



## Texas A&M University School of Law Texas A&M Law Scholarship

### Faculty Scholarship

1994

# Abolition of China's Unequal Treaties and the Search for Regional Stability in Asia, 1919-1943

Charlotte Ku

Texas A&M University School of Law, [cku@law.tamu.edu](mailto:cku@law.tamu.edu)

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>

 Part of the [Law Commons](#)

### Recommended Citation

Charlotte Ku, *Abolition of China's Unequal Treaties and the Search for Regional Stability in Asia, 1919-1943*, 12 Chinese (Taiwan) Y.B. Int'l L. & Aff. 67 (1994).

Available at: <https://scholarship.law.tamu.edu/facscholar/413>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact [aretteen@law.tamu.edu](mailto:aretteen@law.tamu.edu).

**ABOLITION OF CHINA'S UNEQUAL TREATIES AND THE  
SEARCH FOR REGIONAL STABILITY IN ASIA,  
1919-1943\***

CHARLOTTE KU\*\*

**TABLE OF CONTENTS**

I. Development of China's Unequal Treaty System .....	67
II. China at the Paris Peace Conference: The Sanctity of Treaties.....	70
III. The Failure of Incremental Change: Article XIX of the League of Nations Covenant .....	73
IV. The Pursuit of Regional Stability Through the Washington Conference .....	76
V. China's Program of National Reunification .....	79
VI. World War II and the End of the Treaty System .....	82
VII. Conclusion: China's Search for Equality and Independence.....	83

**I. DEVELOPMENT OF CHINA'S UNEQUAL TREATY  
SYSTEM**

On July 1, 1997, China will resume control over Hong Kong — territory ceded to Britain in 1842 following China's defeat in the Opium War. The settlement of the Hong Kong question and the scheduled 1999 reversion of Macao from Portugal to China will effectively remove the last traces of the restrictions and encroachments placed on China by treaty for 150 years following the 1842 Treaty of Nanking.

The "unequal" treaty system began with the trading and residential privileges provided by the Treaty of Nanking. Britain was the premier trading power in China in the nineteenth century, and the treaty

---

\* Sections of this paper appeared as "Change and Stability in the International System: China Secures Revision of the Unequal Treaties," in *Essays in Honour of Wang Tieya*, R. St. J. Macdonald, ed., Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1993, pp. 447-61. It is reprinted here with permission.

\*\* Executive Director of the American Society of International Law (ASIL). A former visiting professor at the Johns Hopkins University Nanjing (China) Center and Assistant Professor, Department of Government and Foreign Affairs, the University of Virginia. Dr. Ku has also taught at the American University and worked in the U.S. Senate and the Office of Legal Affairs, United Nations Headquarters, New York. Educated at the Fletcher School of Law and Diplomacy and the American University, Dr. Ku has written on multilateral cooperation, concepts of international relations, and China's diplomacy, particularly of the 1920's. She is the author of "Images to Frame the Discourse: Group Cohesion and the State," in *History of European Ideas* (March 1994).

and trading system that developed there were largely of British design. The United States and France benefitted from this framework, and added to it. Russia added border issues and overland trade to the system. Germany and Japan, latecomers to the China trade, essentially had to confine their activities to the framework created by the earlier powers in China.

The Treaty of Nanking with the United Kingdom and separate treaties concluded with the United States and France opened China to trade with the outside. The two basic elements of the treaty framework were the most favored nation clause and diplomatic relations on an equal footing. Some form of the most favored nation clause was used by all the treaty powers from the outset to ensure that they would receive no less in rights and privileges than their fellow treaty powers. China granted this freely. For the Chinese, it seemed only logical that what was granted to one "sea barbarian" should be granted to another. This liberal granting of most favored nation status would later work to China's disadvantage when it sought to revise its treaties. The clause bound all the treaty powers together, making it impossible for China to restructure its treaty relations with one without involving all the powers.

The treaties provided for diplomatic relations on a footing of equality, but initially had little effect on the Chinese world view, since such relations were restricted to the coastal cities opened for foreign residence and trade and were to be conducted locally by local officials. For the Chinese, this was an important victory; it safeguarded the capital and the emperor from any foreign presence.

The next intrusive developments in the treaty system date from the 1858 Treaty of Tientsin, concluded following the Taiping Rebellion and the Chinese defeat, again by Britain, in the 1856 Arrow War. This treaty provided for a foreign-run Chinese customs service, won the powers the right of permanent representation at the capital, and secured the creation of the *Tsungli Yamen* (Chinese foreign office) to handle foreign affairs. By the turn of the century, China had moved from granting trading privileges at Chinese ports to acknowledgement that it could no longer control its borderlands<sup>1</sup> or prevent territorial

---

1. British protectorates were established in Burma in 1886, in Sikkim in 1890, and in Tibet in 1904. See Inspector General of Customs, *Treaties, Conventions, etc. Between China and Foreign States*, vol. 1, Shanghai: Statistical Department of the Inspector General of Customs, 1908, pp. 314-16, 321-23, 460-67. A French protectorate was set up in Annam in 1886. See texts of treaties regulating these relations in *ibid.*, vol. 1, pp. 689-700 and 713-33. Japan set up a protectorate in Korea in 1895 and colonized it in 1910. See *ibid.*, vol. 2, pp. 1318-31.

encroachments on China itself.<sup>2</sup> The competition for rights and privileges verged on threatening the continued existence of the state.

Fearful that a partition of China would destroy the treaty framework which supported its own privileges and interests, Britain sought to temper the "scramble" by advocating a policy of territorial integrity for China and equal opportunity for all trading powers. However, as the power whose trade in 1899 represented more than half of all the China trade (35 out of a total 55 million pounds sterling), Britain was not in a position to take the lead; it instead encouraged the United States to pursue the "open door" in China.

