

〈ARTICLE〉

Korean Attitudes Toward International Law after the
Open-Door to the West(Ⅱ)

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IV. Korean Independence of China under the Imperialism

In spite of the hearty desire of Koreans for the independence, the status of Korea has largely depended upon the international situation surrounding the Korean peninsula. In 1880s Chinese efforts to reinforce her influence upon Korea were many times checked to a certain extent by Japan and other treaty powers. Even when the Japanese soldiers and members of the legation were driven out of Korea after the abortive *coup d'etat* by the Progressive Party in 1884, Japan successfully urged China at the time of the negotiation for the Treaty of Tientsin to agree to withdraw respective forces from Korea and to give prior notification to the other party if one party was to dispatch troops to Korea in the future.⁽⁵⁰⁾

Due to the domestic turmoil in Korea by the Tonghak rebellion the Korean government, led then by the Conservative Party, invited the Chinese troops to Korea. According to the provision of the Treaty of Tientsin, China gave its prior notification to Japan on June 6, 1894. The next day Japan was also willing to dispatch troops to Korea not only to counter the Chinese influence upon Korea but also to turn the attention of the Japanese people from the unresting domestic political problems to the external problems like a war with China. Notwithstanding the repeated protests by the Korean government against sending troops to Korea, Japan landed its troops to intervene into the

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(50) See the texts of the Treaty of Tientsin, at Kukhoe-tosogwan, *Kuhanmal choyakhuich'an*(韓末條約彙纂), chung *kwon* (Ippöp-ch'amgo-charyo No.26), at 142-145(1965),

domestic matters of Korea under the excuse of assistance for the modernization of Korea. The first thing that Japan requested Korea was to terminate the 1882 Regulations for Maritime and Overland Trade between Chinese and Korean Subjects, which stipulated the traditional Chinese superiority over Korea. Japan sent an ultimatum to the Korean government on July 17, 1894 that the termination of the Regulations was to be done by midnight of July 22.⁽⁵¹⁾ Yüan Shih-k'ai fled to China on July 19. Without any clear answer from the Korean government by July 22, the Japanese forces occupied the Kyöngbok palace at the dawn of July 23. A new cabinet was organized by the advise of Japan upon the success of the Japanese *coup d'état*. The new puppet cabinet under the leadership of Taewön'gun repealed all the existing treaties with China on July 25. Naturally the time-honored tributary relationship between China and Korea thus came to an end by the "assistance" of Japan.

Under the Japanese guidance, the new cabinet conducted the Reform of 1894 through the newly created Deliberative Council (軍國機務處) which was composed of some twenty members, who were more or less familiar with the Western civilization. Among them, former minister to the U.S. Pak Chöng-yang and former member of the 1883 *Kyobingsa* mission to the United States Yu Kil-jun participated in the Council as Minister of Home Affairs, and Director-General at the Ministry of Foreign Affairs respectively. Kim Hong-jip, who was the chief of the *Shinsa-yuramdan* mission to Japan in 1881 became president of the Deliberative Council. Most of the reform was planned by the Council without the direct intervention by Japan.⁽⁵²⁾ It seems that Japan was not much interested in the reform itself. Its sole object was to locate Korea under the Japanese domination. The reform, conducted by the Deliberative Council, was revolutionary. The basic change was the separation of the Royal Household (Kungnaebu) from the executive. The State Council (Üijöngbu) was

(51) See II-an(日案) II, at 684, No. 2947. For the text of the Regulations (朝中商民水陸貿易章程), see note 19 *infra*.

(52) See *Nihon Gaiko Bunsho*(日本外交文書), 27:1, No. 429, at 636. See also, *ibid.*, No. 447, at 665-666.

organized under the prime minister with seven ministries. Former Ministry of Courtesy, which had taken in charge of the tributary matters, was replaced with the Ministry of Foreign Affairs. Significantly the administration of justice was for the first time separated from the executive. According to the law creating a system of courts, district courts and appellate and circuit courts were established. Torture of criminal suspects was banned. The traditional extension of punishment to family members of the convicted of heinous crimes were also abolished.

