Völkerrechtsdenken und Außenpolitik in Japan, 1919-1960

by Urs Matthias Zachmann
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It is indeed a rare opportunity to find monographs on the legal history of East Asian countries written outside of the respective country. In 2005, the publication of Alexis Dudden's *Japan's Colonization of Korea: Discourse and Power* started to foster an interest in legal issues among scholars of Japanese and Korean history. In 2012, Marie Seong-hak Kim's *Law and Custom in Korea: Comparative Legal History* first tried to fully reconcile the disciplines of history, law, and area studies, an approach shared by the title under review here. This German title, *Völkerrechtsdenken und Außenpolitik in Japan, 1919-1960* roughly translates into English as *The Thought of International Law and Foreign Policy in Japan, 1919-1960*. Even though "Japan" is clearly identifiable as the primary focus of the book, the topic still indicates that Korea, having been a part of the Japanese Empire between 1910 and 1945, as well as China, another target of Japanese expansionism, play a role. However, it is not necessarily for its regional focus that this book might be of interest to the readers of East Asian history. Nor is it for the often-mentioned, deep-running connections on the basic grasp of law historically shared between Germany, Japan, and Korea. It is rather the interdisciplinary approach of this work that delivers

an analysis of legal professional discourse and its historical evolution. Urs Matthias Zachmann seeks to interpret this discourse in terms of political-intellectual history (*sasangsa*), which is what makes this work shed new light on the historical development of Japanese-Korean-Chinese relations, a topic which has continually received much scholarly attention in Korea, as well.[1]

Zachmann has held the Handa Chair in Japanese-Chinese Relations in the Department of Asian Studies at the University of Edinburgh since 2011. In 2006, he received his doctoral degree in Japanese Studies from the University of Heidelberg, and also has a background in Chinese Studies and in Legal Studies. His thesis on Sino-Japanese relations in the late Meiji and Qing periods was published into a monograph in English as *China and Japan in the Late Meiji Period: China Policy and the Japanese Discourse on National Identity, 1895-1904* in 2009 and awarded the JaDe prize the following year. This prize is a German distinction for outstanding accomplishments in Japanese-German Studies. In 2010, Zachmann completed his habilitation in Japanese Studies at the University of Munich, and the publication under review here is the academic result of this effort.

Published in German as part of the series "Studies in the History of International Law" by Nomos, the 419 pages of *Völkerrechtsdenken und Außenpolitik in Japan, 1919-1960* are divided into six chapters framed between an introduction and a conclusion. Further division into numerous subchapters help the reader to draw necessary comparisons between individual chapters, but they also constantly reveal the origins of this work as a habilitation dissertation. The introduction sets the stage by first explaining the contemporary status of law and order in terms of international law and offers a short overview of its history and Japan's

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[1] To offer a few examples, Kim Gi-hyeok, *Geundae Hanjungil gwangyesa* (Seoul: Yeonse Daehakkyo Chulpansa, 2007); Kim Yong-gu, *Manguk gongbeop* (Seoul: Sohwa, 2008); and Choi Deok-su, *Joyak euro bon Hanguk geundaesa* (Seoul: Yeollin chaekdeul, 2010).

role in its development. International law, for which there is no absolute definition, goes beyond the sovereignty of a single nation-state. Its basic principles originated from the traditional conception of states in Europe, but after the Ottoman Empire and Japan successively joined the community of countries abiding by international law its character became increasingly universal. Japan came to be the only non-western nation among the great powers that had a say in deciding the direction international law should take and earned a certain reputation for testing the law with the arousal of "incidents" as small-scale conflicts. The author poignantly shows that Japan often used the collapse of state authority in its neighboring states to legitimize its interventions, substantiating its expansionist efforts with a "humanitarian responsibility" of protecting weaker states and thus using the international law of the day to its advantage.

By approaching the topic from the standpoint of intellectual history, the author takes into account recent developments in legal history. He further claims that international law, as the youngest field of legal studies within as well as outside Europe, is dominated by a strong case of eurocentrism. The central assumption of his inquiry, which led to the chosen timeframe of 1919-1960, is that the passive stance of Japanese specialists taking part in the discussion about international law in that period was not bound by eurocentrism and that the scholars under discussion were actively involved in constructing Japanese foreign policy after 1945. This application of global discourse on international law to the Japanese case only from the onset of the Cold War and the United States-Japanese security treaties fell back to passivity (35).