U.S. embassies in France, Germany, Great Britain, Italy, Japan and Russia sought support and compliance with this policy in an 1899 circular memorandum. The responses were ambiguous, but U.S. Secretary of State John Hay declared the policy adopted on March 20, 1900. He committed the United States to a policy to "preserve Chinese territorial and administrative integrity . . ."<sup>3</sup> The interest of the powers in China now shifted from extracting favorable trading arrangements to ensuring regional stability to protect interests already acquired.

In the twentieth century, China's attempts to break out of these arrangements would be alternately advanced or held back as the powers calculated the potential importance of China's efforts as a factor in ensuring regional stability. For the outside powers, this eventually boiled down to a choice of supporting China or Japan in the Pacific. As Japan emerged as a rival to their interests after World War I, the outside powers sought to protect China and to shore it up as a counterweight to the expansion of Japanese power. This undercurrent persisted to the very end throughout Chinese efforts to revise the unequal treaties. Revision was accomplished in 1943, when new treaties with the United Kingdom and the United States abolished such intrusive practices as extraterritoriality.<sup>4</sup>

---

2. In addition to the cession of Hong Kong to the British, foreign encroachments on China were made by:

Portugal: China confirmed Portugal's "perpetual occupation and government of Macao . . ." in 1887. See *ibid.*, vol. 2, p. 1009; Germany: leased Kiaochow Bay from China in 1898. See *ibid.*, vol. 2, pp. 930-43; Russia: leased Dalian Bay, including Port Arthur, from China in 1898. See *ibid.*, vol. 1, pp. 119-21; Britain: leased 355 sq. miles to expand British holdings in Hong Kong. The expiration of this lease in 1997 led to the Hong Kong settlement between China and the United Kingdom in 1982. Also leased Weihaiwei from China in 1898; France: leased Kuang-chou Wan from China in 1898. See *ibid.*, vol. 1, pp. 128-30.

3. U.S. Department of State, *Foreign Relations of the United States*, 1899, Washington, D.C.: U.S. Government Printing Office, 1924, p. 142.

4. The term "extraterritoriality" is used here to mean the consular supervision of foreign nationals in China.

## II. CHINA AT THE PARIS PEACE CONFERENCE: THE SANCTITY OF TREATIES

The obligations imposed on China by the treaty system begun by the Treaty of Nanking established myriad special privileges and spheres of influence which, by the early twentieth century, made China virtually ungovernable. China's inability to maintain an effective central government after the abdication of the last Ch'ing emperor in 1912 and its eventual lapse into warlordism were the byproducts of these special privileges and the efforts made to maintain them. The treaty powers aggravated an already unstable condition by backing one or another of the warlords in order to strengthen their own positions in China. Warlords, chief among them Yuan Shi-kai, vied for favor with the powers for arms and other financial assistance. In 1915, Japan sought to create a protectorate over China through its Twenty-One Demands by supporting the abortive ambition of Yuan to become emperor.

When China declared war on Germany and Austria on August 14, 1917, it did so with the hope that entering World War I would begin the process of winning back control of all its territory. China appeared at the Paris Peace Conference in 1919 as a power with limited representation on a level with Greece, Poland, Portugal and other "belligerent powers with special interests."<sup>5</sup> China had one overriding goal. Its success or failure at the peace conference would be judged at home by its ability to secure the return to China of the German-held privileges in Shantung. This aim brought it into direct conflict with Japan.

The ninety-nine year lease that Germany signed with China in 1898 had granted Germany various land and waters in and around Kiaochow Bay in the province of Shantung.<sup>6</sup> Already dominant in northeast China in 1914, Japan seized the opportunity presented by the outbreak of World War I to consolidate its position there. Japan declared war on Germany and captured and occupied the city of Tsingtao and the railway and mines in the area. The Japanese action violated China's neutrality as proclaimed on August 6, 1914. However, in recognition both of its inability and its unwillingness to engage the Japanese and their British allies, China declared Shantung an area of "qualified neutrality."<sup>7</sup>

---

5. See H.W.V. Temperley, ed., *A History of the Peace Conference of Paris*, vol. 1, London: Oxford University Press, 1924, p. 248.

6. Text in Inspector General of Customs, *Treaties, supra* note 1, vol. 2, pp. 944-50.

7. John V.A. MacMurray, comp. and ed., *Treaties and Agreements With and Concerning China, 1894-1919*, vol. 2, New York: Oxford University Press, 1921, p. 1365.

On November 7, 1914, German and Austrian forces surrendered to the Japanese in Tsingtao. Japan had achieved its objective of pre-determining the outcome of any peace settlement (assuming an allied victory) by occupying Shantung. With the cessation of hostilities in the area, China declared it was restored to neutral status and called on Japan to withdraw its troops. The Japanese responded curtly: "We cannot acquiesce therein under any circumstances."<sup>8</sup>

On the diplomatic front, Tokyo sought assurances from its allies that its claims to Shantung would be supported at the peace conference. It also bolstered its position by securing assent to those claims in the Yuan Shi-kai government's agreement to the Twenty-One Demands. China agreed:

to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests, and concessions, which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.<sup>9</sup>

In February 1917, Japan received British assurances of support for its claims to "Germany's rights in Shantung and possessions in the islands north of the equator . . . ."<sup>10</sup> France's support was enlisted in March 1917, and the United States' in November 1917. Thus equipped, Japan was ready to press its claim at the peace conference.

