

Japan, Germany and the Idea of the Hague Peace Conferences*

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After the 'opening' of Japan in 1853–54, the international system began to change from the limited, traditional European 'concert of nations' to a 'comity of nations', proclaiming universal norms and values. Participants in the first Hague Peace Conference – called by the Russian Tsar, Nicholas II – therefore included the USA, China, Japan, Persia, Siam (Thailand) and Turkey. The conference marked the early stages of today's International Court of Justice and the United Nations Organization. Although for the Japanese in 1899 the revision of the unequal treaties had priority, they also placed hope in the conferences. Japan was ready, if the Western powers would agree among themselves, to join efforts for disarmament and the peaceful settlement of international disputes, including obligatory arbitration – major subjects discussed at the conferences. Unlike Germany, which had almost boycotted the conferences from the start, the Japanese foreign ministry, in spite of its reserve, took the proceedings very seriously, and was prepared to participate fully. Not least in view of the economic, social and political consequences of war, and alerted by politicians, diplomats, international law scholars, and a broad and active peace movement, nation states considered adopting legal process instead of the traditional call to arms to resolve their differences. Publications like those of Jean de Bloch about the costs and effects of future wars were received in Japan also. A comparison of these trends and contemporary records in the Japanese archives shows that Japan was a conscientious participant who clearly recognized the merits of the ideas discussed at The Hague.

The largest and most serious question which can be asked today is, how much farther is the militarism of the civilized world to go? . . . Are China and Japan to climb to the war-level – perhaps it would be more true to say descend to the war-level – of England, France, Germany and Russia? . . . follow the same path, until the 'armed camp' of Europe becomes . . . the armed camp of the world? (Trueblood, 1899: 52–53)

Introduction

The attitude of Japan towards and its involvement in the Hague Peace Conferences, 1899 and 1907, has not been given much attention.

By contrasting it with the well-known position Germany took at The Hague, it is hoped that new insights into some of the patterns and potentials of the events may be obtained. Both Germany and Japan were 'latecomers' in the community of nations. The comparison shows that Germany was against the idea almost from the start, while Japan was *not* – though it required and demanded unanimity among the great powers, to obtain a reduction of armaments and binding guarantees. This seems to indicate that Japan could conceive of the possibility of achieving

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Appeal for Peace Conference (The Hague, 14 May 1999). Japanese names are given in the traditional order, with the family name first. Readers are invited to send comments and criticism to the author: k-schlic@sophia.ac.jp.

progress and realizing its national interests without resort to war,¹ whereas Germany thought this was impossible. However, while Germany was part of the European legal tradition, this was not so in the case of Japan. It is therefore necessary, to obtain a better understanding, to take a look at Japanese tradition.²

The Historical and Legal Background

Ronald P. Toby was the first Western author who in 1984 gave evidence that Japan during the so-called 'seclusion' (*sakoku*) 'was not nearly so isolated as it has hitherto been portrayed' (Toby, 1984: 21),³ an important fact explaining the country's sudden emergence as a modern state. Both politically and economically during the Edo Period (1603–1868), Japan continued to be an accountable partner in the strategic East Asian environment. The diplomatic and trade relations,⁴ strictly regulated by the government, constituted a far-reaching information network.⁵

It is not surprising, therefore, that the significance of international law and its applicability for Japan was discussed and given careful consideration during the first two decades after the 'opening' (*kaikoku*) of the country to the West in 1854. While the American consul Townsend Harris, who had arrived in Shimoda in 1856, still found Japan 'undemocratic' and

'uncivilized', making it his 'personal mission' to 'bring the heathen country under the laws of nations' (Miyoshi, 1979: 16),⁶ the Japanese carefully studied international law from three aspects. The first was as a 'Way of the State as Moral-Being', then as a 'Shield of the Weak' (relating to the 'Heaven-Bestowed Rights of Man', *tempu jinken*) and last as a 'Tool of the Strong'.⁷ Though 'determined to copy' the West where it seemed appropriate, they by no means wanted to 'become subject' to the Western powers.⁸ However, the tariff treaty of 1866 and indemnities 'imposed by foreigners at the point of their naval cannon sent money flowing out of Japan'. As a consequence, 'the West grew richer, [while] Japanese grew money-poor' (LaFeber, 1997: 35).⁹

In March 1868, Japan officially declared that it would conduct its foreign affairs in accordance with public international law (*bankoku kôhō*).¹⁰ Understanding and adopting *bankoku kôhō* was facilitated by traditional Confucian conceptions on the conduct of states. At the same time, however, considerations of statecraft made conscription necessary.¹¹ In the 1860s and 1870s,

¹ This does not mean that Japan would not defend itself, if attacked or vital national interests were at stake, as it did in the Sino-Japanese (1894–95) and the Russo-Japanese (1904–5) wars.

² Germany turned away from Japan when, around 1895, the German Emperor William II conjured up the 'yellow peril'.

³ Scholars like Asao Naohiro and Tanaka Takeo had already published theses on the subject in the seventies.

⁴ Korea, for example, had almost regularly sent diplomatic missions to the capital Edo (Tokyo) during the seclusion, though this seems to have reflected 'an essential parity' between the two countries (Toby, 1984: 38).

⁵ Toby (1984: 228) refers to Maruyama Masao: 'only through the catalysis of a Japan-centered vision . . . the Japanese were able to transform late-Tokugawa isolationism and xenophobia . . . into the thesis that Japan's survival depended on the autonomous opening of the country to full foreign intercourse (*kaikoku*).'

⁶ Yanaga (1956: 365) paints Harris in more favourable tones: 'Harris . . . was strongly opposed to extraterritoriality', and 'made every effort to help the Japanese to get rid of the unequal treaties'.

⁷ For details of the discussion, see Stern (1979).

⁸ Japan 'intended to join the Westerners, not invite them in', and pointed to other Asian countries, and also 'to the fate of the American Indians . . . [who] were an early victim of Western imperialism' (LaFeber, 1997: 46, 36).

⁹ In this light, obviously, '[o]verseas successes could ease domestic distresses' (LaFeber, 1997: 42).

¹⁰ On 17 February in the first year of Meiji, or 17 March in the Gregorian Calendar, in a public notice, Japan committed itself to this effect (*Nihon Gaikô*, 1969: 33–34).

¹¹ Imperial edict concerning the introduction of compulsory military service (28 November 1872). Text in Tsunoda, DeBary & Keene (1964: 197–198). Here Japan merely followed the general trend, as Strachan (1988: 49–50) so aptly put it: 'Thus the moral power of the state reached its greatest possible extent: in exchange for guaranteeing the natural rights of man, the state could demand the willingness to accept discipline, danger and ultimately death in its defence. What transformed warfare was therefore a revolution in the power of the state, acting in the name of the general will. Military service, from having been the lot of a small section of society, could now in theory be truly universal.'

several diplomatic missions, including the famous Iwakura Mission (*Iwakura kengai shisetsu*, 1871–73) were sent to the capitals of the foreign powers in Europe and America, largely to effect a revision of the ‘unequal treaties’.¹²

The failure of the Iwakura Mission¹³ to achieve treaty revision decided the Japanese ‘change of heart’, with regard to the previously held hope to obtain guarantees for Japan’s development, national security and independence on the basis of recognized principles of international law – a change which can clearly be seen in the *volte-face* of Fukuzawa Yukichi (1835–1901) with regard to this particular question (Fukuzawa, 1958–64).¹⁴ The German chancellor Bismarck, too, had advised the ‘Iwakura Mission’ on 15 March 1873 not to rely on international law but on the power of arms, as guarantee, in its international relations. In 1878, after Darwinism had been introduced by Edward S. Morse in 1877,¹⁵ Fukuzawa in his *Tsūzoku kokkenron* (What Every Man Should Know About the Rights of Nations) no longer complimented the ‘law of nations’:

To put it plainly, there are two Ways: to kill, or to be killed . . . this is the Way of every man. However, the Way of foreign intercourse does not differ in the slightest from this principle. ‘Treaties of Friendship and Commerce’ and the ‘Law of Nations’ (*bankoku kōhō*) are very beautiful phrases indeed, but they are merely polite veneer. The true principles of foreign

intercourse are nothing more than to fight for power and to forage for profit. (quoted in Stern, 1979: 136)

Of course Fukuzawa was not a Darwinist, but he clearly realized the necessity of a strong Japan to defend its interests.¹⁶ This should be kept in mind to understand Japan’s position at The Hague. For the work to be accomplished at The Hague, under favourable conditions, a strong Japan would be an asset. In this sense, it was a welcome development that in ‘little more than thirty years, between 1868 and 1900, the Japanese [had] built both a nation and an empire’ (LaFeber, 1997: 32).

