

The Japan-China Joint Communiqué as a Document for the Reconciliation of Japan and China –Japanese Diplomacy towards China and the History Issue–

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Summary

In order to think about Japanese foreign policy to China in the context of global-regional dynamics, I would like to speak of the History Issue today. This matter often causes friction between Japan and other countries. The history issue is still a source of anxiety between Japan and China. From this viewpoint, I would like to refer to the 1972 Japan-China Joint Communiqué (Joint Communiqué of the Government of Japan and the Government of the People's Republic of China). My report is not an analysis, but an interpretation of the Communiqué from the present view. At first please allow me to talk about the Tokyo Trial (International Military Tribunal for the Far East), which was held more than 60 years ago.

The nature of the Tokyo Trial is very diverse and complicated; however, the Tokyo Trial, which the ordinary Japanese people accepted, was the starting point for reconciliation between Japan and the United States. Based on this point, the San Francisco Peace Treaty was signed, and Japan regained its independence and returned to the international society. Thus the San Francisco Peace Treaty legally consummated

reconciliation between Japan and the United States.

Of course, reconciliation does not settle everything. It was a manifestation of the intention to rationally “isolate” resentment or grievances by sealing the crime, and thus building a good relationship with the United States. In that sense, I regard the Tokyo Trial and the San Francisco Peace Treaty as a norm, which Japan should observe toward the international society. I recognize that the Tokyo Trial was a ceremony to promote reconciliation between Japan and the United States.

In the same sense, I regard the Japan-China Joint Communiqué that contained the expression of apology as a document of reconciliation between Japan and China. There has been no other document or ceremony that can be called the starting point of reconciliation than the Japan- China Joint Communiqué that top leaders and foreign ministers of both countries signed and declared the normalization of their relations. Thus, it can be said that the process of establishing the document from negotiating to signing should have an exemplary significance which is similar to the Tokyo Trial.

While the Tokyo Trial took two and a half years to conclude, the Japan-China Joint Communiqué was formed in a rather short period of less than three months after formation of the Tanaka administration and Tanaka’s visit to China. Therefore drawing an easy analogy between them must be avoided in terms of their forms and contents. The trial has the significance that the accused Japan should be deprived of its value, while the Joint Communiqué is significant in that China would waive the right to demand war reparations (though the waiver of the right to demand war reparations was included in the San Francisco Peace Treaty). The Tokyo Trial was conducted on many to one basis, while the

Joint Communiqué was formed bilaterally. Moreover the trial took place under the GHQ occupation, while the Joint Communiqué was conducted by exercising Japan's sovereignty. In addition, while one was an act to inflict punishment by the occupational authority, the other was a conclusion drawn by negotiations on an equal basis. Despite these differences, we cannot ignore some of their common features. Both were conducted as part of the process of postwar arrangement. They possessed characteristics that led to the Peace Treaty, and most of all, both included contents that favored Japan concerning the most crucial issues in the postwar arrangement such as the Emperor's exemption from responsibility for the war in the Tokyo Trial, and the waiver of war reparations based on the ideas that the Japanese people were not offenders but victims in the Joint Communiqué. Taking these points into consideration, both the Tokyo Trial and the Japan-China Joint Communiqué can be called ceremonies of reconciliation.

The Joint Communiqué is a document that indicates the reconciliation between Japan and China, and its signature takes on the meaning of reconciliatory ceremony by leaders of both countries. This significance is indicated by the fact that a huge picture of Zhou Enlai and Kakuei Tanaka shaking hands in 1972 is displayed in the Anti-Japanese War Memorial Museum in Beijing. When the Tokyo Trial and the San Francisco Peace Treaty were concluded, Japan was an occupied country with no power, but the Japan- China Joint Communiqué was concluded as a result of diplomatic negotiations on an equal footing. Also the records of the negotiations reveal that China had made many concessions. Hence, binding force as a norm that the communiqué holds should be respected all the more because of those reasons.