China tried to enlist U.S. help at the peace conference. On November 26, 1918, China's minister to the United States, Wellington Koo, called on President Woodrow Wilson. A record of the meeting reported that Shantung was not specifically mentioned, but that the President anticipated difficulties in questions related to China because "there were many secret agreements between the subjects of China and other Powers."<sup>11</sup> Wilson was further recorded as saying that the framework for a new world order as outlined by the Fourteen Points would be difficult to apply in the Far East. The President agreed to support China "in broad terms" at the peace conference.<sup>12</sup>

Minister Koo left the White House hopeful that Wilson's presence in Paris and the Fourteen Points would help China win its case at the peace conference.<sup>13</sup> This faith, however, proved unjustified, and China was given only three opportunities to present its case on Shan-

---

8. *Ibid.*, p. 1158.

9. *Ibid.*, p. 1231.

10. *Ibid.*, p. 1168.

11. Wunsz King, *Woodrow Wilson, Wellington Koo and The China Question at the Paris Peace Conference*, Leyden: A.W. Sythoff, 1959, pp. 6-7.

12. *Ibid.*

13. *Ibid.*

tung. In asserting its claim, Japan pointed to Chinese acquiescence in 1915 to its takeover of German rights and privileges. It further revealed its secret agreements with Britain and France confirming Japanese rights in Shantung. By January 1919, when the question was taken up, the United States was not able to lend support, as Wilson faced difficulties with Italy over Fiume and with Japan over a proposal to include a racial equality clause in the Covenant of the League of Nations.<sup>14</sup>

Koo made a final appeal to Wilson on April 8, 1919, urging the United States to "use its good offices to induce the four Powers [Britain, France, Italy and Japan] not to permit the said assurances to stand in the way of their extending a helping hand to China when their help is so much needed to obtain for her a just recognition of her rights."<sup>15</sup> Wilson apparently tried to get the Japanese to agree to an arrangement whereby Germany would hand over a portion of the territory to the five powers (including Japan) or to set a definite date for the territory's restoration to China. Japan refused. Wilson accepted this outcome on the basis of the importance of preserving the sanctity of treaties. He was recorded as saying: "It would be better to live up to a bad treaty than to tear it [up]."<sup>16</sup>

Wilson later told the Chinese delegates that "whatever doubts China should have in regard to her treaties with Japan, there certainly was no doubt about the agreement between Great Britain and Japan and that between France and Japan. Great Britain and France had to uphold those treaties."<sup>17</sup> Wilson tried to persuade China that this setback was temporary and that the League of Nations held the promise of a long-term solution and of equalizing the imbalance of power between China and Japan at Paris. Wilson explained:

In the establishment of the League of Nations, the territorial integrity and political independence of China would be safeguarded. China would have a protection. Other nations would also have a right of intervening in things unfair to China. In 1915 Japan could have replied to us that we had no business to intervene. But with the establishment of the League of Nations, the Powers would have a right to intervene in China's behalf.<sup>18</sup>

---

14. Wunsz King, Ambassador Koo's secretary, recalled that: "The [racial equality] proposal was not carried [because] as everybody was aware . . . , the United States Congress would surely refuse to ratify it if the instrument should contain an article providing for racial equality, inasmuch as such a stipulation would run counter to the American immigration policy *vis-a-vis* the Chinese and the Japanese." *Ibid.*, pp. 21-22.

15. *Ibid.*, p. 13.

16. *Ibid.*, p. 38.

17. *Ibid.*, p. 17.

18. *Ibid.*

Although China did not win back Shantung as a result of World War I, it did terminate Germany's special tariff and consular jurisdiction privileges in China. Nevertheless, China refused to sign the Treaty of Versailles, since it was not allowed to make any reservations to Articles 156, 157 and 158, all of which confirmed Japanese rights in Shantung. On its refusal to sign, the Chinese delegation to the peace conference issued a statement:

The Peace Conference having denied China justice in the settlement of the Shantung question and having today in effect prevented them from signing the treaty without sacrificing their sense of right, justice and patriotic duty, the Chinese Delegates submit their case to the impartial judgment of the world.<sup>19</sup>

China became a member of the League of Nations by virtue of its signature, on September 10, 1919, of the Treaty of Peace with Austria, concluded at Saint Germain.

### III. THE FAILURE OF INCREMENTAL CHANGE: ARTICLE XIX OF THE LEAGUE OF NATIONS COVENANT

China's first priority in the League of Nations was very specific — to secure reconsideration of the Shantung question in the forum suggested by Woodrow Wilson. However, as it became clear that no change had taken place in Britain's and France's support for Japan on this question and that the United States would not soon join the League, China broadened its sights and pursued a non-permanent seat on the League Council. Over Japan's objections, China succeeded. Having secured this position, on December 18, 1920, the chief Chinese delegate, Wellington Koo, read a statement to the League Assembly that China reserved the right to bring the Shantung question to the Council at any time.

China's next step was to attempt to change its treaty obligations through Article XIX of the League Covenant, which stated:

The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

While revision of treaties was not specifically mentioned within Article XIX itself, revision was clearly what was contemplated by the drafters of the Covenant in Paris. The official League handbook, *The Aims, Methods and Activity of the League of Nations* confirmed this

---

19. MacMurray, *Treaties*, *supra* note 7, vol. 2, p. 1498.



when it stated that "the Covenant makes reference to the peaceful revision of treaties in Article 19."<sup>20</sup>

Article XIX was both broad and specific. It was broad in that it could cover any treaty that appeared to be inapplicable or a source of tension and instability. Yet, it was also specific in that the League Assembly's involvement was explicitly limited to *advising* the members to reconsider such a treaty. Neither the Assembly nor, for that matter, any other organ of the League could itself undertake revision. This function was still reserved to the states involved.