Japanese participation in the first Hague Peace Conference had been preceded by the country joining a number of international unions, such as the International Telegraphic Union in 1865, the Postal Union (Bern Convention) in 1877, and in 1886 the ‘Bern Agreement for the Protection of Works of Literature and Art’ and the ‘International Red Cross’, etc. The German Alexander von Siebold¹⁷ saw Japan ‘entering the European diplomatic concert . . . (as it were) through the backdoor’ (Siebold, 1900: 8).

Tokyo’s Imperial University (*Tōkyō Teikoku-Daigaku*), Siebold reports, in the 1880s had a well-equipped Law Faculty. Clearly, Japan wanted to be recognized as a legal person under the Law of Nations in the

¹² On the history of the ‘unequal treaties’, see Jones (1931).

¹³ Named after Iwakura Tomomi (1825–83), a court noble who led the 48-member mission.

¹⁴ See Miyoshi (1979: 171); further discussion in Stern (1979: 63–100), Miwa (1968). While Fukuzawa, the great ‘publicist of modernization’, still in 1872 in his book *Gakumon* (Learning) had ‘defended the theory of *tempu jinken*’ (Heaven-Bestowed Rights of Man), his 1875 treatise *Bunmeiron no gairyaku* (An Outline of a Theory of Civilization) portrayed the law of nations as ‘a Machiavelian tool (*kembō jussū*)’ (Stern, 1979: 135).

¹⁵ According to Miwa (1968: 2), the Japanese ‘seem to have taken to this Western philosophy with complete naïveté . . . [i.e.] Darwinian-Spencerian ideas of evolution and the survival of the fittest.’

¹⁶ An extreme example of a Darwinist is Katō Hiroyuki (1836–1916), a prominent jurist and follower of the teachings of Rudolf von Jhring. Under the influence of the German school, he changed from being a proponent of ‘inherent human rights’ and constitutionalism to professing – after 1882 – social Darwinism and opposing the liberal movement. Militarily, after the German victory against France in 1871, Japan had been under the strong influence of German (legal and military) advisors and ‘ideology’, evidenced by Katō Hiroyuki’s philosophy of ‘might over right’, which the Japanese had adopted to an extent. See Katō (1894), also note 60.

¹⁷ Alexander von Siebold (1846–1911) was the son of Philip Franz von Siebold (1796–1866), the famous Japanologist who had lived and worked in Japan during the ‘seclusion’ period.

sense of the *ius gentium*, obtain 'titles' and access to common goods and benefits under public international law, and fully participate in the community of nations. Yet, a 'basic and universal ingredient in the Japanese attitude to international relations' was, since China's defeat in the 1842 Opium War, 'the fear of . . . conquest of the Far East' by the Western nations 'as a group of "outside countries" (*gaikoku*), or as individual nations competing among themselves', carrying their wars to Asia (Miwa, 1968: 2).

The first test for Japan to stand up for its own came in 1894 when, following the supposed Chinese intervention in Korea¹⁸ to squash the Tonghak Rebellion,¹⁹ Japan declared war, officially 'in order to secure the independence of Corea', unofficially to obtain a 'strategic foothold on the continent' Clyde (1958: 306). In this it heeded the advice of its Prussian 'military mentors', i.e. that Korea was 'the touchstone of Japan's security'.²⁰ When it came, 'Japan's military, along with civilian officials,' welcomed the Sino-Japanese war as 'a club to beat down political unrest, even rioting, arising from

economic problems' (LaFeber, 1997: 47, 48).²¹

From the resulting struggle Japan emerged victorious. This earned it considerable respect from the Western powers, though following the Treaty of Shimonoseki, Russia and France, spearheaded by Germany, intervened taking away its spoils on the mainland.²² If Japan was 'driven toward imperialism by different impulses', this Triple Intervention served only to confirm its 'well-justified fears that Westerners were creeping uncomfortably close to the home islands, and that these outsiders intended to dominate Japanese trade' (LaFeber, 1997: 41).²³

The Idea of the Conference

The modern concept of a peaceful organization of the nations and societies into a legally responsible community developed mainly in 19th-century Europe, but the basic impulse

¹⁸ Japan had 'opened' Korea in 1876. Subsequent imports of rice to Japan brought profit to few people, while the masses of Korean farmers were left poorer.

¹⁹ China, by insisting that Korea was a 'tributary state', apparently violated the Treaty of Tientsin (18 April 1885), which guaranteed 'a position of equality' to both countries, especially in military matters. The Chinese, by sending troops into Korea in June 1894 against the uprising, provided the opportunity for the Japanese to do the same. When they rejected the Japanese proposal for a 'joint Sino-Japanese action to effect financial, administrative, and military reforms', the Japanese forced the Korean king to order the expulsion of the Chinese (Clyde, 1958: 297–300). LaFeber (1997: 48) has it that the 'rioters (an outlawed group, the Tonghaks) were quickly smashed by Korean forces without China's help'.

²⁰ Fukuzawa had argued: 'was there any (countr[y]) touched by the Westerners [that was] able to maintain real independence? . . . We want our learning independent, not licking up the lees and scum of the Westerner. We want our commerce independent, not dominated by them. . . . And that led him back to Asia, for once Japan renewed itself, it could find its mission in revitalizing and exploiting nearby areas – above all, Korea' (LaFeber, 1997: 37).

²¹ 'War offered too much – peace at home, secure markets and strategic points in Korea, checkmating a Russian movement south, and membership in the imperialists' club' (LaFeber, 1997: 49).

²² *The North-China Herald*, 21 February 1896, and *ibid.*: 'What the unbiased friends of Japan warned her would happen . . . has come to pass, and Russia has now established her protectorate over the Korean Court and Government.' See also the English-language *Kobe Weekly Chronicle* of 16 October 1897, writing that 'slowly and steadily, without ostentation, [Russia] is securing paramount control over the peninsular kingdom'.