As aforesaid, the Japanese people sometimes feel pity for Class A war

criminals. This mindset persisted, although Japanese accepted the judgment of the Tokyo trial. There is also a pent-up sense of revulsion against the Tokyo Trial among the Japanese. Although the People's Republic of China established in 1949 did not attend the Tokyo Trial, it is quite reasonable for China to request to respect the decisions of the trial as a successive government of the Republic of China and a legitimate regime representing the Chinese people. Moreover China was the most seriously damaged victim in the war of aggression by Japan. The Tokyo Trial was, as already mentioned, a ceremony of reconciliation between Japan and the Allied Powers. If I may put it in extreme terms, the trial was a magnificent ceremony in which the Emperor and the rest of the Japanese were acquitted by thrusting all the responsibilities to 25 Class A war criminals and the related other people. The Allied Powers including China abandoned examining other damages caused by Japan, and acquitted many Japanese people of responsibilities for the war by accepting such logic. The Japanese virtue of not lashing the dead is admittedly respectable. Although I empathize with such a feeling as an ordinary Japanese, nonetheless if we assume even Class A war criminals were victims and innocent, no offender would exist in this historical incident. Then who should be blamed for the tremendous damages of the war? From the viewpoint of China, the fact that political leaders of a peace-loving nation, Japan, who are supposed to accept the decision of the Tokyo Trial, visit Yasukuni Shrine where Class A war criminals are enshrined is an unacceptable breach of fair and equitable principles even though the Yasukuni Shrine per se is not a problem for China at all. Thus the crux of the history issues does not lie in the Yasukuni Shrine nor Class A war criminals, but in Japan's attitude towards the Tokyo Trial and responsibility for the war.

Thus it is difficult to say that Japan has kept faith with the guideline of 1972, the Japan- China Joint Communiqué. Having considered these, Japan seems once again to have missed a chance to face history in the generous context of the Joint Communiqué. Both the Tokyo Trial and the Japan- China Joint Communiqué are ceremonies of reconciliation, at the same time their lenient characters bear a close parallel in a way that they deprive the Japanese of motives to reflect on their history.

It is certain that what be called the system of 1972 does not exist today. Above all there lie at least several big issues between Japan and China. Among these issues, perception of history has special status, because perception of history lies in the deepest level. Though it does not involve conflicts of interests very often, once a controversy happens, it can easily get entangled. This is because how to perceive history is related to peoples' sentiments such as national dignity and pride. Once principles of both countries clash, this issue may become uncontrollable and can also affect other issues. It is desirable that both sides make much of the rules and act prudently. The argument with the intention to throw one's potential dissatisfaction about Tokyo Trial to China is nothing but stupidity. Though the 1972 System does not exist, Joint Communiqué of 1972 is still to be considered extremely important as the standard for historical perception between the two countries⁵. Unexploded shells can completely be disposed of only through the efforts to get such standard established. It is in the will to inherit the attitude to deal with unexploded shells that the true value of Japan's perception of history will be examined. For the future of Japan-China relations, both sides are expected to recognize the value of the Communiqué again, that is, it is not only a diplomatic document, but also a document for reconciliation between Japan and China. We need to reevaluate and respect it.

Introduction

1. What was the Tokyo Trial really about?
2. What does the Japan- China Joint Communiqué signify?
3. Historical Perception as a Norm

Conclusion

Introduction

The history issue is an unexploded shell that lies in Japanese diplomacy. Today, over 60 years after the end of World War II, the handling of this issue has become even more critical due to the fact that the memories of our wartime experiences is beginning to fade and that the population of the postwar generation is increasing rapidly. Until now, the way to deal with this unexploded shell has never been thought about earnestly and of course its treatment has not been passed down. Since the history issue has been a source of friction between Japan and China, or between Japan and South Korea, there is a possibility that in the worst scenario it could also create friction between Japan and WWII Allied Powers, especially the United States⁽¹⁾.