In order to put spurs to the process of the reform, the King of Korea proclaimed on January, 7, 1895 the Basic Rules of the Fourteen Articles(洪範十四條) for the reform at the yard of the royal cemetery. The first article of the proclamation was that "We shall hereafter sever the dependence on China and hereby establish a foundation for the independence."⁽⁵³⁾ This was the first Korean declaration of independence of China. The Korean independence of China was reaffirmed in the Treaty of Shimonoseki concluded after the Sino-Japanese War. The first article stated that "China recognizes definitely the full and complete independence and autonomy of Korea, and, in consequence, the payment of tribute and the performance of ceremonies and formalities by Korea to China in derogation of such independence and autonomy shall wholly cease for the future."⁽⁵⁴⁾ Thus the traditional tributary ties to Ching China, which had been established since the defeat of Korea by the invasion of the Manchus in 1636, finally came to an end not by the tenacious struggle of the Koreans, but by the deliberate efforts of the Japanese to sever the Korean tributary ties with China so that Korea should fall under the Japanese domination. Koreans were at a loss by this sudden independence. On the one hand they were naturally pleased with the independence, on the other hand they were afraid of the increasing Japanese domination. The Korean government now cautiously heightened the level of the official title of

(53) See *Kuhan'guk kwanbo*(舊韓國官報) 1, at 829-883 (the 12th of the 12th month of the year of 503 since the foundation of Yi dynasty).

(54) See *supra* note 50, at 148-166.

the royal families. For example, the king was to be called "His Excellency the Great Sovereign(大君主陛下)" in place of "His Lordship(主上殿下)." The Queen was to be called *Wanghu-p'yeha* instead of *Wangbi-jönha*; the prince was to be called *Hwang-t'aeja-jönha* in place of *Wangseja-jöha*.⁽⁵⁵⁾ The words like Emperor and Empress were not yet used at that time.

Yu Kil-jun published *Söyu-kyönmun*(西遊見聞) on April 25, 1895 in Tokyo. He wrote the manuscript during his custody from 1885 to 1892 upon his return from the Korean mission to the United States. He had been put under the custody because of his alleged sympathy with the 1884 *coup d'état*. Upon being freed from the custody on the eve of the Tonghak peasant rebellion, he decided to join the Reform of 1894. It is still curious why his *Söyu-gyönmun* written in dialectic Korean was published not in Korea but in Japan as late as in May 1895. Printing facilities at his *alma mata* Keio Academy might have been good, but probably he had to publish it there because his staunch endorsement for the principle of sovereign equality in the book was against the still haunting tributary system. He introduced things in the West for the progressive enlightenment of Korea. The third chapter explained the fundamental rights of sovereign nations in public international law. He maintained that every state had the same right as a sovereign nation whether it was large or small, strong or weak. He further maintained that sovereignty was supreme internally and nonviolable externally. He then illustrated seven fundamental rights of states: (1) the right of self-existence, (2) the right of independence, (3) the right for development, (4) the right of legislation, (5) the right of diplomacy, (6) the right of association and (7) the right of neutrality. He strongly opposed to the tributary system in view of the Western international system based on the principle of sovereign equality. He maintained that "there is no state above state, no state below state." He said that the sovereign right of every state could be compared to the right of a family

(55) See *Kuhan'guk kwanbo*(舊韓國官報) 1, at 859(the 16th of the 12th month of the year of 503 since the foundation of Yi dynasty).

which would never allow others to intervene into the domestic affairs, as well as to the right of an individual person, who would naturally not accept other person's intervention.⁽⁵⁶⁾