²³ Concerning Japanese expansionism in the late 19th and 20th century, it is evident that the Japanese had to pay close attention to the requirements and agreements stipulated by international law. However, they considered that (a) they had the same right as the Europeans to develop backward areas on the Asian mainland economically, and support indigenous reform movements as in China, Korea, etc. – an argument that carried even more weight, as the mainland was in Japan's immediate proximity; (b) admittedly, as in European countries, colonial clubs came into existence, propagating the idea of Japan as a colonial, civilizing power equal to the Western powers (including the USA); and (c) Japan's growing industry was dependent on markets and resources outside Japan. This attitude and policy corresponded to the demand at home that Japan be given a responsible place in the world. As in Asia, the 'Americans wanted markets . . . Japanese wanted markets and security' (LaFeber, 1997: 74, emphasis added).

had existed in Asia for a long time. Thus, for example Mozi (Mo Tse, ca. 470–391 BC),²⁴ whose teachings considerably influenced Taoist and Confucian traditions, appears very modern in his ‘condemnation of aggressive war’ during the times of the Warring States (403–221 BC). His ideas of an ‘ideal state’, ‘universal love’ (*ken’ ai*) and equality were studied in Japan, too. Universalist ideals were also fostered by Orientalist discoveries of Indian literature, culture and philosophy (Schlichtmann, 2001).

The Hague Peace Conferences (1899 and 1907) brought all these trends to fruition.²⁵ The neo-Kantian Walther Schücking, eminent professor of international law and a pacifist, believed that the Hague conferences started ‘a process . . . which one could characterize as international law (*Völkerrecht*) being transformed into World Law’ (Schücking, 1918: 73; see Schlichtmann, 2002). By a curious feat of providence, it was the young Russian Tsar Nicholas II who approached the foreign representatives in St. Petersburg, to hold an international peace conference.²⁶ Several influences had been at work on the Tsar, including Ivan (Jean de) Bloch (1836–1902), a Polish banker,²⁷ Bertha von

Suttner (1843–1914)²⁸ and the Inter-Parliamentary Union (IPU).²⁹

The First Hague Peace Conference

In 1899 Japan, together with some two dozen mostly European nations, but among them the USA, China, Persia, Siam and Turkey, participated in the ‘first truly international assembl[y] meeting in time of peace for the purpose of preserving peace, not of concluding a war then in progress’ (Hinsley, 1963: 139). As we have seen, Japan had been receptive to the idea of the Law of Nations, but took a turn with Fukuzawa Yukichi and the Iwakura mission to adopt a more realistic foreign and military posture, following Western patterns. This did not mean, however, that in Japan the idea of the Law of Nations and an international order based on the rule of law had become discredited.

On 25 August 1898, Motono Ichirō (1862–1918), the Japanese minister in Brussels, sent a cable to prime minister Ōkuma Shigenobu (1838–1922) in Tokyo, informing him about a ‘note’ (circular letter) from Russian foreign minister Count Muraviev:

Main reasons laid down in the note are as follows: During the last twenty years, the maintenance of peace has been considered as the object of international policy; and under the pretext of the maintenance of peace, Great Powers have formed alliances, increased and still are increasing their armaments without success: Financial burdens, resulting from it increase day by day, and injure public prosperity. . . . If this situation continues, it will . . . lead to catastrophe.³⁰

²⁴ Mozi was the third great original Chinese thinker besides Laozi (Lao Tse) and Confucius (Kong Qui).

²⁵ Needless to say, in Europe numerous projects for peace had existed from Pierre Dubois to Immanuel Kant.

²⁶ On the Hague peace conferences, see Brown Scott (1909), Dülffer (1981) and Uhlig (1988).

²⁷ Bloch’s (1899) work, ‘a veritable *Das Kapital* of pacifism’, was published in six volumes in spring 1898 in Russian and Polish, with French, German and an abridged version in English following. In Japan, in 1902, Abe Isoo (1865–1949), the ‘father of Japanese socialism’, dedicated several issues of the Unitarian journal *Rikugō Zasshi* to Bloch’s work (Powles, 1978: 156), and in 1904 a full translation was published in Japanese under the title *Kinji no Sensō to Keizai* (Modern War and Economy) by ‘a publisher called Min Yu Sha (Friends of Democratization)’ (Tsuboi, 1999: 159). For the most thorough investigation into Bloch’s contribution to bring about the Hague peace conferences, see van den Dungen (1983).

²⁸ Baroness Bertha von Suttner’s book *Die Waffen Nieder* [Lay Down Your Arms] was ‘known to have affected the Tsar deeply’ (Beales, 1931: 231).

²⁹ The IPU was a worldwide association of parliamentarians, founded in 1889. Japan became a fully fledged IPU member in 1910, after having been an active participant for some time (Uhlig, 1988).

³⁰ Gaikō shiryōkan (Diplomatic Record Office), MT 2.4.1.2., vol. I. The first circular was issued on 12/24 August 1898.

Muraviev, Motono wrote, 'added that he does not think that such a conference may produce immediate result, but he hopes that it may serve to prepare solutions for the future' (MT 2.4.1.2., vol. I).

When press and politicians in Europe reacted favourably at first, '[t]hroughout the world the Peace Movement seized its opportunity. . . . Petitions to Governments were opened all over Europe' (Beales, 1931: 231).

Hayashi Tadasu (1850–1913), the minister in St. Petersburg, wired on 1 September to Ôkuma, that at a meeting on the previous day the German secretary of state in the foreign ministry, Bernhard von Bülow, had 'confidentially informed' him that the 'German Government was disposed to take into favourable consideration the proposal of the emperor of Russia'. On the same day, Motono sent an almost euphoric cable: 'it appears that European press welcomes Russian proposal with almost unanimity, and considers it as one of the most important acts of international policy of this century.'³¹

Also, on 1 September, Motono communicated to Ôkuma the following story about the Tsar's initiative:

there are two versions about the probable cause of the Russian proposal: (1) The emperor of Russia, deeply animated by [a] sincere desire for peace, spontaneously has ordered [the] Russian Minister for Foreign Affairs to make the said proposal, and to give publicity to the document by seizing [the] opportunity of the unveiling of [the statue of] Alexander II at Moscow. It is said that the Empress of Russia has exercised great influence on the Emperor of Russia on the subject. (2) [The] Russian Government being much sensible to the violent attack made by English

newspapers against her ambition, and being anxious to keep friendly relations with England, have decided to manifest to the world their peaceful intention by proposing the said conference in view of appeasing [the] bad feeling on the part of the English people.³²

On 13 September, Ôkuma sent Hayashi the reply of the Japanese government, 'to accept the proposition of the Imperial Government of Russia and to participate'.³³

A second Manifesto, circulated by the Russian government on 30 December 1898/11 January 1899, toned down the original intent, 'compl[ying] more neatly with the wishes of the foreign governments' (van den Dungen, 1983: 16–17). On 12 January of the following year, Hayashi communicated to foreign minister Aoki Shûzô (1844–1914)³⁴ in Tokyo details of the Russian disarmament proposals, concerning the 'freezing' of armaments (point 1), and including the prohibition of new weapons more dangerous than those already existing (point 2) and production of submarines (point 4).³⁵

On 18 January, Hayashi sent a cable from Berlin to Aoki: 'I saw [the] German Minister for Foreign Affairs to-day, who told me that while the Emperor of Germany and his Government cordially sympathize [with the] humanitarian undertaking of the Emperor of Russia, he thought there would be great

³² And he now adds: 'Foreign representatives do not attach great importance to the results of the conference.' MT 2.4.1.2., vol. I. The communication quoted here, like the others between Japan and foreign countries, is a cable telegram. Cable telegrams at the time could be transmitted only in the Roman alphabet, and in the cases quoted were transmitted in English or sometimes French, and then translated into Japanese for the record. The brackets are mine.

³³ MT 2.4.1.2., vol. I.

³⁴ According to Nish (1977: 45), 'Aoki was probably the most Europeanised among the prominent Meiji diplomats . . . a bold, independent thinker.' On the other hand, Aoki was 'much influenced . . . by the personality of Bismarck . . . [and] had fallen under his spell' (ibid.: 67).

³⁵ MT 2.4.1.2., vol. I. Altogether there were eight points in the second Russian circular.