Former Prime Minister Junichiro Koizumi visited the Yasukuni Shrine six times during his office. This aroused such a huge controversy that in April 2006 Henry Hyde, the Chairman of the International Relations Committee of the House, even sent a letter to the House Speaker to express his concern over the Prime Minister's visit to the Yasukuni Shrine⁽²⁾. The author also heard the serious concern of William Perry, former U.S. Secretary, over the tension in Japan- China relationship at a lecture held in Beijing in September 2006⁽³⁾. After Koizumi finished his

term, his successors did not visit the Yasukuni Shrine officially, thus keeping the Japan- China relationship stable so far. However, that does not mean that the issue will not be brought up again. In this regard, the history issue remains an undisposed unexploded shell.

To begin with, the high governmental officials' visit to the Yasukuni Shrine is a violation of the Constitution⁽⁴⁾. While the origin of the Japanese Constitution is often argued, it is true, regardless of the enshrinement of Class A war criminals, that by provision of Article 20 of the Constitution, we have bid adieu to the detestable era when State Shinto and politics were connected. However, the objective of this paper is not to consider this point in depth. First of all, it is necessary to make it clear that the so-called history issue is not the issue of Yasukuni Shrine.

China has never expressed concern or protested against traditional Japanese religious activities such as visits to shrines by ordinary Japanese people. The reason why a prime minister's visit to the Yasukuni Shrine has been regarded as part of the history issue is because that Class A (Class "Jia" in Chinese) war criminals are enshrined there. Therefore the history issue between Japan and China is not the issue of a prime minister's visit to the Yasukuni Shrine per se, but one related to the enshrinement of Class A war criminals there. In fact, Class A war criminals are not the crux of the issue. In the first place, China does not pay any attention to Class B or Class C war criminals. Therefore the issue here is not about the war criminals themselves, but what is symbolized by the act of visiting and paying respect to those war criminals, the Japanese government's stance towards the Tokyo Trial, and how Japan is facing up to its war responsibility. Thus the crux of the history issue is Japan's stance towards the Tokyo Trial as well as

its war responsibility. In this case, war responsibility basically means Japanese moral responsibility toward the war. A prime minister's visit to the Yasukuni Shrine and paying respect to Class A war criminals by themselves are just the tip of an iceberg.

In this paper I will first consider the significance of the Tokyo Trial by examining the Japanese people's perception and understanding of Tokyo Trial as well as related controversial points.

What is mentioned here is within the scope of conventional wisdom. This paper intends to explain the mixed feeling of the Japanese people towards the Tokyo Trial to the rest of the world. At the same time, it is a question I asked to myself as a Japanese. Next, I will examine how the Japan- China Joint Communiqué serves as a norm. Here what has been understood as a shared perception of Japan- China Joint Communiqué between Japan and China is to be reassessed. Often there is a gap between Japan and China in perception of the Japan- China Joint Communiqué, which seems to further complicate the issue. Finally, I will consider a certain similarity between the Tokyo Trial and the Japan- China Joint Communiqué and the significance of this similarity.

1. What was the Tokyo Trial really about?

During the six years and eight months from August 14, 1945 to April 28, 1952, the direction of the Japanese postwar democracy was decided. A series of events happened during this period: the Potsdam Proclamation (Proclamation Defining Term for Japanese Surrender) was accepted on August 14, 1945. Occupation started on August 28, 1945. Capitulations were signed on September 2, 1945. The Tokyo Trial started on May 3,

1946. The Japanese Constitution came into force on May 3, 1947. The Tokyo Trial decision was delivered on November 12, 1948. The San Francisco Treaty (Treaty for Peace with Japan) was concluded on September 8, 1951 and came into effect on April 28, 1952. If we try to find logical relations between those events, the Tokyo Trial was in accordance with Article 10 of the Potsdam Proclamation, and Japan accepted its decision according to Article 11 of the San Francisco Peace Treaty. In that regard, it can be said that the Tokyo Trial and its decisions provided the recovery of Japan's sovereignty and positioned it at the starting point of postwar democracy. In light of the fact that the Japanese Constitution is based on the precondition that the Emperor was absolved of war responsibility, the Tokyo Trial and its decision certainly had a great influence on the Japanese Constitution, which is the guardian of Japan's postwar democracy.

