained. It should be noted that the principal Japanese treaty collection (*Joyakushu*) published by the Treaty Bureau of the Japanese Foreign Ministry appears in two different formats. Up until 1965 the collection was organized serially according to number and after 1965 the collection appeared in single volumes containing the treaties for a single year. Therefore, the references to these treaties are either followed by a number or cited according to the year and the page within the annual volume. The abbreviations are as follows:

UNTS	<i>United Nations Treaty Series</i>
UST	<i>United States Treaties and Other International Agreements</i>
TIAS	<i>Treaties and Other International Acts Series</i>
JAIL	<i>Japanese Annual of International Law</i>
JOYAKUSHU	<i>Treaty Collection</i> issued by the Treaty Bureau, Ministry of Foreign Affairs, Japan
PTS	<i>Philippine Treaty Series</i>
HOREI ZENSHO	Compilation of official Japanese government acts
YING	Chen Ying-Ching, <i>Treaties and Agreements between the Republic of China and Other Powers, 1929-1954</i>

## PREFACE

An integral part of contemporary Japanese foreign policy is treaty-making. While specific treaties have constituted a principal focus in various studies of the domestic and international politics of Japan, no study has emphasized the overall treaty practice of Japan. This study represents the first general and comprehensive study of Japanese treaties. Several sets of sources are combined in this effort: (1) original Japanese treaty documentation, (2) Japanese scholarly writings on treaties, (3) various non-Japanese writings on the law and policy of the foreign relations of Japan, and (4) the computerized data bank of the Treaty Research Center at the University of Washington. These sources are used to present an integrated analysis of Japanese foreign policy and its position in the international community.

Using both quantitative and qualitative data, this study presents an analysis of three aspects of Japanese treaty-making and practice: theory, law, and policy. Theoretical considerations include, first, consideration of the role of treaties in the study of foreign policy and international politics and second, a review of Japanese scholarship on the law of treaties. A consideration of the law of treaties presents a comparison between the doctrines of international law regarding treaties as treated by Japanese scholars and the actual practice of Japan in treaty-making with respect to the procedural matters of the conclusion and termination of treaties. The policy of Japanese treaties is concerned with the determination of the extent of Japanese foreign relations, the problems in negotiating treaties, and the impact that these agreements have had on Japanese policy.

The study concentrates on the twenty-year period since the signing of the Treaty of Peace with Japan in 1951. The gradual re-emergence of Japan into regional leadership and global status is shown by an analysis of Japan's treaty practice. The historical benchmarks can also be reconstructed from the treaty record. Beginning with the early efforts of Japan to overcome the memory of its involvement in the last world war through reparations agreements, then the arms limitations agreements of a defeated power, and finally the special dependency status vis-a-vis the United States, all of Japan's interactions with East Asia and the rest of the world are reflected in its treaty patterns.

The use of treaties in a study of this nature has introduced a further variable into the study of the foreign policy of a particular state and the study of that state's behavior in the international community.

In the course of this study many individuals have been gracious enough to assist me. To these individuals I wish to extend my appreciation and thanks: to Professors Dan F. Henderson and Donald C. Hellmann of the



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L.J.A.  
Fall, 1973

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## CHAPTER I INTRODUCTION

*Preliminary Consideration* Central to contemporary processes of international cooperation and the conduct of foreign affairs is treaty-making. Indeed, it can be said that treaties are one of the most concrete manifestations of foreign policy decisions. The study of treaty practice of states is also, in a sense, the study of international behavior. The study of treaties and treaty practice of an individual state or a collectivity of states would be compatible with and complementary to studies concerning the causes of war, international conflict, the seeking of alternatives to violent international behavior, international organization, regional integration, foreign policy decision-making, etc.

Treaties also occupy "a central position in international law."<sup>1</sup> Substantive rules of customary international law have been increasingly supplemented and even superseded by international treaties and agreements. When international society or most of its members desire to enact a fundamental, organic, quasi-constitutional law, such as the Charter of the United Nations, it is done by a treaty. When the members of international society seek to establish regulations for the movement of international mails, such as the Universal Postal Convention, or establish international standards for trade, such as the General Agreement on Tariffs and Trade, or establish mutual security arrangements, such as NATO and SEATO, they do so by treaty. When nations wish to formally define the limits of the territorial sea, such as the Convention of the Territorial Sea and Contiguous Zones, they do so with a treaty. When two nations wish to formally delineate methods of dispute settlement, such as the agreement between the U.S.S.R. and Iran concerning the settlement of frontier disputes and incidents, they use a treaty. Also, when hostilities end between warring states, the formal arrangements for the cessation of the state of war are embodied in a treaty. The predominant method by which international society has regulated and continues to regulate its multifarious transactions and relationships is the conclusion of treaties.<sup>2</sup> International agreements regulate not only the formal organization of international society but also innumerable technical and economic aspects of interstate relations as well.