In spite of this limitation, Article XIX was little used. One factor inhibiting its use was the need for unanimity in the Assembly. It was difficult even to make the recommendation which Article XIX permitted because of the presence in that body of parties (or their allies) who felt their interests jeopardized by revision or even reexamination of an agreement. Commenting on this, Pitman Potter pointed to a larger issue discouraging use of Article XIX, which stemmed from the nature of the international community itself. He wrote:

The problem involved in Article XIX is not merely that of revision but that of community promotion and even, potentially, enforcement, of revision.<sup>21</sup>

Throughout the League's existence, Article XIX was invoked in only two cases. The first was Bolivia and Peru's 1920 request for revision of their treaties with Chile. The second was China's attempt to place itself in a favorable negotiating position with its treaty partners on the basis of Article XIX.

On September 14, 1925, the Chinese delegation presented to the League Assembly a draft resolution which stated:

The Assembly, having heard with keen interest of the Chinese delegation's suggestion regarding the applicability of Article 19 of the Covenant to the existing situation in China, having learned with satisfaction that a conference of the interested States is soon to take

---

20. League of Nations, *The Aims, Methods and Activity of the League of Nations*, Geneva: Secretariat of the League of Nations, 1938, p. 44.

21. Pitman B. Potter, "Article XIX of the Covenant of the League of Nations," *Geneva Studies*, No. 12 (August 1943), p. 66. See also David Hunter Miller, *The Drafting of the Covenant*, New York: G.P. Putnam's, 1928, vol. 1, p. 169. Potter expounded on this further by saying that: "Article XIX, so far as it, as a text, is responsible for the failure of revisionism under the League, was a failure because it attempted to cut into the process of creating and revising international rights and obligations at an intermediate level, while leaving that basic process mainly to the states, in the form of treaty-making and not providing an adequate legislative process on top." *Ibid.*, p. 74.

place in China to consider the questions involved, expressed the hope that a satisfactory solution may be found at an early date.<sup>22</sup>

After redrafting, however, the final text submitted to the Assembly on September 22, 1925 made no mention of Article XIX. It read:

The Assembly, having heard with deep interest the Chinese delegate's suggestion regarding the possibility of considering, according to the spirit of the Covenant, the existing international conditions of China, having learned with satisfaction that a conference of the interested States is soon to take place in China to consider the questions involved, expresses the hope that a satisfactory solution may be reached at an early date.<sup>23</sup>

China raised the issue again at the League's Tenth Assembly in 1929. On September 10, the Chinese delegate, C.C. Wu, stated that:

It is somewhat strange that, for a full decade, no use has been made of this article [XIX] . . . We suggest . . . that a Committee should be set up to consider the best means for making this extremely useful article of the Covenant more effective, in order that it should not rust and eventually fall into desuetude. A Committee should be appointed, whether by the Assembly or by the Council, charged with the task of finding the most effective means of putting this article into operation. This, in the opinion of the Chinese delegation, would be a great contribution to the cause of international peace and co-operation.<sup>24</sup>

China's proposal was referred to the First Committee, where Wu spoke more candidly about the reluctance of League members to use Article XIX:

A certain amount of concern, amounting almost to apprehension, had been expressed in some quarters that, if China asked for reconsideration of her treaties, certain other treaties, on which the stability and equilibrium of different parts of the world depended, might also be shaken.<sup>25</sup>

Rejecting that "apprehension," Wu went on to say that he thought "statesmen were perhaps apt to see danger where none existed."<sup>26</sup>

---

22. "Records of the Sixth Ordinary Session of the Assembly, Plenary Meetings," *League of Nations Official Journal*, 1925, p. 79.

23. *Ibid.*, p. 102.

24. "Records of the Tenth Ordinary Session of the Assembly, Plenary Meetings," *League of Nations Official Journal*, 1929, p. 99.

25. "Records of the Tenth Ordinary Session of the Assembly, Meetings of the Committees, Minutes of the First Committee," *League of Nations Official Journal*, 1929, p. 44.

26. *Ibid.*

Despite some support (notably from Berlin, which may have been counterproductive, given Germany's well-known desire for revision of the Versailles Treaty), China's efforts to use Article XIX did not yield the specific endorsement for revision it had hoped for. Even China's compromise suggestions that a committee be appointed to study the use of Article XIX failed to assuage League members' apprehensions that encouraging its use would raise troublesome questions about other treaty arrangements. Supporting China ran counter to the powers' wider concern to maintain the post-World War I status quo among League members.

The League, however, was not the only forum available to China during the inter-war period. As they had before 1914, the powers continued to pursue their interests through the calling of ad hoc multilateral conferences. Concerns about the arms race and regional stability in Asia led the United States and the United Kingdom to convene the Washington Conference in 1921.

#### IV. THE PURSUIT OF REGIONAL STABILITY THROUGH THE WASHINGTON CONFERENCE

Initially drafted to address the naval arms race, the meeting's agenda was expanded to include "all essential matters bearing upon the Far East and the Pacific Ocean."<sup>27</sup> American concerns about Japanese ambitions in Asia and the future of the Anglo-Japanese alliance heightened Washington's interest in putting Far Eastern issues on the table at an international meeting. The United States, the United Kingdom, France, Italy and Japan took part in the arms limitation portion of the conference, and these five were joined by China, Belgium, the Netherlands and Portugal for consideration of the Pacific and Far Eastern questions.