Reality, however, is not that simple. There is a mixed feeling in the Japanese people toward the Tokyo Trial. Regardless of their political belief, many Japanese people share this feeling. Have the Japanese people accepted the outcome of the Tokyo Trial? If so, what is the rationale behind it? Or in the case that there is no rationale, how did they compromise their complicated feelings to accept it?

There are just too many questions about the Tokyo Trial. Some argue that "crime against peace" should be regarded within the domain of ex post facto law. The fact that the object of the Tokyo Trial was retroactive to 1928 despite the fact that the Potsdam Proclamation only covered the Pacific War is also controversial. Whether conspiracy was already defined as a crime in international law back then, and whether conspiracy existed, or whether it was possible to hold an individual who was serving a state institution criminally responsible by international

law, are also in question. Other questionable points include the fact that all the judges were selected from the Allied Powers and none was selected from neutral powers, that the meaning of invasion was not defined, that war for invasion was established as a crime in international law, that the meaning of responsibility for omission was stretched, that too many pieces of hearsay evidences were adopted, that the selection of defendants were arbitrary, that punishment was decided in an unfair manner, and that all the judges never got together in their preparation of the decisions. (Besides the Tokyo Trial, retaliatory decisions of other trials, which tried Class B and Class C war criminals, left a lot of questionable points.) In this regard, the document of Judge Radhabinod Pal of India, who thoroughly criticized this trial and asserted the innocence of all defendants of war crimes, will continue to be important to the Japanese people as far as the postwar system continues⁽⁵⁾. Also as Judge Pal mentioned, while the Tokyo Trial condemned Japan's invasion of China and Southeast Asian nations, it never regarded Japan's colonial rule itself as an issue. This fact shows, in a way, that there is a limit to the trial which was dominated by the Allied Powers with British and French prosecutors presented there.

Of course the author takes the stance of not objecting the decision of the Tokyo Trial. The reason for this is, first of all, quite practical. If we do not accept it, it would lead to a denial of San Francisco System, which has been upheld until now. Without the intention to challenge the existing international system, people of official position should not carelessly make negative comments on the decisions of the Tokyo Trial. Despite this, however, this theory is not applied to academic and historical evaluation. Therefore it should be possible to clearly present some reservations. From the viewpoint of this paper, there are two

points that should be confirmed for the Tokyo Trial as presented below. Firstly, the Tokyo Trial was so-called a victor's judgment. Needless to mention its unfairness is due to the fact that all the judges were from the victor nations, that the process of the trial was in the control of the occupational forces and its priorities were given to achieve the Allied Powers' objective of occupation, especially to achieve the U.S.'s objective of occupation. In this regard, from beginning to end, the nature of the Tokyo Trial was political, and the trial was directed on account of the victors' interest. The chief judge turned down disadvantageous evidences for prosecutors and the decision turned out to be as close as what prosecutors asserted⁽⁶⁾. Furthermore, the selection of defendants was quite arbitrary. Putting the issue that Unit 731 was absolved of war crime responsibility aside, out of the seven criminals who were executed by hanging, the only civilian officer was Koki Hirota, then former Prime Minister of Japan. Here we can even sense an obvious intention to include a civilian officer, by all means, in a list of criminals who were subjected to the death sentence⁽⁷⁾. The number of defendants was adjusted according to the victor nations' interest, and it was even affected by the number of chairs in the courtroom. After all, the Tokyo Trial did not try any war crimes committed by the Allied Powers such as the indiscriminate bombing of major cities, including the atomic bombings of Hiroshima and Nagasaki and the Great Tokyo Air Raid, which was obviously regarded as a war crime⁽⁸⁾. Moreover, the Soviet Union, which joined the battle only for few days, assaulted and plundered the non-combatant Japanese in the Manchurian region and got 600,000 Japanese soldiers into forced labor under harsh conditions as prisoners of war. Neither the violation of the Japan-Soviet Neutrality Pact by the Soviet Union, nor the Yalta secret agreement (concerning the Far East),