The first chapter, "Foreign Policy and International Law in Japan, 1603-1910," however, belies the book's title in terms of its timeframe. The reader will find this section to be an extended introduction to the book's main argument. Beginning from the Edo period, Zachmann re-narrates well-known facts regarding Tokugawa foreign policy to conclude that Japan at the dawn of the Meiji period had not been a *tabula*

rasa (41) with regard to international law. He further adds a broad description of foreign policy during the Bakumatsu and Meiji periods, displaying the advent of the treaty port system in East Asia and how Japan became part of it. Finally, Zachmann analyzes the motivations behind foreign policies in the Meiji period between 1871 and 1910, when Japan extended its colonial grasp on Taiwan and Korea.

Here, the author travels beyond the usual narrative of unequal treaties in showing the legal background and legal elements that turned these treaties into their unequal state not only in terms of perception, but also in terms of their entire nature. The introductory remarks are closed with a historical overview of international law in Japan, highlighting the establishment of the Study Group for International Law (*Kokusaihō gakkai*) in 1897 (76). The first chapter's conclusion outlines in three cumulative stages aspects of international law in Japan's development of its foreign policy: a) acquisition of territory (*landnahme*) in the case of Taiwan in 1874; b) recognition/annexation of states in the case of Korea in 1876 and in 1910; and, finally, c) war and peace. Not only in the wars with China and Russia, but also from participating in the war-like subduing of the Boxer Uprising was Japan able to prove itself as the first and only Asian power that had to be admitted to the peace conventions of The Hague in 1899 and 1907. This was at a time when the right to war was still acknowledged by international law, which is what reinforced the Japanese conviction that it was necessary to abide by the rules of how to conduct modern warfare.

The next two chapters both cover war and order in the international realm that was established by the Washington and Versailles conferences. While the second chapter focuses on Japan and the League of Nations, the third chapter focuses on the Briand-Kellogg Pact of 1928 and its implications for Japan. The world system established in post-Napoleonic Europe came to an end after World War I. The Versailles Peace Conference and the creation of the League of Nations now established a new stage in international law, further forbidding Japan from playing out

its bellicosity and military prowess. Indeed, Japanese involvement in World War I was limited as the Russo-Japanese War was the last concentrated military action for Japan until the eruption of the Asia-Pacific War in 1941 (88). The Briand-Kellogg Pact, a sharp renunciation of war as a means to resolve conflicts among states, was also signed by Japan as a member of the international community among a long list of other signatory countries and further restricted Japan's ability to use war rhetoric.

The thread that weaves all of the following chapters together then emerges as the author traces the Japanese discourse on international law by introducing the works of Japanese scholars active in the periods under research. The discourse during the Taishō period and the early Shōwa period was dominated by two generations of scholars from Tokyo Imperial University, Tachi Sakutarō (1874-1943) and Yokota Kisaburō (1896-1993), both of whom held very different viewpoints on the development of the international law of their times. While Tachi, who had participated in the Versailles Conference, did not see any hindrance for Japan in terms of its right to war, Yokota stood rather firmly on the new stance of war as a crime and an illegal act. In a time marked by the break from a flat model of a community of states under international law to a more hierarchically structured community centered around the League of Nations, this discourse culminated in the argument of war as an indispensable element in an imperfect global community in the wake of the Briand-Kellogg Pact's conclusion. The corresponding restriction in state authority was only reluctantly accepted by Japan. It is in this context that the fundamental critique by Taoka Ryōichi (1898-1985) on the Kellogg Pact coincided in a timely way with the Japanese assault on Manchuria.

The fourth chapter deals with the issue Zachmann calls the "perhaps most irrational decision in Japanese Foreign policy of the Modern period" (347), the Manchurian Incident of 1931 and Japan's decision to leave the League of Nations in 1933 due to an argument

regarding the international acknowledgment of Manzhouguo. The disparity between the disadvantage Japan felt and its objectively dominant position in Northeast Asia may only partially explain Japan's behavior. Also, there had been no treaty that solved basic issues between Japan and China as the Locarno Treaty did for Europe. Along with an offering of the background on Japan's military position in Manchuria, the author reviews reactions of the Japanese public, in which Manchuria was already acknowledged as Japan's "lifeline" (186). Manchuria did indeed only bear a rather abstract value to the Japanese public prior to the Russo-Japanese War, but it was thereafter refashioned into a territory where Japanese ancestors had sacrificed their lives to protect China and Korea. Furthermore, Manchuria also had become a mythical symbol of a new, inexhaustible fountain of natural resources (187).