Convened on November 11, 1921, the Washington Conference adjourned on February 6, 1922, after having produced a collection of treaties and resolutions which delegates hoped would bring stability to the Far East. The Five Power Treaty limiting naval armaments, signed in December 1921, was part of this process. Britain, the United States, Japan and France further agreed to settle all disputes relative to their island possessions in the Pacific through diplomacy.<sup>28</sup>

The results of the participants' deliberations on Pacific and Far Eastern questions can usefully be grouped into three categories:

---

27. U.S. Department of State, *Foreign Relations of the United States, 1921*, vol. 1, Washington, D.C.: U.S. Government Printing Office, 1946, p. 19.

28. Westel W. Willoughby, *China at the Conference*, Baltimore: The Johns Hopkins Press, 1922, p. 280.

1. General statements on the future of China.
2. Items considered, but not settled.
3. Items settled.

The major item falling into the first category was the Nine Power Treaty Relating to the Principles and Policies to be Followed in Matters Concerning China.<sup>29</sup> Article I of this treaty reaffirmed acceptance of the Open Door principles by the powers. Article II addressed the existence of the numerous inter-power agreements in which the treaty powers, without the consent or knowledge of China, created among themselves special and dominant positions in various parts of China.<sup>30</sup> A promise to seek no further spheres of influence was secured in Articles III and IV. The treaty guaranteed China's rights as a neutral whenever China declared itself neutral in disputes between powers with privileges in China.<sup>31</sup>

Areas which were addressed but left for future settlement were tariff autonomy, extraterritoriality (consular jurisdiction), the stationing of foreign troops and police in China and the status of leased areas. China reached its goals of having foreign post offices and wireless installations removed from China and settlement of the Shantung question with Japan.

A primary reason for calling the Washington Conference had been the Western treaty powers' and China's concern that Japan was becoming a destabilizing factor in the Pacific. Japan's claim of "special interests" in China, especially in South Manchuria and Eastern Inner Mongolia, preoccupied the Chinese, as did their sense of betrayal over the Versailles disposition of the Shantung question.

29. See "Principles and Policies Concerning China (Nine Power Treaty)," February 6, 1922, in *ibid.*, pp. 375-80.

30. The Chinese delegation submitted a list of inter-power agreements as follows:

1. Franco-Japanese Agreement, June 10, 1907.
2. Anglo-Japanese Treaty, July 13, 1911.
3. Russo-Japanese Convention, July 30, 1907.
4. Russo-Japanese Secret Convention, July 30, 1907.
5. Russo-Japanese Convention, July 4, 1910.
6. Russo-Japanese Secret Convention, July 4, 1910.
7. Russo-Japanese Secret Convention, July 8, 1912.
8. Russo-Japanese Convention, July 3, 1916.
9. Russo-Japanese Treaty of Alliance, July 3, 1916.
10. American-Japanese Exchange of Notes, November 30, 1908.
11. American-Japanese Exchange of Notes, November 2, 1917.
12. Anglo-French Agreement, January 15, 1896.
13. Anglo-Russian Agreement, April 28, 1899.
14. Anglo-German Agreement, September 2, 1898.

See *ibid.*, pp. 235-6.

31. See U.S. Department of State, *Foreign Relations of the United States*, 1922, vol. 1, Washington, D.C.: U.S. Government Printing Office, 1947.

China's efforts to address its concerns with Japan took place on two levels: formally and multilaterally, within the framework of the conference; and, informally, bilaterally, under the auspices of the United States and Britain outside the conference sessions.

Two issues were considered on the formal level: the cancellation of the 1916 Sino-Japanese treaty implementing Japan's Twenty-One Demands (which had given Japan a dominant position in Manchuria and other parts of northern China), and the status of the Chinese Eastern Railway. The lingering issue between China and Japan, however, was Shantung, but major stumbling blocks had to be cleared before an agreement could be reached. China was reluctant, having refused to sign the Versailles Treaty, to "enter upon any direct negotiations that would, in any way, imply that the Japanese had rights in Shantung such as would furnish a basis for negotiation . . ." <sup>32</sup> For this reason, China had rebuffed Japanese overtures to discuss the return of the leased area of Kiaochow in 1920 and 1921. <sup>33</sup>

Dissuaded from taking the Shantung question to the League of Nations by the lack of support from other members, China came to Washington determined to air its grievance in this international gathering. Japan, in the meantime, was aware of growing support for China among the powers. Tokyo pressed for a quiet settlement to avoid the appearance of failure in public, should negotiations not conclude to Japan's satisfaction. Tokyo had sought bilateral resolution of the matter before the Washington Conference formally opened. <sup>34</sup>

With the help of the American and British senior delegates, Charles Evans Hughes and Arthur Balfour, a compromise enabling the Chinese and Japanese to meet privately in Washington was worked out. Not part of the formal agenda of the conference, the meetings were conducted with American and British observers present. China and Japan agreed that "any solution arrived at between the two parties should be communicated to and duly noted by the conference." <sup>35</sup> It was understood by both delegations that the conversations were on a "purely *de facto* basis, that is, no arguments should be based upon legal as distinguished from equitable or factual premises." <sup>36</sup> With strong U.S. pressure on both sides to be cooperative during the negotiations, the Treaty for the Settlement of Outstanding

32. Willoughby, *China at the Conference*, *supra* note 28, p. 280.

33. See U.S. Department of State, *Foreign Relations of the United States*, 1922, vol. 1, Washington, D.C.: U.S. Government Printing Office, 1947.

34. See U.S. Department of State, *Foreign Relations of the United States*, 1921, vol. 1, Washington, D.C.: U.S. Government Printing Office, 1946, p. 613.