³¹ Motono to Ôkuma, MT 2.4.1.2., vol. I. Initially, the German press 'enthusiastically received the Tsar's Manifesto'. (*Norddeutsche Allgemeine Zeitung*, 31 August 1898); even emperor William II in a speech before the Reichstag approved of the Tsar's proposal, however, at the same time justifying German military presence in China. This outwardly favourable disposition had changed completely by 18 January 1899: MT 2.4.1.2., vol. I.

difficulty in arriving at [a] practical solution of the propositions formulated in [the] recent circular of [the] Russian Minister for Foreign Affairs.³⁶ The German government now consistently opposed the whole project.

The documents in the foreign ministry's archive in Tokyo, among entries at the beginning of the year 1899, contain a copy of Leo Tolstoy's famous 'Letter to the Swedes' of 23 January 1899 (followed by a Japanese translation), from which it may be worth quoting here, as it is known that thoughtful Japanese politicians would have been affected by his views.³⁷

Armies will disappear when public opinion brands with contempt those who, whether for advantage or from fear, sell their dignity as men and enter the ranks of those murderers dressed in fools' clothes – called the army, when men will be ashamed to wear, as they now do, implements of murder, and when the word 'military' will be, what indeed it is – a term of foul abuse. Only then will armies first diminish and then quite disappear, and a new era in the life of humanity will commence.³⁸

On 12 April, Hayashi Tadasu was appointed chief delegate to the conference.³⁹ The Japanese government was well aware of the ambivalence and widespread scepticism in

the European capitals.⁴⁰ The instructions stated unmistakably: 'Europe is the center of military and naval activity and it is chiefly to deal with the situation there that the Conference is convoked.'⁴¹ At the conference, which continued from 18 May to 29 July, 96 delegates from 26 countries worked in three committees: one on Armaments, under M. Beernaert of Belgium; one on the Laws of War, under the Russian jurist Feodor de Martens; and one on Arbitration and Conciliation, under Leon Bourgeois (a member of the French Inter-Parliamentary Group) (Brown Scott, 1909; Holls 1900; De Armend Davis, 1962; Dülffer, 1981).

The most important and far-reaching project at the conference, besides disarmament, was the establishment of the Permanent Court of Arbitration (Cour Permanente d'Arbitrage, in Japanese *jōsetsu kokusai chūsai saibanshō*), a parent of today's International Court of Justice (ICJ) at The Hague. This no doubt went to the heart of the sovereign right of nations to wage war (*jus ad bellum*). The Russian project for a 'Convention on Mediation and Arbitration' comprised two areas in which the appeal to the Court was to be obligatory, namely, all questions of a 'purely technical' nature: 'First, question of pecuniary indemnity so far as not to touch [the] vital interest nor honour of the state; Second, [the] interpretation of the Treaties, [and of] convention[s] on the following subjects: Post, telegraphs, railways, prevention of collision on high seas, navigation on international river and canals, patent, copyright, monetary and metric system, sanitary questions, cattle and plant disease, successions, extradition, mutual judiciary assistance, demarcation so far as purely technical.'⁴² On 7 June, Sugimura Koichi (1856–1938), the

³⁶ According to van den Dungen (1983: 28), 'the Germans had been opposed to the Conference from the start, seeing in it only a Franco-Russian maneuver to deceive them'.

³⁷ However, Tolstoy, the 'Christian anarchist' and 'militant pacifist', was not much in favour of the Hague Peace Conference, as expressed in the same letter: 'the conference itself can be nothing but one of those hypocritical arrangements, which, far from tending towards peace and the diminution of the evils of militarism, on the contrary, serve to hide those evils from men, by proposing evidently fallacious means of escape, and thus turning the eyes from the one safe path'. The 'easiest and surest way to universal disarmament', according to Tolstoy, was 'by individuals refusing to take part in military service . . . *this is the only way* to escape from the ever-increasing miseries of wardom (militarism)' (emphasis added); see van den Dungen (1983: 21–22). The carefully hand-copied letter erroneously bears the date 1890.

³⁸ MT 2.4.1.2., vol. II, hand-written, six pages. The letter is also found in Tolstoy (1905: 439–446), in English.

³⁹ The delegates besides Hayashi were Motono Ichirō, Ueyehara M. and Sakamoto M. Later, Nagae Ariga, a jurist and professor of international law at the Army-and-Navy School in Tokyo, joined as adviser.

⁴⁰ For the position of the United States, see DeArmond Davis (1962).

⁴¹ MT 2.4.1.2., vol. II.

⁴² Sugimura to Aoki, Special Telegram No. 35, MT 2.4.1.2., vol. II.

newly appointed minister in St Petersburg, sent a cable-telegram to Tokyo giving details of the Russian proposal. The US proposition went even further: every government was to nominate two prominent jurists to be entered on a list that would be available to disputing parties in case of need; a permanent bureau was to be established for administrative purposes. The Court's permanent seat was to be at The Hague.⁴³ Until 1907, the Court consisted only of a list, from which states could choose judges,⁴⁴ to take recourse to 'arbitration . . . as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle'.⁴⁵ Also on 7 June, Aoki informed the secretary of the Japanese delegation at The Hague, that the Japanese government had 'no objection to the project of [a] convention for the mediation and arbitration as mentioned . . . *provided however that all the continental powers do likewise*'.⁴⁶ In fact, Japan had first concluded an arbitration treaty with Peru in 1873 (13/25 June), and was familiar with the idea.

Like in most European and Western countries, there was also public support in Japan for the conferences, as is shown by a Japanese princess who forwarded 6,471 signatures 'to the promoters of the Association in Germany', on behalf of the Japanese 'Ladies International Peace Association', to back the peace conference.⁴⁷

The US delegate, Frederick Holls, relates how the Japanese set about sending the text of the Arbitration Treaty to Tokyo, which 'involved cabling the entire text . . . the cost of the cablegram . . . being 35,000 francs', an incident which may 'illustrate the completeness with which the great and enterprising

Empire of the Far East entered into judicial relations with the rest of the civilized world' (Holls, 1900: 325).

However, the desired unanimity to make international arbitration compulsory in certain areas of potential conflict did not come about, as the German Reich declined to make any binding commitments, followed by Austria-Hungary among the big powers. 'The essence of the whole conference and the prime objective of the peace movement itself were thereby destroyed' (van den Dungen, referring to Ivan Bloch's view, 1983: 33; see Brown Scott, 1909 and Brown Scott, 1917: 314ff. for details). Germany prided itself nonetheless in having contributed substantially to the laws of war (*jus in bello*).⁴⁸

By 31 December, all the powers had signed the final document. On 6 October 1900, Japan deposited its signatures on the Conventions and Declarations at The Hague, and on 10 February 1901 the ratification documents were exchanged. For the list of 'peace judges', Motono Ichirô and foreign office adviser Henry Willard Denison (1846–1914)⁴⁹ were nominated. Though it was 'surely extraordinary' (Saito, 1935: 198) and a special honour for Denison, the fact that a foreigner was employed in the Japanese service was accepted practice at the time, other Asian countries followed, too.

In spite of considerable disappointment about the results of the conference among the international peace movement, hopes were high that the concert of nations had begun to experience 'a profound change with regards to its legal structure. A new age of a "world federal union" (*Weltstaatenbund*) had

⁴⁸ Only to be the first to violate them in WWI. Evidently, the Conference's significance did 'not lie in the codification of the [ius in bello], . . . but in the institution of the Permanent Court of Arbitration' (Schücking, 1918: 70).