Japan, not unlike other members of international society, relies to a considerable extent on the use of treaties to regulate its relations with other states and as an instrument for obtaining foreign policy objectives. The significance of treaty-making, negotiations, conclusion, implementation and termination and the circumstances surrounding these procedural steps is evident in any study of Japanese diplomatic history as it is in that of other states.

Given the above considerations, the following study attempts, first, to examine thoroughly Japanese treaty-making and practice, i.e., the Japanese concept of treaties and international agreements with regard to their formulation, conclusion and termination; and second, to determine the role of treaties in Japanese foreign policy, i.e., a consideration of treaties as instruments of and formal binding embodiments of Japanese foreign policy. The intent here, therefore, is the identification and analysis of various Japanese theories, practices and policies of treaties and treaty-making since 1952, and the evaluation of treaties and treaty practice within the framework of Japanese foreign policy.

*Historical Background* Before considering the significance of early Japanese treaties, it is necessary to discuss briefly the ideological framework that developed during 300 years of Tokugawa isolation. This framework, as will be pointed out, had a considerable influence on early Japanese statesmen and on the perspective from which they viewed the international community and Japan's potential role within that community.

Before the opening of Japan by Perry in 1859, Japan had enjoyed a 300 year period of self-imposed isolation. During this period, an indigenous social ethic emerged comprised of a predominant Confucian strain substantially affected by Shintoism and Buddhism. The important element of this social ethic was that social distinctions were a requisite if social propriety and order were to be maintained. Implicit in this concept of social distinctions was the view of tutelage, i.e., "the concept that an intellectual elite should guide the 'backward masses' toward certain pre-established goals."<sup>3</sup> According to the Confucian ethic, therefore, stability and morality within the state demanded a proper ordering of society on the basis of birth, age, and sex. "Upon all of the governed lay stern injunctions to live with status and to obey superiors in unswerving fashion."<sup>4</sup> The resultant social hierarchy buttressed by Confucian ideology was one in which the individual lived to fulfill the mission of his allotted station.<sup>5</sup>

It was out of this hierarchial social milieu that Japan's modernizing elite emerged upon the collapse of the rule of the Tokugawa shogunate. The social ethic not only influenced the perspective from which the new domestic and international order was perceived but also served as rationalization for the programs the modernizing elite sought to implement. Domestically, the social ethic came to mean that national, rather than individual, ends would receive priority; and that individual concerns and efforts could best be justified as important to national strength. However, because of the antipathy toward the newly established regime in certain parts of the nation, the government felt compelled to establish a political loyal army first, to put down internal disorder and dissidence and, second, to serve as a defense against external threats.

Internationally, the ruling elite perceived the international community as being essentially a hierarchy of unequal nations. Maruyama Masao

argues that the Japanese leadership of this period felt not only was Japan's own society composed of a hierarchy of unequal classes but also interpreted the international community to be similarly hierarchial in structure. Consequently, "when the premises of the national hierarchy were transferred horizontally into the international sphere, international problems were reduced to a single alternative: conquer or be conquered."<sup>6</sup>

The early Meiji statesmen recognized the need for widespread domestic reforms; in essence modernization meant westernization. Reforms were needed, first, to prevent the fledgling state from being subjected to foreign intervention and exploitation and, second, to catch up with the industrialized West. The objective of modernization was at the outset seriously handicapped by the unequal treaties. The existence of fixed custom rates stipulated in these treaties in effect restricted Japanese freedom to set tariffs and to protect indigenous industries. Industrialization could be accelerated if tariff autonomy could be achieved. Therefore, the primary foreign policy objective of the early Meiji government was the revision of these treaties. Once modernization programs began being implemented and the unequal treaties were revised, the focus of foreign policy was directed at the role Japan was to have in the international community. Reflecting the perspective of the international community as a hierarchy, Japan sought equal status with the major powers.

To achieve domestic and foreign policy objectives, the modernizing elite adopted Western political, technical, economic, and social methods and techniques. The instruments used by the Japanese in the exercise of foreign policy also reflect considerable influence from the West; for example, diplomatic missions, military aggression, and war were just a few of a host of instruments used to obtain specific policy objectives. Treaties and treaty-making also had a considerable role as an instrument of foreign policy during this era. Japanese treaties and treaty-making of this period represented the formal codification of gains made in the progress of Japan toward membership in the upper stratum of the international hierarchy. As such, treaties concluded and terminated by Japan during the Meiji and Taisho periods serve as a profile of Japanese foreign policy success and failures and mark the progress of the rise and gradual deterioration of the position of Japan in the international system of the pre-World War II period.