35. *Ibid.*, p. 935.

36. Willoughby, *China at the Conference*, *supra* note 28, p. 121.

Questions Relative to Shantung was negotiated in thirty-six meetings and signed on February 4, 1922.<sup>37</sup> It provided for restoration to China of the former German-leased territory of Kiaochow and Tsingtao-Tsinanfu Railway.

China scored a number of achievements at Washington:

1. It won a promise from the powers not to take advantage of China's internal chaos to secure additional privileges for themselves or to create any new spheres of influence.

2. It settled the Shantung question and secured the return of the former German-leased area of Kiaochow, which Japan had been allowed to keep under the Versailles peace settlement.

3. It secured the removal of foreign post offices and wireless installations from China.

4. It won a promise from the treaty powers that they would discuss in the future the restoration of China's tariff autonomy and the abolition of extraterritoriality and consular jurisdiction.

For the first time, China won acknowledgement from its treaty partners that the time had arrived to reconsider the basis for relations established in 1842. From the perspective of the powers, the Four Power pact signed at Washington by the United States, Britain, France and Japan replaced the Anglo-Japanese alliance. The alliance formed in 1902 had not only threatened the principle of the Open Door in China, by allying the most ambitious power (Japan) with the most influential (Britain), but had also provided the basis for Japanese actions in World War I. Britain's need for allies in its war with Germany provided Japan with the opportunity to move in China against German-leased territories. In Washington, the powers tried to remove a potentially disruptive element by engaging the four major Pacific powers in a guarantee of regional stability, and by giving China itself a future stake in that stability.

## V. CHINA'S PROGRAM OF NATIONAL REUNIFICATION

Capping a period of reorganization, the Nationalist Party, the Kuomintang (KMT), released a manifesto in 1923 outlining the key elements required for China to "complete the great task of national reconstruction" and to fulfill its "hopes for peace and security."<sup>38</sup> The manifesto sought to rally the people around the banner of equality — equality both in domestic relations (equitable distribution of land) and

---

37. U.S. Department of State, *Foreign Relations of the United States*, 1922, vol. 1, Washington, D.C.: U.S. Government Printing Office, 1947, pp. 935-60.

38. Li Chien-nung, *The Political History of China, 1840-1928*, trans. and ed. by Teng Ssu-yu and Jeremy Ingalls, Princeton: D. V. Nostrand Co., Inc., 1956, p. 447.

in international relations. To add to its legitimacy, the KMT identified equality as "the general trend of the world." The manifesto formally introduced the term "unequal treaties" into China's national consciousness and declared that:

To implement their policies the Manchu despots did not rely upon the people of China, but depended on foreign assistance, and as a result concluded unequal treaties with other nations at the expense of the rights of our own people. Even with the overthrow of the Manchu dynasty our nation continues to function as a colony for foreign powers. In accordance with the principle of nationalism our party will continue to work for removal of all inequalities of status between our nation and foreign powers and we shall continue to work also for the integration of all peoples of our country as a single Chinese nation.<sup>39</sup>

The Declaration of the First KMT National Congress, adopted in January 1924, elaborated on the manifesto's themes and directly linked China's internal chaos with its weak international position. Based on Sun Yat-sen's Three Principles of the People (nationalism, democracy and livelihood), the Declaration outlined a plan of action constituting the Kuomintang's political platform and program. In setting as its first objective that "all unequal treaties are to be abolished," the Declaration opened a new phase in China's treaty relations with the powers. These documents took on added significance following the defeat of the warlords and the unification of China at the end of 1928 under the Kuomintang banner.

The publication of Sun's will after his death in early 1925 further enshrined treaty revision in China's political program. He exhorted his countrymen to continue the work he had begun. As generations of Chinese schoolchildren would later commit to memory, Sun wrote:

The work of the Revolution is not yet done . . . . Above all, our recent declarations in favor of the convocation of a National Convention and the abolition of unequal treaties should be carried into effect with the least possible delay.<sup>40</sup>

In his capacity as commander in chief of the Nationalist Revolutionary Army in June 1926, it fell to Chiang Kai-shek to carry out Sun's program. The success of his Northern Expedition put all of China under one government for the first time since 1915.

Emulating Sun, Chiang had declared the objectives of the Northern Expedition in a manifesto:

---

39. *Ibid.*, pp. 446-50.

40. Sun Yat-sen, *San Min Chu I*, Shanghai: China Committee, Institute of Pacific Relations, 1927, frontispiece.

The object of the revolutionary war is to establish an independent and free nation and to promote the welfare of the country and people in accordance with the Three Principles of the People. All revolutionary forces must, therefore, be mobilized under the Three Principles for the overthrow of the warlords, and of foreign imperialists upon whom the warlords depend for their existence.<sup>41</sup>

China's two struggles against the warlord and the foreign imperialist were thus inextricably linked. The KMT had nothing to lose by tying the two together and something to gain in providing a new focus to the national revolution, whose energy had waned once the goal of bringing down the Manchu Ch'ing dynasty had been achieved in 1912.

Abolition of the unequal treaties proved to be a powerful rallying cry. Public support for it led to a gradual stiffening of China's positions on treaty revision, and there was little difference on this issue among rivals for power in China. It is noteworthy in this context, however, that the KMT never argued that the inequality of the treaties was grounds for voiding them. China's objective was the conclusion of new treaties with the outside powers, not the renunciation of its existing relations. The characterization of the treaties as "unequal" was meant to indicate their inherent potential for destabilizing China domestically and in its international relations. Overcoming such instability, China argued, was in the long term interest of all the Pacific powers.