⁴⁹ Henry Willard Denison came to Japan in 1869 to serve with the US consulate in Kanagawa. Having started his own law practice in 1878, he then served from 1880 until his death as legal adviser (*hōritsu kōmon*) to the foreign ministry in Tokyo. MT 2.4.1.3., vol. I (Saito, 1935: 179–189).

⁴³ MT 2.4.1.2., vol. II.

⁴⁴ See Wehberg (1911: 21).

⁴⁵ Article 20 of the 'International Convention for the Pacific Settlement of International Disputes' of 29 July 1899.

⁴⁶ MT 2.4.1.2., vol. II (emphasis added).

⁴⁷ *Kobe Weekly Chronicle* of 28 June 1899: 521.

dawned' (Schücking, 1918: 69). The participating nations agreed to hold a second conference to seek a solution to the unresolved problems which had remained.

Between the Conferences

At the beginning of the century, in Japan, a Christian-socialist movement influenced by pacifist ideals flourished, as evidenced by thinkers like Uchimura Kanzō (1861–1930), whose articles were published in the *Yorozu Chōhō*, a newspaper having around 1903 a circulation of 150,000 copies, and of which Uchimura was editor (see Howes, 1978). At that time, the impending war with Russia was casting its shadow, a conflict that might have been prevented, had the results of the First Peace Conference been more tangible. Advocates of war against Russia and pacifists clashed repeatedly and publicly over how best to defend Japan's interests.

Meanwhile, the project of obligatory arbitration, which had been desired by the large majority of nations at the conference in 1899, was pursued bilaterally and materialized in numerous treaties (2 in 1903, 27 in 1904, 48 in 1905, 49 in 1906; see Uhlig, 1988: 837). In France, prominent politicians like Pierre Marie Waldeck-Rousseau and Jean Jaurès together with Baron d'Estournelles de Constant formed a 'groupe d'arbitrage' (Dülffer, 1981: 261), which successfully lobbied for the idea of a judicial treatment of international conflicts, in place of the traditional instruments of war. Also, in 1902 Baron d'Estournelles de Constant took steps toward 'the summoning of the second Hague Conference', having in the same year 'prevailed on President Roosevelt to submit to the Court a minor pecuniary dispute between the United States and Mexico' (Beales, 1931: 262–3; Dülffer, 1981: 216–7; Wild, 1973: 99f.), which was followed by other countries employing the Court's services. Perhaps 'the American decision

actually saved the Court' (Wild, 1973: 101). Nevertheless, attempts to avert the Russo-Japanese War, which eventually started in February 1904, failed.⁵⁰

Further steps were taken when a resolution of the Inter-Parliamentary Union (IPU), which held its conference at St Louis in 1904, was presented to President Roosevelt. On 24 September 1904, at a reception of IPU representatives in the White House, the President declared that he wanted to 'invite other nations . . . to reassemble with a view to pushing toward completion the work already begun at The Hague by considering the questions which the first conference had left unsettled'.⁵¹ In his welcome speech to the IPU delegates, US Secretary of State John Hay (1838–1905)⁵² positively mentioned Leo Tolstoy and his religiously founded pacifism.⁵³ On 21 October 1904, the US president sent a nine-page circular letter to the foreign representatives of the countries who had participated in the first conference, proposing a second peace conference, stating inter alia:

enlightened public opinion and modern civilization alike demand that differences between nations should be adjudicated and settled in the same manner as disputes between individuals are adjudicated, namely,

⁵⁰ A letter to the Japanese foreign minister in Tokyo, from professors Ludwig Stein and Henri Morel of the International Peace Bureau (IPB) in Berne, on 15 December 1903, called on the powers to offer their good offices to mediate in the conflict (MT 2.4.1.4). Similarly, later, an Inter-Parliamentary Union resolution in September 1904 at St Louis asked the signatory powers to the First Hague Conference to intervene in the war (Uhlig, 1988: 333). The IPB in September 1905 requested the powers, including Japan and China, to create an 'international federation', as the only means to ensure international development and prevent war.

⁵¹ MT 2.4.1.7., vol. I; see account in Uhlig (1988: 326ff). In 1905, the IPU recommended that 'the Hague Conference should become the world tribunal and . . . the Inter-Parliamentary Union . . . itself be converted into a universal legislature' (Hinsley, 1963: 143).

⁵² Allegedly, Hay supported the 'Open Door' in China, and in 1900 prevented the dissolution of the Chinese Empire. See LaFeber (1997: 69) for details.

⁵³ 'Hay Speaks for Peace. Agrees with Count Tolstoy' 4 October 1906, *Washington Post* (?), MT 2.4.1.7., vol. I.

by arbitration of courts in accordance with recognized principles of law.⁵⁴

This statement was based on the IPU resolution passed earlier at St Louis.

The Russo–Japanese War, Prelude to the Second Peace Conference

It may be fair to say that the war was mainly the result of Russian imperialist schemings. The *Frankfurter Zeitung* (evening edition), on 21 December 1903, summarized the situation: ‘One cannot say that the Japanese so far have been hot-headed, for they have given the Russians time to make true their promise of evacuating Manchuria. Only after the deadlines for evacuation had passed, without the Russians even attempting to comply with their promise, did the Japanese come out with their demand for compensations.’

At the beginning of December 1904, while the war with Russia was still raging, ambassador Hioki Eki (1861–1926) sent a cable from Washington to foreign minister Komura Jutarō (1855–1911) about a conversation he had had on 1 December with Hay, who had given the ‘impression that he is anxious to obtain [an] early reply of [the] Japanese Government’⁵⁵ to the president’s invitation. On 8 December, the Japanese Imperial Government accepted the invitation.⁵⁶ Russia, however, whose Baltic fleet had set sail for the Far East in October hoping for victory,⁵⁷ refused to accept an armistice. Another letter circulated by the State Department on 16 December expressed the US government’s regret over the Russian turn-down, ‘tending as it does to cause some post-

ponement of the proposed Second Conference’.⁵⁸ Until the end of February 1905, however, some 16 sovereign powers, including Germany, Great Britain, China and Siam, had accepted the invitation.

After the dramatic defeat of the Russian fleet in the battle of Tsushima, and the signing of the peace treaty in Portsmouth on 5 September 1905, the Russians through their ambassador in Washington, Roman Romanovich Rosen (1849–1922), on 13 September presented the US president with a memorandum for the convention of the second conference. On 19 September, Inoue Katsunosuke (1860–1929), Japan’s minister in Berlin, informed prime minister Katsura Tarō (1847–1913)⁵⁹ in Tokyo about the Russian initiative.⁶⁰ Nearly six months later, on 3 April 1906, the Russian ‘Programme’ was presented to the new US Secretary of State, Elihu Root (1845–1937). On 16 April/9 May, the Russian ambassador in Tokyo, Boris Bakhmeteff, in a letter to the Japanese government stressed the conference should enhance the ‘*création la plus importante: la cour internationale d’arbitrage*’, an institution, Bakhmeteff pointed out, that had already proved its worth.⁶¹ Japan now proposed that the conference be convened not before April or May 1907.⁶²

Subsequent preliminary negotiations once more dealt with disarmament, one of the

⁵⁴ MT 2.4.1.7., vol. I.

⁵⁵ MT 2.4.1.7., vol. I.

⁵⁶ *Ibid.*

⁵⁷ And receiving encouragement – and coal – from Germany on the way! Dülffer (1981: 267–268) writes that the Germans ‘already in 1903 [strove] consistently to encourage the two opponents to [adopt] a more energetic advance against each other, . . . in order to drive (them) into war’.

⁵⁸ *Circular*, Department of State, Washington, sent by Hioki to Komura, 9 December 1904, MT 2.4.1.7., vol. I.

