

Beyond the “San Francisco System”: Seeking a Peace Regime in East Asia

ABSTRACTS

PANEL 1: The San Francisco Treaty, History, and International Law

Tae-jin Yi (Seoul National University, History): “The San Francisco Treaty and the Problems regarding the Exemption of Japanese Blame on the Colonization of Korea”

The 1951 San Francisco Peace Treaty was the one and only international opportunity that would have facilitated the demand for Japan to acknowledge their responsibility for the colonization of Korea. However, the United States did not demand such an acknowledgment. Soon after the Treaty’s signing, Korea and Japan resumed their diplomatic relationship and held their first summit in 1952. After numerous negotiations, in 1965 the “Korea - Japan Treaty” was agreed upon. Within this treaty, the interpretation of colonization was different for each country and ultimately was left unresolved. This is because of Japanese adherence to the language and demands of the San Francisco Peace Treaty.

In contrast to the inadequacy of the San Francisco Peace Treaty’s appraisal of Japanese legal responsibility for Korean colonization, the League of Nations, founded in 1920, believed that the systematization of international law was vital to keeping international peace. Therefore, they put much effort in and successfully carried out the codification of international law. The “Report on the Law of Treaties,” completed in 1935, noted that the ‘1905 Protectorate Treaty,’ the ultimate treaty that led to Korea being annexed by the Japanese, was one of the three treaties that had no effective standing. This decision was adopted by the International Law Commission of the United Nations in 1963 and became a Resolution in 1963 after being submitted to the General Assembly. Using the decisions of the League of Nations and the United Nations as evidence, this presentation will critically appraise the San Francisco Peace Treaty’s lack of assessment regarding Japanese responsibility in the colonization of Korea.

Jang-Hie Lee (Hankuk University of Foreign Studies, International Law):

“Limitations of the San Francisco Peace Treaty and Peace in East Asia from the Perspective of Colonial State Responsibility”

The San Francisco Peace Treaty of 1951 went only as far as setting forth approval of Korea’s independence and relinquishment of Japanese territorial claims, and the ‘liquidation of the past colonial issues’ was left to future Korea-Japan talks.

The 1965 system of ROK-Japan Settlement Treaty is a subordinate system of Article 4 of the San Francisco Peace Treaty of 1951. It deals with civil and financial damages of its state claiming for obligation, debt or claim rights not connected to the illegality of colonial rule. Article 4 of the San Francisco Treaty was intended to solve financial debt, civil debt, and credit relations between two countries, but did not handle the problem of compensation for damages resulting from the illegality of Japanese colonial rule. Therefore, the 1965 Korea-Japan Settlement Treaty was also established on the premise that Japan’s annexation of Korea of 1910 was legally

valid. The preamble of the Constitution of the Republic of Korea asserts its national legitimacy on the basis of the spirit of 3.1 Independence Movement of 1919 and the legality of the Provisional Government of the Republic of Korea in Shanghai in 1919. Therefore, the preamble of the Constitution begins with the emphasis of the illegality and invalidity of the Japan's Annexation of Korea in 1910. The 1965 Korea-Japan Settlement Agreement Regime is against the core value of ROK's constitution and is opposed to the national legitimacy of the Republic of Korea. There is no clear stipulation for Japan's apology and acknowledgment of legal responsibility for its past colonial atrocities and of follow-up measures to clear its historical past. As long as the 1965 Regime and the San Francisco Peace Treaty of 1951 exist, the criminal and illegal acts of unlawful colonialism cannot be legally overcome. What's worse, the historical war in East Asia will last over a long period, so that peace in East Asia will not be realized. In this context, the decision of the Constitutional Court of ROK in 2011 and the decision of the Supreme Court in 2012 were the first courageous rules conducive to overcoming limits of the 1965 Regime and of the San Francisco Peace Treaty of 1951. The aforesaid two decisions are the first historical judicial decisions to recognize the illegality of colonial rule.