In terms of the discourse on international law, Japanese scholars had to either defend or criticize Japanese behavior. Tachi developed the concept of a right to national self-defense that already exhibited a new understanding for what was later to become a regional approach to international law. In the meantime, his pupil Yokota adhered to a stricter interpretation of the law in use, criticizing not only the excessive behavior of the Japanese military in Manchuria, but also defending the League of Nations' stance. However, due to social pressure, Yokota soon gave in to the necessity of the times and further toned down his voice. In short, the overall discourse shifted from an attempt at a "Japanese Monroe Doctrine" toward explanations of China's status as a non-entity in order to build up a new "international community" inherent to Japan. The Manchurian crisis became the most crucial challenge for Japanese international law studies, now responsible for drafting and backing a new order in East Asia in terms of the Greater East Asia Co-Prosperity Sphere. In analyzing the work of Yasui Kaoru (1907-1980), the author finds a new universalism/cosmopolitanism that actually contradicted the rising ultra-militarism of the time. The author concludes the fourth chapter by further interpreting Japan's behavior as a logical result of the

fact that the newly established institutions of international law, namely the League of Nations and the Briand-Kellogg Pact, did suffer from a global loss of authority during that time.

The fifth chapter deals with thoughts on order and the law of war during the Asia-Pacific War of 1937-1945. Zachmann outlines Japan's project of creating its own regional "East Asian" order of international law. The background and intellectual foundations of such an agenda are first laid out. Due to the presence of several actors, among which there were those who held the often-cited symposia for "overcoming modernity" (*kindai no chōkoku*), the League of Nations was obviously downplayed in Japan as a "European" league, which was a region so very different from Japan and therefore could not be a solution for East Asia. To those outside the field of law, "regional" international law might seem paradoxical, but the author's concise explanations have made it easy to understand as a concept counter to universal international law and one recognizing that geographical necessity might require smaller areas of application. In this context, the above mentioned Kokusaihō gakkai is presented as a think tank backed by all the prominent *zaibatsu* conglomerates of the day. The example of Tabata Shigejirō (1911-2001) further shows that the times did not at all allow much room for different thinking. In a recursion of Yasui, Zachmann is also able to show that it was only after a stage of ideological conversion (*tenkō*) that Yasui gained his reputation as the one who paved the way for the Greater East Asia Co-Prosperity Sphere. Despite a difference in their positions and approaches, leading scholars of the day all took part in a discourse on international law that defended Japan's right to wage war, a right it was already exercising through its many campaigns in the Asia Pacific area. In his review of works by such scholars, citing the stance of Tachi Zachmann largely concludes that Japan had been avoiding infringement of the Briand-Kellog Pact by not issuing a declaration of war against China. Examining the discourse in its entirety reveals that ultranationalist positions were merely a fragment of the overall spectrum. Other

cornerstones were set by the liberal relativism in international law as expressed by Kiyosawa Kiyoshi (1890-1945) and the condemnation of air warfare by Taoka in opposition to Tachi. Finally, Yokota warned what the "total war" occurring at that time would mean for international law, namely the end of the traditional law of war that could inevitably come into conflict with the right of war in general. Yet, less critical than before, Yokota on the other hand downplayed Japan's breaches of international law by claiming and emphasizing that such breaches had been made on all sides.

The sixth chapter deals with the unavoidable defeat of Japan in 1945 and reviews the discourses among scholars of international law in dealing with issues of the lost war and the Japanese security dilemma that led to the second United States-Japanese Security Treaty in 1960. Here, Zachmann evaluates Japanese foreign policy since 1868 as one of indisputable aggressiveness, but one also characterized by a strong defensive "siege" mentality. Before the war, only a minority, such as Ishibashi Tanzan (1884-1973), declared the necessity for a "small Japan" (*shō Nihon*). Then during the wake of radical change following the occupation of Japan, demilitarization and democratization on behalf of the United States was when most of the erstwhile "rightist" scholars of international law found their thinking closer to the prewar minority (282). In tracing the question of whether these turnabouts were personal decisions or only necessitated by political conditions of the time, Zachmann further reviews the ongoing discourse among scholars of international law. After mentioning the fates of the aforementioned scholars, Zachmann explains their reactions to the new situation. In fact, the Korean War (1950-1953) was central to the argument concerning Japan's national security and was seen as a baneful example of all future conflicts in East Asia. The Korean conflict led to the integration of Japan into a new military system following the American "reverse course" that turned Japan from foe to friend in a matter of a few years. While this was received with mixed feelings among the aforementioned scholars,