⁵⁹ Katsura was war minister (1898–1900) and prime minister (1901–06, 1908–11 and 1912–13). A ‘hardliner’, in 1902 he concluded the Anglo-Japanese Alliance, which Germany had also been invited to join, and was impressed by German ‘Kultur’, having co-founded the ‘Society for German Science’ (*Doitsu gaku kyōkai*) in 1882, together with Katō Hiroyuki, first president of Tokyo University and ‘leading Japanese advocate of Social Darwinism’ (Wippich, 1993: 60–61).

⁶⁰ MT 2.4.1.7., vol. I.

⁶¹ *Ibid.* (emphasis added). Cases before the arbitration court were the dispute between California and Mexico (1902), a conflict between Venezuela and Germany/Great Britain/Italy (1903/4), and between Japan and foreigners in Yokohama (1905), concerning the unlimited transfer of property to foreign residents.

⁶² ‘Correspondence Concerning the Second Hague Peace Conference’, printed documentation, MT 2.4.1.7., vol. II.

primary US objectives. The US government, 'in addition ([to] questions contained in the Russian proposal) propose[d] to consider the question of reduction or limitation of armaments'⁶³ – although the Russian draft had not included this item. The British government also wished 'the question of reduction of armaments . . . included'.⁶⁴ Japanese ambassador Aoki Shūzō in Washington assured the Americans once more that the Japanese government would not 'have any objection' to include the item on the agenda, 'if an understanding [could be] reached between [the] United States and Great Britain', which was supposedly forthcoming.⁶⁵ Apparently, however, the 'attempt of various Governments, particularly the English and Russian Governments, to have the question of the limitation of armaments discussed at the Second Hague Conference failed as a result of the opposition of Germany' (Wehberg, 1921: 31).

In the meantime, according to Alexander von Siebold's report from Switzerland to foreign minister Hayashi, 'the legal advisor of the Russian Foreign Office Monsieur von Martens has been visiting most of the Capitals of Europe and although a profound secret is kept of his object . . . [it] is to secure a majority for the Russian projects[,] the program of which was communicated to the Powers'.⁶⁶ Von Siebold again offered his services to the Japanese, but it had already been decided that Henry W. Denison⁶⁷ would

accompany the appointed delegates under Tsu(d)zuki Keiroku and Satō Aimarō.⁶⁸

On 10 April 1907, the Dutch ambassador in Tokyo informed the Japanese government that the conference would be opened on 15 June.⁶⁹ Also in April, another disarmament proposal, this time from Italian foreign minister Tommaso Tittoni (1855–1931), attracted Japanese attention,⁷⁰ and on 24 April Hayashi told Komura, in London, the Japanese government would be willing to accede to the proposal.⁷¹ Some time later the Italian government retracted, 'owing to objection of Austria and Germany'.⁷²

On 1 May 1907, Inoue Katsunosuke reported to foreign minister Hayashi the contents of a debate in the German Reichstag of 30 April. German chancellor von Bülow had replied to a question of whether it was 'expedient' to include the problem of the limitation of armaments: 'At the First Conference the only decision arrived at was that Powers should carefully examine the question. [The] German Government had done so but had found no means which in view of the great difficulties in the geographical, economical, military and political situation of the different States would be justifiable and suitable to remove these differences and to serve as a basis for an

⁶³ Aoki to Hayashi, 17.11.06, MT 2.4.1.7., vol. II.

⁶⁴ Komura in London to Hayashi, 26.10.06, MT 2.4.1.7., vol. I.

⁶⁵ Aoki to Hayashi, 17.11.06, MT 2.4.1.7., vol. II.

⁶⁶ Letter of 19.02.07, MT 2.4.1.7., vol. II.

⁶⁷ Obviously, Denison as an 'actor in the Japanese camp' had to follow Japanese orders – mostly in close cooperation with the chief of intelligence in the foreign ministry's telegraphic department, Shidehara Kijūrō, who was the main link between the delegation at The Hague and the Japanese government. Naturally, Denison was also expected to advise the Japanese government and the foreign ministry on what course of action should be taken, and in this capacity again, Shidehara as his immediate superior would have been the addressee for any discussion on the relevant issues.

⁶⁸ The other delegates were major Akiyama Yoshifuru, counter admiral Shimamura Hayao, the attachés Kurachi Tetsukichi (foreign ministry adviser), Yoshimura Yasozo (advisor, war ministry) and Yamakawa Tadao (advisor, navy ministry); captain Moriyama Keizaburō, commandant Takatsuka Kyō, Tatsuki Shitchita and Nagaoka Harukazu. MT 2.4.1.7., vol. III.

⁶⁹ MT 2.4.1.7., vol. III.

⁷⁰ There is a letter by Tittoni to Baron Romano Avezzana, the Italian chargé d'affaires in Tokyo, containing concrete disarmament proposals. On 17 April Hayashi answers: 'The Imperial Government congratulate the Italian minister for foreign affairs upon his eminently conciliatory propositions respecting limitations of armament. Although the Imperial Government fear that there is no present prospect of a general accord among the Powers on that important subject, they would have no objection to Monsieur Tittoni's propositions in principle as an eventual mode of procedure.' MT 2.4.1.7., vol. III.

⁷¹ MT 2.4.1.7., vol. III.

⁷² Komura to Hayashi, 28.04.07, MT 2.4.1.7., vol. III.

agreement.' He had 'no hopes that anything would come out of discussions'.⁷³

On 30 May, the Japanese ambassador in Berlin sent a cablegram about a meeting between Tsudzuki and von Bülow (29 May). Von Bülow had 'expressed a hope that Tsudzuki would have cordial relations with the German delegates at the Peace Conference and work together hand in hand for the cause of peace. [The] Prince, on his part, would instruct the Principal German Delegate to be always in close touch with Tsudzuki.'⁷⁴ Three days later Inoue reported: 'The Emperor of Germany received me and Tsudzuki together with other members of [our] mission in audience June 1st. In the course of conversation [the] Emperor stated that Japan and Germany being two great military Powers, it was desirable that they should be on the footing of good understanding with each other in the forthcoming Peace Conference, to which the Emperor would command [the] German delegate to co-operate with Tsudzuki and to be in intimate relationship with him.'⁷⁵

The Second Peace Conference

The conference convened from 15 June to 18 October under the Presidency of the

⁷³ MT 2.4.1.7., vol. III. Already in 1899, Emperor William II had given his opinion: 'In order not to make the Tsar look foolish before the Europeans, I agree to this nonsense! But will in actual practice afterwards only rely and call on God and my sharp sword! I don't give a damn for the agreements!' (Dülffer, 1981: 93).

⁷⁴ MT 2.4.1.7., vol. III.

⁷⁵ Inoue to Hayashi, 02.06.07. MT 2.4.1.7., vol. III. There is also the following report of a half-hour conversation, which Tsudzuki had with the German Emperor: 'the Emperor had a long talk with me lasting about thirty minutes. The general trend of which made me feel that he was trying to impress upon me [the] possibility and the desirability as well of the close friendship and the intimate understanding between the two nations which based their greatness on the strength of their self-defence as of the strong sympathy between the two heroic peoples animated so thoroughly by military spirit and so willing to fulfil their duties towards the respective bodies politic. . . . it was something more than an ordinary after-dinner conversation.'

Russian ambassador in Paris, M. de Nelidov. This time some 256 delegates representing 44 'civilized nations' participated, including some from Latin America. By far the most important question on the agenda was the '*general obligatorium*' (Zorn, 1920: 67), i.e. binding agreements to accept legal procedure to settle international disputes.