In June 1896, the Korean Ministry of Education published *Kung-fa-hui-t'ung* (公法會通), which was published in China in 1880. It was translated into Chinese from Johann C. Bluntschli's *Das Moderne Völkerrecht der zivilisierten Staaten als Rechtsbuch dargestellt*.⁽⁵⁷⁾ The government now eagerly distributed the book to the Confucian scholars throughout the country. It was a striking comparison to the previous policy of the Korean government to ferret out international law books to be burnt on the streets. *Wan-kuo-kung-fa* (萬國公法), translated by William A. Martin into Chinese from Henry Wheaton's *Elements of International Law* and published in China in 1864, had also suffered from such a fate. Publication of such a "seditious" book was prohibited in Korea because it was against the hierarchical tributary system and would eventually demolish the traditional Confucian culture in East Asia. It was possible for Korea to publish international law books only after the Chinese were gone from the Korean peninsula.

On October 12, 1897, the Korean government proclaimed the establishment of the Great Han Empire (大韓帝國). The proclamation was possible due to the temporary balance of power between Japan and Russia after the Japanese aggressions into China was checked by France, Germany and Russia. As a result of the Three Power Intervention, Japan had to give up Liaotung Peninsula acquired from China due to the victory at the Sino-Japanese War. A new Korean constitution (國制), drafted by the Law Reform Council (法規校正所), was proclaimed on August 17, 1899. The preamble of the constitution clearly stated that it was drafted based on the public opinion and with reference to public international law. The constitution consisted of nine articles. All the articles were firmly based on the principles of public international law. Five articles actually stated the basic principles of public international law. Article I stated

(56) See Yu Kil-jun, *Söyu-gyönmun* (西遊見聞), Chapter 3 (1895).

(57) See *Hakbu* (Ministry of Education), *Kung-fa-hui-t'ung* (公法會通) (1896).

that "The State of the Great Han is an independent and autonomous empire, which has been recognized by the states over the world." This was taken from a passage in Chapter 64 of *Kung-fa-hui-t'ung*, wherein it was stated "There are two phases of the sovereignty: the first is independence, which purports not to depend upon other state: the second is autonomy, which purports not to be directed by other state."⁽⁵⁸⁾ Articles 3, 6, 7, 8 and 9 respectively stated five sovereign rights provided in Chapter 68 of *Kung-fa-hui-t'ung*, namely: (1) the right to determine its constitution(自立政體), (2) the right to determine its rules and regulations(自定律例), (3) the right of self-administration(自行治理), (4) the right to select officials(自選臣工), and (5) the right to dispatch diplomatic missions abroad(自遣使臣).⁽⁵⁹⁾

On September 11, 1899, a Treaty of Friendship and Commerce between China and Korea was signed in Seoul. Article I of the Treaty declared that "There shall be perpetual peace and friendship between the Empire of Korea and the Empire of China, and between their respective subjects, who shall enjoy equally in the respective countries of the High Contracting Parties full protection and the advantages of favorable treatment." Article II stated that "the High Contracting Parties may each appoint diplomatic representatives to reside at the court of the other, and may each appoint consular representatives

(58) The original German text is as follows:

"Die Souveränität eines Staates zeigt sich

- a) in der Unabhängigkeit desselben von einem fremden Staat und in der Ablehnung jeder fremden Staatshandlung auf seinem Gebiet:
- b) in der Freiheit desselben, ohne Behinderung fremder Staaten seinen eigenen Staatswillen selbst zu bestimmen und nach eigenem Ermessen zu äussern und zu bestätigen. "See Johann C. Bluntschli, *Das Moderne Völkerrecht der zivilisierten Staaten als Rechtsbuch dargestellt* (1872), at Chapter 64.

(59) The original German text is as follows:

"Zu den regelmässigen Souveränitätsrechten eines Staates gehören:

- a) das Recht, seine Verfassung selber zu bestimmen:
- b) das Recht, selbständiger Gesetzgebung für sein Volk und Land:
- c) die Selbstregierung und Selbstverwaltung:
- d) die frei Besetzung der öffentlichen Aemter:
- e) das Recht für den Verkehr mit andern Staaten seine Stellvertreter zu bezeichnen und zu ermächtigen.