Asia in 2050: Realizing the Asian century published by ADB emphasizes cooperation and peace among member countries of East Asia to make the Asian Century of 2050 realized. It should start with the declaration of the illegality of Japanese colonialism. For this cause, we need to launch a new regime system overcoming the limits of the 1965 Korea-Japan Settlement Agreement Regime and of The San Francisco Peace Treaty of 1951. The new regime should clearly stipulate a state's responsibility for its colonial crimes and unlawful rule.

Not only Korea and Japan but also the USA should actively work together to contribute to overcoming the unreasonable 1965 Regime system and the San Francisco Peace Treaty of 1951, building peace in East Asia through effective implementation of the two decisions. At the same time, in this regard, it is necessary to arouse public opinions and form a relationship of trust and amity at the grassroots level of two peoples, e.g. Korea-Japan intellectuals issued a joint declaration of 2010, and worldwide intellectuals issued a joint declaration of 2015, to the effect of rendering null and void the legal validity of Japanese annexation of Korea in 1910.

Jeong-Ho Roh (Columbia University, Law); "The Legal Framework of Diplomacy: Clarifying the Nature of a Permanent Peace Regime"

This paper discusses the legal issues surrounding Korea's liberation and subsequent division following the end of World War II, the exclusion of Korea for the San Francisco Peace Treaty that ended the US occupation of Japan, and the inconclusive end of the Korean War. Just as a peace treaty was necessary to bring a formal end to the Pacific War, so would a peace treaty be necessary to end the Korean War in order not to violate Article 51 of the UN Charter.

Etsuro Totsuka (Ryukoku University, Law): Japan's Re-joining Into the Cold War World and its Freezing of the Decolonization Process"

Despite the December 28, 2015 agreement made by Foreign Ministers of Japan and the ROK, the issue of "comfort women" does not seem to be totally settled. The speaker brought this case of "sex slaves" before the UN Commission on Human Rights in 1992. The perpetual denials of responsibility by Japan are discussed in relation to the San Francisco System.

PANEL 2: The San Francisco System and International Order

Haruki Wada (Tokyo University, History): "San Francisco Treaty System and Peace State Japan"

Emperor Hirohito told his Diet members in his Imperial message on September 4, 1945 that he was worrying himself day and night, wishing to contribute to the culture of mankind by "establishing a Peace State (*Heiwa kokka*)". At this time, intellectuals supported the emperor's will and advocated for an unarmed Japan. Ordinary people of Japan who had suffered from the bombardments of U. S. bombers B-29 also came to support the slogan of "Peace State." Thus the notion of an unarmed peace state had come to prevail in Japan at the time when General MacArthur gave his note about the new Japanese Constitution to his staff in February, 1946. With the promulgation of the constitution Japan became an unarmed peace state under the occupation of the Allied Powers. On June 25, 1950 the Korean War broke out, and the United States troops immediately rushed from Japan to Korea. Japan was absorbed almost automatically and totally into the US war efforts. Yet Prime Minister Yoshida Sigeru clung to his principle: though Japan was obliged to obey all orders of Allied Powers and to do everything as ordered, of its own volition Japan could cooperate with the United Nations only spiritually. In such way Yoshida managed to save Article 9 of the Constitution and "Peace State" posture.

While the war was raging in Korea, the San Francisco Peace treaty was established in September of 1951. The continuation of free use of the US bases in Japan was a vital condition of the peace settlement with Japan. Therefore Yoshida and Dulles signed on the same day the Japan-US Security treaty. In its preamble it is written that Japan as a sovereign country has the inherent right to individual and collective self-defense, and it was announced that in near future Japan will have its own defense forces. Japan needs its own defense forces, first of all in order to defend its sovereignty against the foreign military forces in Japan, that is, in order to show that Japan is not fundamentally a US protectorate. In 1952 the National Police Reserve was re-organized into the National Security Forces. And on June 1954, the National Security Forces became the Self Defense Forces. On that same day, Parliament passed a resolution which forbade the Self Defense Forces to fight abroad. The main proponent of this resolution, Tsurumi Yusuke, said that the "Declaration of people's will, "We will not fight abroad," is the means to defend our people and our

democracy.” In thus way, “Peace State” Japan transformed itself to be a state armed, but not waging war. The “Peace State” has existed under the San Francisco Treaty system for sixty years.