which caused the Soviet Union to violate the pact, was ever questioned. In this regard, it cannot be denied that the Tokyo Trial went in favor of the Allied Powers, especially that of the United States. With regard to the establishment of the Manchurian state or Japan's colonial rule, even those Japanese with good sense, who have a guilty feeling towards Asian nations, including China and South and North Korea, surely believe that Japan is not the only country that engaged into such conducts. Basically many Japanese people regret Japan's invasion and colonial rule. However, while Asian nations' condemnation against Japan can be acceptable, it must be true that they have a feeling that the Western powers are not in a position to condemn Japan⁽⁹⁾. This is why it is psychologically so hard for the Japanese people to accept the decisions of the Tokyo Trial, which ended up in favor of the Allied Powers.

The second point is that the Emperor was not indicted, and thus absolved of responsibility for the war due to political reasons. To begin with, as many postwar reparation trials that happened after the Tokyo Trial have adopted, the doctrine of Kokka-Mutoseki (non-responsibility of the state) was prescribed in the Constitution of Japan in those days, and therefore the doctrine of Tenno-Mutoseki (non-responsibility of the emperor) might be applicable. However, it could have been possible to indict the Emperor, who was the General of the Imperial Army and Navy of Japan as well as the head of Japan, by international law. At least, Chief Judge Webb and Judge Bernal regarded the Emperor as a suspect. At least his moral responsibility was evident. The repercussions of the non-indictment of the Emperor were quite great. Because the Emperor, who held the greatest power, was absolved of responsibility for the war, the pursuit of war responsibility was not conducted sufficiently⁽¹⁰⁾. Opportunities for thoroughgoing pursuit of war

responsibility as well as for becoming fully aware of the sense of responsibility that comes with it were lost. Behind the reason why the Emperor was absolved of war responsibility was the intention to facilitate the occupation of Japan as smoothly as possible and to save the cost of occupation. Insufficient pursuit of war responsibility has also led to the creation of a somewhat unique postwar cultural environment where the top management does not assume political or managerial responsibility but instead account for their misconducts by merely saying “We are sorry” at press conferences.

As a result, insufficient pursuit of war responsibility produced ambiguity about who should be held accountable for the war. This is the first effect that Tokyo Trial left in the Japanese consciousness regarding war responsibility. From the beginning, the sources of accountability were not clear in the system based on the Meiji Constitution. This was clearly evident in the postwar era, and it was often used as an excuse not to pursue war responsibility. In a sense, the system itself was held accountable and the actual leaders of the system were absolved of responsibility. Successive prime ministers and the military leaders, including Hideki Tojo were regarded as victims in a series of events and their responsibility was lightened⁽¹¹⁾. It was pictured as if the system itself should have been the one to be blamed for the war. Many political and military leaders had been tossed about by the system despite having opposed the war and trying to stop it. In the context of the Japanese culture that embraces a notion that the dead should not be considered evil, this gives rise to sympathy for war criminals when they think of the fact that they were judged by people who were not entitled to do so.

Of course there was a positive aspect about this trial as Judge Röling pointed out. There certainly was an ideal, in a way, which questioned the

criminality of wars of aggression and tried to apply international law on it for the sake of world peace. It is especially significant that through the process of the trial, a lot of truth, which had been kept secret before the war, was revealed before the eyes of the Japanese people.