An event at the end of June 'caused much sensation to Japanese authorities', when three Koreans suddenly appeared at The Hague, having been sent by the Korean emperor Kojong, with credentials, and carrying his seal.⁷⁶ These delegates, Yi Sangsol (Yi-Sang-Sul⁷⁷),⁷⁸ Yi Chun (Yj-Tjouné)⁷⁹ and Yi Ui-jong (Yi-Oui-Tjyong),⁸⁰ on 27 June presented a printed note to the delegations, requesting an intervention on behalf of the empire of Korea, and accusing Japan: 'Can we, as an independent nation, allow Japanese deception to destroy the friendly diplomatic relations that existed until now between us and the other nations, becoming a constant threat to the peace in the Far East?'⁸¹ On 5 July, however, the *New York Herald* reported Kojong had 'repudiate[d] the mission and denounce[d] the credentials as forgery'⁸² – according to some sources under threat from the resident Japanese.

On 7 July, foreign minister Hayashi

⁷⁶ According to the *New York Herald* (Paris edition), 5 July 1907. Telegram from Tsudzuki to Hayashi, 05.07.07. MT 2.4.1.9., vol. I.

⁷⁷ Spellings in brackets are those in the printed document

⁷⁸ Former vice prime minister of Korea.

⁷⁹ Former judge of the Korean High Court, who apparently committed suicide at The Hague. In 1995, a Yi Jun Peace Museum was opened in The Hague.

⁸⁰ Ex-secretary of the Korean legation in St Petersburg.

⁸¹ Translated from the original French.

⁸² Paris edition. In the preliminary correspondence the question of participation of Korea, Panama and Abyssinia had been discussed. On 24 October 1906, Japanese ambassador Kusakabe in Rome sent a cable to Hayashi stating that Abyssinia had accepted the Russian invitation, Panama declined, and Korea had not yet answered. However, already on 26 September/9 October, ambassador Bakhmeteff had told Hayashi that participation of 'Korea, Panama and Abyssinia [was] out of the question'. It is possible or likely that the decision to exclude Korea was swayed by Japanese objections. MT 2.4.1.7., vol. I.

communicated to governor Ito Hirobumi (1841–1909)⁸³ in Seoul that technically the Korean campaign at The Hague could present a *casus belli* (*sensen no kenri*).⁸⁴ At the conference, Tsudzuki stated in a telegram to Hayashi on 7 July, the ‘Complaint and philippics of [the] Coreans are not making much impression . . . as there are Georgians, Poles, and others who are trying the same sort of experiments.’ On the same day, Tsudzuki asked whether he should, ‘under authority of Article I of the Agreement of November 17th, 1905, send for Coreans now here and demand to see authority under which they profess to act’. At a semi-public meeting presided over by British peace activist William T. Stead, where the Koreans were able to present their case, there was a motion for a ‘resolution expressing sympathy with [the] Coreans and reproaching [the] Japanese’. When others, including Stead himself, ‘opposed the reproach against Japan’, a resolution more sympathetic to Japan was adopted expressing ‘the wish that in some future time [an] international tribunal may be established for examining and adjudicating such cases [for] finding out [the] truths and administering justice all around’.⁸⁵ The press was generally favourable to Japan. An article in the *New York Times* of 20 July perhaps reflected the general sentiment at the time:

⁸³ Ito Hirobumi was a leading statesman whose moderate views sometimes brought him in conflict with the military clique. Storry (1960: 144) characterizes Ito as follows: ‘Ito believed . . . that in modernising [Korea] Japan would be able to win the goodwill of the Koreans, provided that firmness was tempered with tact: But tact was a virtue ill regarded by most of the army leaders’. According to LaFeber (1997: 87), Ito was concerned that if Japan would ‘ignore the proper rights and interests of other people and behaves outrageously . . . national ruin is certain.’ And in May 1906 he told the cabinet in a prepared speech that Japan should show restraint in Manchuria and on the continent, and pursue its interests in a spirit of selfless detachment, keeping in mind that ‘Japan has yet to win over their [the Koreans] hearts and souls’, because otherwise they (the Koreans) would be compelled to ‘reach out to Russia’. Ito was assassinated by a Korean patriot in 1909, after resigning his post in Seoul, while on tour in Manchuria.

⁸⁴ MT 2.4.1.9., vol. I.

⁸⁵ Tsudzuki to Hayashi, 09.07.07. MT 2.4.1.9., vol. I.

Saved by Japan from Russian conquest, Corea three years ago agreed [to be] guided by Japanese advice in fiscal and other administrative matters and to conduct its foreign affairs through [the] Japanese Government. In return Japan was to guarantee her territorial integrity and safety of her dynasty. This arrangement was recognized by all the world. [The] Gravity of [the] offence of the Emperor of Corea [by] sending [a] delegation to La Haye unknown to Japan may be estimated if we imagine Emir Bokhara sending [some]one to ask [for an] intervention between him and the Czar or [if the] Annamese King [were to move] against France or some Indian Maharaja [was] asking La Haye to expel British rule from Hindustan. [The] Title of Japan to deal with Corea, as she has, is at least as good as that of Russia, France, England or any other power. . . . Peace and progress of the world are of more importance than nominal independence of [a] country as a bone of international contention.⁸⁶

On 19 July, as a consequence of the affair, Kojong, who had declared himself emperor in 1897, abdicated in favour of the crown prince.⁸⁷

⁸⁶ As communicated by the Japanese ambassador Aoki in Washington to Hayashi in Tokyo on 21 July 1907.

⁸⁷ On the evidence, it is extremely difficult to do equal justice to both Japan and Korea. On the one hand Japan was pushed to copy the West, becoming an aggressive player in the imperialist game, while Korea was backward, corrupt and the government oppressive, and incapable of managing its affairs. The ‘various Korean reform movements [who] sought to get off the mark . . . influenced by either Japanese or American progressives’ were being nipped in the bud, and, although ‘Korean society was showing unaccustomed vigor . . . the state was . . . incapable of mobilizing this latent energy’ (Cumings, 1997: 111, 125). It is certainly questionable whether Korea would have been better off under Russian rule. In 1899, the Korean government expelled the capable and progressive popular reformer Dr So Chaep’il (1866–1951, a naturalized US citizen Philip Jaisohn, who had returned to Korea in 1896), and obliterated the indigenous Independence Movement. Like the Chinese reformer Kang Yuwei, So Chaep’il had to flee the country with his followers, and scores of Koreans found refuge in Japan. The remains of So Chaep-il, who died in the United States, have only quite recently been transferred to Seoul. He is a national hero today. Prior to that, Kojong had taken ‘refuge’ in the Russian legation from 1896–98, and then declared himself emperor in a vainglorious attempt to match the Japanese (or the Russians?). Subsequently, as the Americans had ‘switched sides to Russia’ and ‘Russian influence grew’ in Korea, a US company ‘obtained Korea’s richest gold mine,

Nonetheless, the chief delegate and speaker of the Japanese delegation at the conference, Tsudzuki Keiroku, represented his country 'with admirable tact and dignity, using as occasion required, French or English with equal facility and telling effect' (Brown Scott, 1909: 160). On 27 June, Tsudzuki wired to Tokyo: 'Russian delegation has proposed, under a skilfully veiled form, a quasi obligatory *enquete internationale*. German[y] will of course oppose it.'⁸⁸ Understandably, the Japanese response to Germany's lack of cooperation in the project at The Hague was one of caution and restraint; a Japanese positive vote on the issue of obligatory arbitration required unanimity among the powers. Japan was reluctant to take sides in a dispute that was in its perception (mainly) a European problem.