Despite its dissatisfaction with the slow progress of revision, the KMT continued to offer incentives to the powers to redress China's grievances without recourse to abrogation. This was the result of a pragmatic assessment of China's continued need for good foreign relations and outside assistance. The 1924 platform's incentives had included the following:

\*Any nation voluntarily surrendering special rights and abrogating all treaties which violate Chinese sovereignty will be accorded status as "most favored nation."

\*Any and all treaties harmful to China's interest will be re-examined and revised under the guiding principle of removing any commitments injurious to the sovereignty of any of the signatory powers.

\*All China's obligations for foreign loans, insofar as they are not harmful to the Chinese government and industry, will be honored and repaid.<sup>42</sup>

---

41. Chiang Kai-shek, *China's Destiny*, trans. by Wang Chung-hui, New York: De Capo Press, 1976, p. 103.

42. Li, *Political History*, *supra* note 38, p. 456.



For one power, however, these incentives were not sufficient. By the 1930s, Japan's drive for hegemony, first in China and then in Asia, eclipsed the KMT's effort to win gradual treaty revision and focused the attention of the outside powers, especially the United States, on creating a stable China eventually capable of balancing Japanese power in the region.

## VI. WORLD WAR II AND THE END OF THE TREATY SYSTEM

China pressed throughout the inter-war period for adjustments to its treaties. Yet, the tentative condition of China's government and general uncertainty as to its viability continued to argue (from the treaty powers' view) for delay in ending treaty privileges, particularly extraterritoriality. American public opinion, however, increasingly favored immediate relinquishment of the special privileges, especially after the United States was attacked by Japan in 1941 and entered World War II.

In this country there is coming more and more to the forefront the idea that the present war is a people's war that the United States and the United Nations are fighting not only for self-preservation but also for human rights and decencies and for greater equalities in the general political, economic and social system than have heretofore prevailed. For years the American people have regarded extraterritoriality and its related appurtenances as an anachronism. This anachronism becomes more vivid against the background of a growing popular conception of what we are fighting for. Relinquishment of extraterritorial and other special rights would thus be in line with and a manifestation of the war aims of the United Nations.<sup>43</sup>

For the British as for the Americans, the question by 1942 was not whether but when to relinquish these privileges. In April 1942 both powers inclined towards early relinquishment "to provide encouragement to the Chinese Government at a difficult moment of the war."<sup>44</sup> The British informed the United States that if the Chinese raised the issue they "would certainly respond sympathetically," but that they felt it desirable that Britain and the United States "follow a parallel course of action in regard to this question."<sup>45</sup> In August 1942, Secretary of State Hull wrote to the U.S. Ambassador in Britain that, while conditions to negotiate relinquishment of extraterritorial rights

---

43. U.S. Department of State, *Foreign Relations of the United States, 1942, China*, Washington, D.C.: U.S. Government Printing Office, 1967, p. 273.

44. *Ibid.*, p. 274.

45. *Ibid.*, p. 276.

in China might not be ideal, "it is doubtful whether any much more favorable occasion is likely to occur in the near future."<sup>46</sup>

The conclusion and signing of new treaties between China and the United States and China and the United Kingdom in January 1943 triggered the kind of chain reaction the Chinese had always hoped for in normalizing relations with the other treaty powers. By 1947, all the remaining powers — France, Belgium, Norway, Canada, Sweden, the Netherlands, Denmark, Switzerland and Portugal — negotiated and signed new arrangements with China based on provisions of the 1943 U.S./U.K. treaties.<sup>47</sup> Meanwhile, at Dumbarton Oaks and San Francisco, China's importance as a factor for regional stability in Asia was recognized by its permanent seat on the Security Council of the new United Nations.

## VII. CONCLUSION: CHINA'S SEARCH FOR EQUALITY AND INDEPENDENCE

The designs of one of the treaty powers dealt the final blows to the treaty system itself. By invading Manchuria in 1931, Japan made clear both to China and to the western powers that it was dissatisfied with the existing treaty structure. This unilateral action directly challenged not only China's independence, but the United States and Britain, which had tied their regional interests to an independent China. Over the course of the next decade, it became desirable for the two powers to restore Chinese independence as quickly and as completely as possible to support what eventually became their own war effort. However, it had already become clear by 1931 that the unequal treaties would one day be revised. Japan's actions affected *when and how* the remaining vestiges of the unequal treaties were removed, but the key factor in shaping the treaty powers' willingness to revise the system had been the KMT's success in the 1920s.

The formation of a national government under the Kuomintang in 1928 was the first coherent expression of a central governing authority since 1915. It was welcomed by outside powers with interests in China as the end of a decade of internal warfare. The KMT's success made it possible for the United States to pursue the key decision

---

46. *Ibid.*, p. 282.

47. For a discussion of negotiations and agreements leading to the restoration of China's tariff autonomy and the abolition of extraterritoriality, see Hungdah Chiu, "China's Struggle Against the 'Unequal Treaties,' 1927-1946," *Chinese Yearbook of International Law and Affairs*, Vol. 5, Baltimore: Chinese Society of International Law — Chinese (Taiwan) Branch of the International Law Association, 1985, pp. 1-28; and Wang Shih-chieh and Hu Ching-yu, *Chung Kuo pu p'ing-teng t'iao-yueh chih yuan-ch'i chi ch'i fei-ch'u*, Taipei: Central Cultural Supply Press, 1967.

of its twentieth century foreign policy in the Pacific: to hitch its fortunes to an independent China as the key to a stable Asia. At the Washington Conference, the U.S. government had made its intentions clear, and internal developments in China made it possible to move U.S. public opinion and the other powers in that direction.