For example, the Japanese people did not know that the abhorrent Nanjing Massacre had taken place until then. Of course, although this makes the occupational forces look like liberation forces, many Japanese realized how they had been deceived by militarism through this trial. It is easy to see a limit to the historical perception of the Japanese people, which is symbolized in a rather emotional expression of "being deceived." There is a point of view to regard themselves as the victims of the war rather than the offenders. As such, the Japanese people even came to regard themselves as just victims. The somewhat tolerant occupational policy of the United States and the Tokyo Trial further encouraged this mentality. Also the fact that ground battles were not fought on the mainland of Japan reinforced this mentality, and there was no serious reflection on the war or spontaneous efforts to investigate who should be held responsible for the war. This can be said to be the second effect that the Tokyo Trial left in the Japanese consciousness regarding war responsibility. Not only was the Emperor absolved of war responsibility, ordinary Japanese were also simply absolved of it. This allows ordinary Japanese people, who eagerly celebrated the occupation of the Chinese capital Nanjing by the Japanese army (at that time the general Japanese did not know of the Nanjing massacre) and felt the joy when they heard of the success of the Pearl Harbor attack, to absolve themselves of war responsibility by claiming that they have been deceived by the militarist government.

In addition to these issues, there is one more crucial point, which is

related to jurisdiction of the trial. The Japanese people completely forgot other Asian nations including China, when they reflect on the war or feel a sense of responsibility for it. This is the third effect that the Tokyo Trial left in the Japanese consciousness regarding war responsibility.

There were two wars subjected to the Tokyo Trial, the Pacific War (which includes the Thrust into French Indochina in 1940 and 1941) and the Japan- Chinese War. The greatest controversy for the Japanese people in facing the Tokyo Trial lies in this fact. If Potsdam Proclamation was the only ground for the trial, time-wise jurisdiction of the Tokyo Trial should have been limited to the Pacific War. One of the grievances of the Japanese people against the Tokyo Trial is that its jurisdiction was extended to earlier than 1941 in an arbitrary manner, and the defendants were judged by the Allied Powers. As Judge Pal and Judge Röling had also pointed out, criticism against the extension of jurisdiction had a rational ground. (However, there is an emotional argument claiming that all parts of the Japan- Chinese War should not be judged by the Allied Powers.) Was it not necessary for the Japan- Chinese War to be subjected to judgment? The fact that the conflict following the Marco Polo Bridge Incident was technically a state of war without declaration should be an issue in light of international law. However, responsibility for acts of aggression that inflict enormous damage to our neighboring country over such a long period of time should exist somewhere. In this regard, it is reasonable that the Charter of the International Military Tribunal for the Far East did not question the presence of the declaration of war.

Essentially, the Tokyo Trial should have been proceeded in two separate time-wise courts⁽¹²⁾. For the Pacific War, the trial should have had jurisdiction over events which happened in December 1941 and after,

and for the Japan- Chinese War, the trial should have had that over events which happened after the Manchurian Incident (September 18, 1931) or the Marco Polo Bridge Incident (July 7, 1937). (If the trial had jurisdiction over events that happened after the declaration of war against Japan by the Nationalist Chinese government led by Chiang Kaisek [December 9, 1941], it would have been too far-fetched.)

As such, the trials should have proceeded separately. By doing so, we could have been able to identify who was historically responsible for the invasion of China⁽¹³⁾. However, the court bracketed all the wars, which were fought by the Allied Powers, including China, against Japan as one and subjected them to the Tokyo Trial. In the mind of many war criminals, the Japan- Chinese War was not paid much attention, and much of the focus was on the Pacific War. The Pacific War was simply recognized as a self-defense war as well as a forced war. The reason why they recognized this war as a forced one is attributed to the economic and trade sanctions imposed by the United States after the Trust into French Indochina. Tojo took a stance to assume responsibility for the loss of the war for the Japanese people, but refused to accept the prosecution by the Allied Powers, which were the victors of the self-defense war, the Pacific War⁽¹⁴⁾. However, there is actually a mechanism in place to justify the Pacific War with an eye-for-eye logic, while letting the invasion of China follow the Manchurian Incident slide by explaining the unique feature of Asia to the Western powers. And afterwards, the Japanese people have come to view the Tokyo Trial from the standpoint of the Pacific War without paying much attention to the Japan- Chinese War. Their feelings are often interpreted in such words, "It was just stupid of us to wage the war only to lose." And since it was a forced war, war criminals should have less responsibility for it. And the logic of