Byung-Joon Jung (Ewha Womans University, History): “San Francisco Peace Treaty with Japan and its Legacy in East Asia”

The San Francisco Peace Treaty, which was led by the US, laid down a post-war regional order in Northeast Asia that was concluded speedily during the Korean War. The San Francisco Peace Treaty provided for a late peace, rather than the early peace aimed for by the Italian Peace Treaty of 1947. It was a result of cold war in Asia and enabled Japanese non-punitive treaties. The San Francisco Peace Treaty was driven by US hegemony, as it was a fundamentally US-centric treaty. It was not an all-encompassing, exclusive peace, but a separate and majority peace, excluding the USSR and China. After the US established a de facto peace treaty with Japan in February of 1951, the US moved to complete its first official draft in March, 1951. US-UK talks started in April 1951. The San Francisco Peace Treaty was focused on anti-communism unity, a direct result of cold war confrontation. It was a genuine peace for Japan, but with limitations on Japanese sovereignty. The most principal legacy of the San Francisco Peace Treaty is the unsolved war responsibility problem in Northeast Asia. Unsolved war responsibility, as well as exclusion of victim countries such as China and Korea from the treaty, maintains the dispute over historical actions in Northeast Asia. The massacre at Nanking, comfort women, wartime forced-mobilization of laborers and soldiers, the Yasukuni shrine, and disputes over the content of history textbooks are all unresolved issues still plaguing relations between Northeast Asian countries today.

Fervent territorial disputes over islands in Northeast Asian region are part of the legacy of the San Francisco Peace Treaty. In accordance with the wartime Allied policy on Japanese territory, the US and UK continued to maintain their policy on Japanese territory after the war, specifying the islands which might belong to Japan, using longitudinal and latitudinal coordinates to explain Japan territory, and drawing maps to provide for easy understanding of the territory clauses of the peace treaty. But it was abandoned by US in the middle of 1950, and a new policy on Japanese territory was never discussed nor agreed upon during the San Francisco Peace Conference. So it left open the possibility of territorial disputes between Japan and neighboring countries. In addition, the San Francisco Peace Treaty left legacies such as the Okinawa problem, and issues surrounding US bases, the Constitutional amendment, the Normal State-Japan issue, and the US-Japan security alliance. The future and co-existence of Northeast Asia might be depend on the wise choice of Northeast Asian people to overcome these problematic legacies of San Francisco system.

Chengyou Song (Peking University, History): “Comments on the San Francisco Conference and Treaty of Peace with Japan”

China was excluded from the San Francisco Conference dominated by the United

States, which violated the agreement by the wartime allies. Furthermore, the Treaty of Peace with Japan redefined Taiwan and Pescadores' status, which has been stipulated as part of China's territory in Cairo Declaration, as unresolved, and that damaged China's rights and interests. In the same year, the Security Treaty between the United States and Japan was signed and directed against China. Therefore the Chinese government has never recognized the San Francisco Conference or the Treaty of Peace with Japan, and maintained sharp vigilance to the Japan-US Security Treaty System. For the past 65 years since 1951, comments about the conference and treaty in Chinese academia can be divided into two stages by the Open and Reform Policy in 1978. Before the 1978, scholars had the same point of view as the government. After that year some different narratives appeared, but they still maintained a critical attitude towards the San Francisco System. In brief, it's very difficult to look beyond the impact of the San Francisco System.

PANEL 3: The San Francisco System, Territory and Memory

Dekun Hu (Wuhan University, History): "The San Francisco Peace Treaty and Territorial Disputes"

The San Francisco Peace Treaty left some stark political legacies, which became the origins of several territorial disputes in East Asia. This paper firstly discusses the Allies' decisions concerning Japan's territories during the war. It continues to examine the amendments made by the San Francisco Peace Treaty to the previous decisions. Finally, this paper analyses the reasons why these amendments were made by the Peace Treaty.