The Russians evidently continued to maintain an active interest in the juridic progress of the 'Work of The Hague', probably due to the eminent jurist Feodor de Martens, who had been among the chief Russian delegates at the first conference, and favoured the arbitration project.

It was not yet decided what the position of Great Britain with regards to obligatory arbitration would be, but it also voted for the 'Obligatorium' (Zorn, 1920: 71-72). The Japanese delegation had apparently been

instructed, in case unanimity could not be obtained, to vote against obligatory arbitration. For one thing, Japan had received what it considered unfair treatment from the Hague Arbitration Court in the 'land lease case' with foreign residents in Yokohama in 1905. Therefore, it was 'in order that [the] country might have further time for reflection' (Brown Scott, 1909: 160) that Tsudzuki abstained in the final vote⁸⁹ at the end of the conference's fifth session (Commission I) on 5 October 1907. The abstention had apparently been brought about by the persuasiveness of the French delegate Baron d'Estournelles de Constant (Wild, 1973: 309). Under the circumstances, perhaps, there was hardly any choice for Japan. The chance to act differently came briefly when, after the First World War, Shidehara Kijûrô (1872-1951) became foreign minister.⁹⁰

Eventually, the great majority of states voted in favour of the principle of obligatory arbitration; it was turned down only by Germany⁹¹ and Austria-Hungary, who were joined by Belgium, Bulgaria, Greece, Montenegro, Rumania, Switzerland and Turkey (Zorn, 1920: 72). Nevertheless, the peace conference unanimously recognized obligatory arbitration as a guiding principle for the future (Brown Scott, 1916: 130).⁹²

On 20 September, Tsudzuki cabled to

the Un-san' from which between 1897 and 1939 'the American owners earned \$15 million of profit' (LaFeber, 1997: 51). At the same time, by sacking some of its most experienced foreign advisers, and replacing the respected and successful financial adviser McLeavy Brown, a Sino-logue, by a Russian with no experience and no knowledge of the language, the Korean government triggered a financial crisis. With the advance of the Russians, and continued mismanagement, in November 1905 Ito Hirobumi was sent to negotiate the transfer of certain responsibilities to the Japanese government. The Korean government signed an agreement on 17 November 1905, relating to fiscal, administrative and foreign affairs. According to the Korean report circulated at The Hague, it was signed under duress. In 1907, at The Hague 'the convention ruled that Kojong was no longer sovereign over Korea's foreign relations. . . . the Japanese forced Kojong to abdicate, in favor of his mentally retarded son, Sunjong' (Cumings, 1997: 145).

⁸⁸ MT 2.4.1.7., vol. III.

⁸⁹ I.e. the 'Convention relating to obligatory arbitration (Annex 72)'. See *Actes et Documents* (1909: 82), for Tsudzuki's speech. Italy and Luxembourg also abstained.

⁹⁰ Closely linked with the 'Work of the Hague' (as the German jurist Walther Schücking called it), Shidehara was on the list of judges for the Permanent Court of Arbitration from 1918-1924, succeeding Motono and Denison. After being minister at The Hague (1914/15), he became foreign minister in 1924, and prime minister briefly after the Second World War. See Schlichtmann (1997).

⁹¹ Consequently, after the conference, the German government also declined 'to negotiate with the United States a treaty of General Arbitration . . . and in . . . 1914, to conclude with the United States one of a series of treaties for the advancement of peace by agreeing to submit disputes of all kinds to the investigation and report of a Commission of Inquiry' (Brown Scott, 1917: 314).

⁹² Tsudzuki to Hayashi, 12 October 1907, the first point: 'The Commission is unanimous . . . in recognizing the principle of obligatory arbitration'. MT 2.4.1.7., vol. IV.

Hayashi that a third peace conference was planned for May 1914,⁹³ with Japan as one of nine members in the advisory committee preparing for the convention. Experts preparing for the third conference now began working to replace the principle of unanimity adopted at the second conference by majority voting procedures, to outvote Germany and the countries that had followed its lead, on the question of the binding nature of the court (Schücking, 1912: 149–271).

After the conference, Tsudzuki travelled through Germany to England, where he met British foreign secretary Sir Edward Grey.⁹⁴ In June the following year, the foreign ministry made public that 'the Imperial Government are prepared to give their consent to twelve of the thirteen Conventions. They do not, for the present, intend to sign the Convention relative to the Establishment of an International Prize Court and they have decided to withhold their agreement to the Declaration prohibiting the discharge of Projectiles and Explosives from Balloons. As to this latter Act it may be mentioned that complete unanimity among the great Powers is lacking.'⁹⁵

Conclusion

The great significance of the Hague conferences is that the participation of Japan and other extra-European powers created a new 'concert of nations'. This was occasion not only for far-reaching hopes, but also irrational fears, including the fear of losing future prospects as a colonial power, as in the case of Germany, and to some extent also Japan. The characteristic features of this

development were – in positive terms – a new internationalism (universal participation of states based on the principle of equality) and pacifism (disarmament and the pacific settlement of international disputes through due process of law instead of war). Japan was, in principle, in favour of such overall regulation. The discord and rivalry among the powers prevented it for the time being – and also subsequently to a great extent – from clearly articulating its preferences. The formula negotiated at the Conference, however – disarmament and 'arbitration' – had, as the history of its successor organizations, the League of Nations and the United Nations show, not become invalid, and remains a viable option.

The special policy of Japan towards the conferences consisted in its basic disposition and active policy to cooperate with the 'West', in spite of the fact that there had been much criticism of Western attitudes, including Western disregard for international law, and violation of Asian interests. Yet, Japanese intellectuals and politicians recognized and sometimes even had a glowing admiration for Western intellectual and scientific accomplishments. A chance was missed to bind Japan into a mandatory international order, and become a pillar of peace in the region.⁹⁶ This shows that the realists' contention that an international legal order to ensure peace and justice was not feasible because of the non-Western countries' lack of a comparable (and compatible) legal tradition and willingness to submit to such order, is misguided.

As to Germany, it succeeded in striking a deadly blow at the project of obligatory arbitration favoured by the great majority of

⁹³ 'The conference recommends to the powers the congregation of a third Peace Conference'. MT 2.4.1.7., vol. IV.

⁹⁴ Tsudzuki from Paris to Hayashi, 14 November 1907: 'Sir Edward Grey promised me that he will keep in close touch with our Embassy'. MT 2.4.1.7., vol. VI.

⁹⁵ Note of the foreign ministry of 19.06.08. MT 2.4.1.7., vol. VI.

⁹⁶ Interestingly, the US diplomat William Franklin Sands describes a meeting with Ito Hirobumi around 1904, who 'encouraged' him to 'speculate upon [a] hypothetical federation of the three Oriental empires: Japan, China and Korea'. Sands 'thought it possible and that a sufficient number of the Western powers might be brought to agreement, provided . . . [Japan] could create confidence in the Chinese and Koreans' (Sands, 1987: 208).

the participants, and eventually upset the balance of power Japan could have strengthened decisively and on a global scale. Without the latter, the reduction of armaments also could not proceed.

After the First World War, Philipp Zorn, professor of international law at the university of Königsberg, who had participated in both conferences, concluded:

The . . . great task was the successful institution of the obligatorium. With impatient longing the world awaited its accomplishment. And that Germany did not recognize this world expectation, and even believed it had to repudiate it, was its prime and tragic mistake . . . (Zorn, 1920: 75) an immense political miscalculation . . . which must have provoked and [in fact] had the most serious consequences, yea, which today, in the horrible light of the universal conflagration of 1914–18 appears as a cause for the world war. (Zorn, 1920: 57)

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