Es kommt den fremden Staaten nicht zu, sich in die Ausübung dieser Rechte einzumischen, es wäre denn, daß bei derselben das Völkerrecht mißachtet wurde". See *idem*, at Chapter 68.

at the ports of the other which are open to foreign commerce, at their own convenience,” and that “[t]hese officials shall have relations with the corresponding local authorities of equal rank upon a basis of mutual equality.⁽⁶⁰⁾” Instruments of the ratification of the treaty were exchanged on December 14, 1899 in Seoul. By the conclusion of the treaty, China eventually gave up her tributary advantages over Korea, and finally recognized the full sovereignty of Korea. Thus China and Korea eventually became equal in accordance with the principles of modern public international law.

Conclusion

The hierarchical tributary relationship between China and Korea became inconsistent in view of the fact Korea concluded treaties of friendship, commerce and navigation with the United States and other Western powers on the basis of sovereign equality, with whom China also concluded such treaties on the equal footing. Due to the fear that Korea might fall like Vietnam, under the imperialism of Japan and Western powers China made all efforts to restrengthen the tributary ties with Korea even by using the newly adopted imperialistic methods, which she had learned from the West. Despite the increasing Chinese intervention, Korea also made tenacious efforts to get out of the Chinese suzerainty by demanding China to abolish the old-fashioned tributary system and to adopt a new relationship, based upon the principle of sovereign equality in international law. However, such efforts had become frustrated owing to the Chinese greed, until the Chinese troops were finally defeated by the Japanese in the Sino-Japanese War (1894~95). Under the increasing Japanese influence, the Korean government conducted a massive Reform of 1894, wherein the Korean government pronounced the termination of the 1882 Regulations for Maritime and Overland Trade between Chinese and Korean Subjects and the abolishment of the tributary missions to China. This was reaffirmed in the Korean Declaration of the Basic Rules of Fourteen

(60) See Kukhoe-tosögwan, *Kuhanmal-choyak-huich'an*(舊韓末條約彙纂), ha *kwön* (Ippöp-ch'amgo-charyo No. 27), at 369-386 (1965).

Articles on January 7, 1895. One of the articles was to the effect that Korea should divorce from the dependence upon China. Article I of the Treaty of Shimonoseki on April 17, 1895 also stated that "China recognizes the full independence of Korea." Independence of a state has an international aspect. It is possible to maintain independence by the full exercise of the sovereignty and by the full recognition of its content by other states. Japan had apparently endorsed for the independence of Korea since the conclusion of the 1876 Treaty, but in reality she wanted to monopolize her interests in Korea by driving out the Chinese. For these reasons, Japan had again conflicting interests with Russia and other treaty powers after the conclusion of the Treaty of Shimonoseki with China. During the period of the balance of power surrounding the Korean peninsula, brought about by the Three Power Intervention into the Japanese interests acquired after the Sino-Japanese War, Korea proclaimed the establishment of the Great Han Empire on October 12, 1897. The constitution of the Empire, proclaimed on August 17, 1899, was firmly based on the principles of international law, quoted from *Kung-fa-hui-t'ung*, which was printed and distributed in 1896 by the Ministry of Education. The Korean independence of China, which had been the hearty desire of the Korean people, was thus cristalized by the Japanese "deliberate" assistance after her victory in the Sino-Japanese War, and by the Korean government's tenacious efforts to establish the Empire. China also recognized the Korean independence by concluding the Treaty of Friendship and Commerce with Korea on September 11, 1899 on the equal footing. Since the enforcement of the Treaty on December 14 of the same year by the exchange of ratifications in Seoul, China and Korea have eventually become fellow members in international society on the basis of sovereign equality.