Fumiaki Nozoe (Okinawa International University, Law): "The Okinawa Problem in the San Francisco Treaty System: A Historical Perspective"

The "Okinawa problems" are negative legacies of the San Francisco Peace Treaty System. In this presentation, I intend to show that US and Japanese policymakers have regarded the US military presence on Okinawa as the essential stabilizer in the San Francisco Peace Treaty System, while people in Okinawa have protested the military bases.

Daqing Yang (George Washington University): "War, Decolonization and Memory in Northeast Asia"

East Asia offers a rich and challenging space to contemplate the complex relationship between colonization, post-colonial political and memory regimes. Beside its immediate and long-term geo-political consequences, the "San Francisco treaty system" helped re-orient postwar Japanese memories of the early 20th century along a U.S. axis, while former Japanese colonies like Taiwan and Korea, formally outside that system, coped with the deepened post-colonial divisions that would profoundly shape their memories of Japanese colonization. Since the 1970s the San Francisco system has undergone some significant changes, while more recently a global "memory culture" has also impacted East Asia. Consequently, the

region raises new questions about re-assessment of colonization and the possibilities of a truly post-colonial memory.

Kimie Hara (University of Waterloo, History/Political Science): “Exploring Settlements of Regional Conflicts in the San Francisco System”

The major regional conflicts in East Asia share common foundation in the post-WWII settlement with Japan, particularly the San Francisco Peace Treaty, which was made somewhat vague in the context of the regional Cold War. These include the maritime border disputes involving Japan, China, and their neighbors. These Cold War legacies still continue to provide sources of instability and politically divide peoples and nations in East Asia. In the meantime, the economy has become the glue of the region. Economic-driven multilateral cooperation developed notably with the creation of multiple institutions, especially since the 1990s, expanding their communication networks and paving the way for confidence- and security-building measures (CSBMs) among the neighbors. However, no matter how much CSBMs are enhanced and relations improved, as long as the sources of conflicts remain unchanged, there is always a possibility that tensions resurge and conflicts escalate. As exemplified in the political developments of Europe since the 1975-Helsinki Accords (Declaration), having common recognition about the political status quo and existing borders contributes to regional peace and stability. This paper considers an application of the Helsinki Accords for the East Asian borders.

PANEL 4: The San Francisco System, Legacies, and Beyond

Young-Ho Kim (Academy of Korean Studies, Economic History): “Beyond the San Francisco System in East Asia – Collision between Historical Legacy and Regional Integration in the San Francisco System”

The positive side of the San Francisco System is that it brought about economic development in East Asia; it gave rise to a huge population of middle-class citizens who formed Civil Asia. Whereas on the negative side, it brought forth conflicts over history and territorial disputes, Japan’s revisionism of history, rationalization of the past, the recurrence of the pre-war system and finally challenges to the San Francisco System itself. The positive and the negative sides, which are in constant conflict with each other, form a dual structure. The problems that the System generated have become more serious than the original purpose with which the San Francisco System was started. We seek new perspectives beyond the San Francisco System.

Myung-Lim Park (Yonsei University, International Studies): “The San Francisco System, Northeast Asian Exceptionalism, and Beyond for Perpetual Peace”

Alexis Dudden (University of Connecticut, History): “The San Francisco System, and Current Issues of National Borders”

In April 2014, the Japanese Ministry of Foreign Affairs published a new map of the nation that includes all of the islands that Japan contests with neighboring countries collectively described in a single policy of “inherent territory” (領土). Amidst a number of pressing concerns today, this map stands out for making clear that certain approaches to history are security threats. At once this map erases key elements of Japan’s modern history of empire and implicates U.S. security guarantees in ways that beg two interrelated questions: what is the point of this policy? Is it a challenge to the United States as well as to neighboring countries? In clear ways, through this map and its related policies, the current Japanese administration and its supporters have made public a particular worldview that would challenge the legitimacy of the San Francisco Treaty system itself, aiming ultimately to deny the legitimacy of the Tokyo Tribunal judgment that determined Japan’s war criminality on which peace rests in the San Francisco Treaty. This paper will tease out some of these ideas.