Japan's entry into the United Nations, its re-entrance into the international community, so to speak, was largely supported. However, Tabata warned that the United Nations was no guarantor of security, but simply a forum for peaceful resolution of conflicts. Zachmann duly takes note of how this reentry into the international law arena was accompanied by an inward turn on behalf of Japan, although this may be argued to be too narrow a consideration of international law and failing to see Japan's inward turn in a more complex and macroscopic way. Japan was allowed to keep its emperor system, and despite the all-encompassing change of values that the system went through, this meant a great continuity. On the other hand, Japan had postulated during the colonial period a common ancestor theory with Korea as another means to justify imperial rule. However, after the war, scholars admitted that their research had been biased, and Japan came to embrace a belief in an ethnic homogeneity that further justified its turn inward. This turn also meant that Japan, able to escape a national division, would not have to take responsibility for Korea's division or for the Korean War. These questions might not have been points of concern for the book under review here while it was being written, but they nonetheless seem quite striking and remarkable if one considers recent debates about the abolition of Article 9 and the role of the Japanese Self-Defense Force.

Zachmann's final inquiry is focused on the reactions of Japanese scholars of international law to the Tokyo war crimes trials and the Shimoda Ryūichi case, which brought the atomic bombings of Hiroshima and Nagasaki to court in Japan in 1963. While Japanese specialists in international law were rather silent about the Tokyo War Crime Trial (336), at the trial concerning the legality of the atomic bombings the court even requested evaluations from Tabata, Yasui, and a student of Yokota. They all concluded that the new weapons themselves did not violate international law, but their usage violated international law: Hiroshima and Nagasaki were not military bases, and only a targeted bombardment of military facilities should have been allowed—an

important difference from their writings during the war.

In the concluding chapter, Zachmann offers a summary of his research results, and an overall assessment of and outlook upon further development of international law. Japan's defeat and the dawning of the Cold War threw Japan back into the Western order of international law. Japanese specialists went through this change in partly active roles and sometimes in passive roles, but they were always aware of the ideological tone of the day (345). The demands of the time may have forced Japanese specialists to radically change their direction, but Zachmann also managed to trace remarkably consistent strings of argument. It is only at this point that the author re-evaluates the fact that Japan did not declare war on China with the motive of maintaining American support. Finally, the author characterizes the functions of international law as a welcome force that enabled Japan to unfold its power in East Asia, but also as a signal of Japanese willingness to cooperate with Western powers (354).

After all, Zachmann could challenge the established view of Japanese scholars of international law prior to 1945 as pragmatic, state-oriented, Eurocentric, and passive. The first two points are valid only when the practical functions of international law are considered, and these were much more actively used than is commonly acknowledged. Up until now, what had often been understood as a schematic antagonism of "Ampo realism" and pacifist idealism on behalf of the post-war conclusion cannot be upheld considering the continuities in the thinking of the specialists Zachmann selected for his research.

Zachmann's juxtaposition of thought on international law and thought on Japanese foreign policy at the same time is a well-working synthesis of events that occurred over the period under research and how they were perceived and dealt with by the Japanese community regarding international law. Sometimes, it seems as though an analysis of discourses running even deeper would have been feasible and more revealing, and that valuable pages of the book were spent on lengthy

descriptions of background information already well-known to scholars of Japanese history. However, those with a background in law might feel similarly regarding the author's explanation of juristic situations. Thus, the author paid great heed to a broad range of readers, making the book accessible to those who do not fully share his disciplinary background. This can hardly be seen as a shortcoming since the amount of new knowledge the book offers is enormous.

Considering the historical as well as the contemporary roles of international law, the reviewer cannot help but feel how much Japan and Germany still ground themselves on what is considered the very first evolutionary step of martial law, namely that of a "just war" (*bellum iustum*) representative of the middle ages. On this point, the author concludes that the decision to wage war may have been the highest expression of national sovereignty and thus not at all justifiable according to international law. The fundamental rejection of wars of aggression as we find it in today's international law was steeled through historical experience. The book reviewed here can thus be read as an appreciation of international law's contribution to a peaceful future.