Japanese treaty-making and practice during the Meiji-Taisho eras can be divided into three distinct phases: first, the period of challenge and response; second, the period of adhesion and manipulation; and third, the period of repudiation and realignment. The first period is characterized by the conclusion of unequal treaties with Western states. The 1854 Treaty of Kanagawa between Japan and the United States was the first treaty Japan concluded with a Western power. The treaty provided for the opening of two ports to United States' ships at Shimoda and Hako-

date and also contained a most-favored-nation clause. Shortly thereafter, the United Kingdom and the Netherlands demanded the conclusion of similar treaties. A subsequent treaty with Russia was the first treaty to stipulate the principle of extraterritoriality.<sup>7</sup> The most-favored-nation clause in the Treaty of Kanagawa resulted in similar privileges being granted to other signatories. These early treaties were followed by the Treaty of Ansei between Japan and the United States concerning trade relations.

This treaty represented the second step in the opening of Japan. The treaty provided for (1) the establishment of regular diplomatic and consular relations between the United States and Japan, (2) opened four additional ports, (3) retained extraterritorial rights in Japan for the United States, (4) established a tariff on goods imported into and exported from Japan, and (5) provided for the introduction and free exchange of foreign currency.<sup>8</sup> The Treaty of Ansei was followed by similar treaties with Holland, Russia, England and France. Later treaties were concluded with Sweden, Norway and Spain in 1868, with Germany and Austria-Hungary in 1869, with Hawaii in 1871 and Peru in 1873.<sup>9</sup>

The significance of these treaties was that they were indeed unequal in nature: the advantages Japan gained by the treaties were considerably less than the disadvantages imposed upon Japan by the stipulations in these treaties. These treaties represented a serious challenge to Japanese sovereignty and the ability of Japan to direct its foreign policy. It should be noted that the concept of treaty-making and treaties was totally alien to Japanese thinking during this period. The contracting parties, as established above, took full advantage of this fact. The conclusion of unequal treaties had one further impact, that was the beginnings of serious inquiries into the nature of the law of nations.<sup>10</sup>

The revision of these treaties became the primary objective over all other international considerations in foreign-policy making of the early Meiji period. The negotiations to revise the unequal treaties began in 1872 resulting twenty-two years later in the first treaty based on egalitarian principles: the July, 1894 Anglo-Japanese Treaty of Commerce and Navigation. It was only after Japan resorted to war as an instrument of foreign policy, for the first time in its modern history in 1894-1895,<sup>11</sup> that the major powers began to seriously consider the possibility of Japan as an equal in the international community, particularly in East Asia. The Treaty of Shimonoseki of April, 1895, ending the war with China, gave Japan trade concessions and most-favored-nation privileges in China,<sup>12</sup> as well as territorial gains in the Liaotung Peninsula, Formosa, and the Pescadores. More importantly, however, it marked the beginning of the period when Japan freed itself from the restrictions that had been imposed by the unequal treaties with the West.

The second period, that of adherence to and manipulation of treaties, begins with the signing of the Anglo-Japanese Treaty of Alliance in 1902.



The significant characteristics of this period are the adherence by Japan to treaties and the solemnity accorded to these instruments. This period is also characterized by the manipulation of treaty-making by Japan to gain certain territorial and economic advantages especially in East Asia. The treaties concluded by Japan during this period are also symbolic of the gradual albeit cautious acceptance by the West of Japan in the international community.

With the signing of the Anglo-Japanese Treaty of Alliance in 1902 and the second and third alliances in 1905 and 1911, Japan was implicitly recognized as having equal power status in Asia with that of Great Britain. The provisions of these agreements (1) established mutual respect for the territorial integrity of the parties, (2) delineated the scope of the respective commercial and industrial interests in China of the two states and for Japan wider influence in Korea. More importantly is the provision stated in Article II:

If either Great Britain or Japan, in the defence of their respective interests as above described, should become involved in war with another Power the other High Contracting Party will maintain a strict neutrality, and use its efforts to prevent other Powers from joining in hostilities against its ally.<sup>13</sup>

The insertion of this particular article in the 1902 agreement was a necessary requisite for the entry of Japan into war with Russia. Japan, under the terms of this agreement, had assurances that should another power assist Russia it could not do so without the possibility of Great Britain entering on the side of Japan.

With the conclusion of this treaty, Japan had become allied with a great world power. This was a major achievement for Japan which had been "regarded as a mere international upstart."<sup>14</sup> The conclusion of this agreement eventually provided a vehicle by which Japan could become involved in the First World War, at the expense of Germany one of its principal rivals in China.

In September 1907, Japanese ascendancy in Asia was again recognized by the signing of the Treaty of Portsmouth, at the end of the Russo-Japanese war. This treaty provided

(1) For recognition of Japan's paramount political, military and economic interests in Korea; (2) For transfer of the rights of Russia in the Liaotung peninsula to Japan; (3) That the southern section of the Manchurian railway be ceded to Japan; (4) That the portion of Saghalin south of the 50th parallel be ceded to Japan; (5) That Russia and Japan should withdraw their troops from Manchuria but retain railway guards; (6) That neither Japan nor Russia should obstruct 'any general measures common to all countries which China may take for the develop-