Both inside China and abroad, the influence of public opinion was increasingly important. More or less orchestrated demonstrations associated with the 1919 May Fourth Movement brought home to the Chinese people the failure of their negotiators at the Paris Peace Conference. While these demonstrations did nothing to change the outcome of the conference, they brought together formerly disparate elements of China's student, merchant and labor classes as a national political force. This force eventually tapped both China's historic anti-foreignism and the discontent of displaced agitators and unpaid soldiers cast off by defeated warlords and factions. The potential fury of this public became fully evident in March 1927 during the Nanking Incident, which gave the foreigners a taste of the future if treaty adjustments were not made.<sup>48</sup>

Public opinion abroad, especially in the United Kingdom and the United States, was also influential.<sup>49</sup> In the United States, it helped shape the 1927 Porter Resolution of the House of Representatives calling for new treaties with China. Three weeks after that resolution, Secretary of State Kellogg gave a speech in Detroit expressing U.S. willingness to negotiate new treaties with any government representative of China. The British government within days undertook talks with the Kuomintang on the rendition of the British concession at Hankow.

Later in 1927, there was serious public opposition in Britain to the landing of British troops in Shanghai to protect the international settlement there. Bowing to it, the British government compromised and only landed part of its force in Shanghai. Apparently, the old

---

48. The incident involved attacks on U.S. and other consular personnel, left one American (Vice President of Nanking University) dead and the Japanese consul wounded. KMT regular soldiers took Americans being evacuated from Nanking as hostages; they were freed by U.S. Marines and moved to the safety of an American warship in Nanking harbor. The U.S. consulate functioned on board the warship until calm was restored. See U.S. Department of State, *Foreign Relations of the United States, 1927*, vol. 2, Washington, D.C.: U.S. Government Printing Office, pp. 153 and 159.

49. Another form of public pressure appeared in the form of essays and works by Chinese writers published in English that argued for the termination of the unequal treaties. See, for example, Huang Ting-young, *The Doctrine of Rebus Sic Stantibus in International Law*, Shanghai: 1935; Tseng Yu-hao, *The Termination of Unequal Treaties in International Law*, Shanghai: The Commercial Press, 1933; and articles in the periodical, *Chinese Social and Political Science Review* throughout this period.

methods of enforcing treaty rights by force would no longer be tolerated either at home or in China. The scope of U.S. options was similarly narrowed as it became clear that any resort to force by the United States to maintain its treaty privileges would be regarded by the American public as sustaining British and not American interests. In the disillusioned climate of Anglo-American relations after World War I — Americans believing they had been duped to fight for survival of the British empire — such a perception was not politically acceptable to the U.S. government.

While not all the treaty powers felt the time was right for renegotiation, given the size of combined American and British interests in China, any actions taken by London and Washington inevitably changed the framework within which the other powers had to operate, whether they approved or not. China counted on this, and lavished much attention on setting the proper precedents in its negotiations with Britain and the United States.

China, however, ultimately succeeded in abolishing the unequal treaties for three reasons. First, it demonstrated the will and the ability to oppose the treaty powers. This made China a credible factor in ensuring stability in Asia. The KMT rhetoric exhorting the Chinese to pursue national unity and abolition of the unequal treaties, backed by the reality of *China's unification under Chiang Kai-shek* convinced the United States that China could survive intact and that Chiang could succeed. That a unified China was a genuine possibility was a factor in encouraging the United States to support China's program of national unification. The alternative would have been to partition China with the other major powers and leave the preservation of regional stability to the balancing of these individual treaty power interests against Japan.

Another important factor was *China's record of international cooperation* from the fall of the Ch'ing dynasty. Led by the United States to recognize the new government of Yuan Shi-kai in 1913, the other treaty powers eventually recognized his government on the condition that he pledge to maintain *all* rights, privileges and immunities whether granted by treaty or practice. Yuan did so in a presidential declaration made before representatives of the treaty powers.<sup>50</sup> Although China's efforts to abolish the unequal treaties intensified over the years, its official position remained one of replacing them with new equal ones, not the abandonment of treaty relations overall. Where international cooperation failed China was in the international

---

50. U.S. Department of State, *Foreign Relations of the United States*, 1913, Washington, D.C.: U.S. Government Printing Office, 1938, p. 85.

system's inability (and unwillingness) to encourage a faster pace to abolish extraterritoriality and to restore tariff autonomy. While the powers negotiated to protect their interests, China was limited in its ability to pursue its own interest — national unification.<sup>51</sup>

Finally, China's *potential for influence and power was on land*, not at sea. China was, therefore, for the United States a more acceptable regional power in Asia than Japan. China seemed unlikely to challenge the U.S. naval role in the Pacific, or U.S. island possessions. The U.S. search for a stable and strong partner in Asia became more urgent as France and Britain stood alone against the German onslaught prior to the U.S. entry into World War II in 1941. With the very real possibility of threats to American security from both Europe and Asia, the United States could no longer follow the lead of the United Kingdom in the Pacific, but had to take steps to counter a possible Japanese threat. China's determination to revise its unequal treaties and its struggle for national unification made it not only an acceptable, but a desirable, partner as Washington sought to maintain U.S. interests in Asia. With revision of those treaties in 1943, China's perceived ability to fulfill American expectations was an important factor in the development of U.S. plans for the United Nations and the postwar world.

---

51. See Charlotte Ku, "Change and Stability in the International System: China Secures Revision of the Unequal Treaties," in *Essays in Honour of Wang Tieya* edited by R. St.J. Macdonald, Dordrecht/Boston/London: Martin Nijhoff Publishers, 1993, pp. 447-61.