organizational decision is brought up again and the responsibility of the concerned leaders disappears as if no one were responsible for the war. But, can the same logic be applied to the invasion of China? Although point should be questioned first, it was never argued thoroughly, and as a result, the Japanese people lack a sense of responsibility for the Japan-Chinese War. Those who have such kind of mindset must have been satisfied and chuckled to themselves when Zhou Enlai stated at the time of the normalization of diplomatic relations between Japan and China that the Japanese people were also victims of the war. If we only focus on the number of casualties of Japanese soldiers, despite the long period of invasion of China (=period of the Japan- Chinese War), it was much greater in Southeast Asia and the Pacific Region than at the Chinese front⁽¹⁵⁾. This fact might have also encouraged people to have such mindset.

Frankly, the author does not think that the Japanese people's perception of history is, as often pointed out, extremely permissive when compared to, for example, that of the German people. As mentioned above, it is certain that the Tokyo Trial, which gave priorities to the U.S.'s single occupation of Japan and its policies, made pursuit of war responsibility quite insufficient⁽¹⁶⁾. With regard to this point, the situation of Japan was completely different from that of Germany, which was occupied by four countries and exposed to severe investigation by Soviet Union and France (countries that were directly attacked by Germany and suffered from massive damage.). If there had been a trial that only had jurisdiction over the Japan- Chinese War, things might have been different. However, China was already caught up in a civil war at that time. At least, in term of severity in pursuing war responsibility, there was a huge difference between Japan and Germany.

In addition to the single occupation, Japan did not experience awful ground battles except for the one in Okinawa, where one-third of the residents passed away. The Japanese people often talk about awfulness of air raids, but the damage done by air raids is not comparable to that caused by ground battles. It is not hard to imagine that the damage done by ground battles was extensive and therefore the assailants should reflect deeply on what they had done. However, except for the ground battle at Okinawa Japan did not even have that experience. Moreover, the Cold War arose, and because of it, the U.S. became even more lenient with regard to the pursuit of who was responsible for the war. The U.S. even put strong pressure to restrain the Philippines and Australia, which demanded the pursuit of war responsibility.

Also, most of the Asian countries were despotic states, which facilitated war reparation and economic cooperation at the national level while restraining demand for reparation from the general public. And the economic cooperation, a substantial way of reparation, further weakened the Japanese people's sense of responsibility toward the war. On the contrary, in the postwar era, Germany needed to find a space to survive in European democracy. Facing the history and settling the past became assets for coexistence for Germany. At least these were not the factors preventing reflection on the war, but became factors encouraging it.

Anyway the outcome of the Tokyo Trial was broadly accepted by the Japanese people, primarily because the Emperor was absolved of war responsibility, a concern of the Japanese people. In this regard, the United States' policy succeeded. And good politics by the United States healed the emotional damage done by the loss of the war and the Tokyo Trial⁽¹⁷⁾. As General MacArthur guaranteed Prime Minister Yoshida, no one died of starvation under the American occupation (except for those

who were extremely fastidious), and people were convinced that occupation forces were keeping them safe. What the Japanese people had not been able to obtain by themselves in the long process of modernization, including the Agricultural Land Reform, Labor Law, and Women's Suffrage, they obtained them for the first time under the occupation of the United States, and what was the most important among them was the pacifist constitution. If that is true, it may be possible to say that the Tokyo Trial was a ceremony to promote reconciliation between Japan and the United States⁽¹⁸⁾.

While the Japanese people felt that the Tokyo Trial was a victor's judgment, they also appreciated the trial for the following reasons: that information was fabricated in favor of them through the trial, that they felt that they were freed from the system that forced them into awful circumstances, that they felt tolerance for the United States for absolving the Emperor of war responsibility, and that they could find a guidepost for economic recovery. So, eventually they accepted to walk a path towards friendly relationship with the United States. It was clear that those seven people, who were sentenced to death, were not the only ones who should be held accountable for the war. But by deciding to hold the 25 convicted Class A war criminals, including those seven war criminals, and other Class B and Class C war criminals accountable for the war, other Japanese absolved them of war responsibility, and reconciled with Japan's enemies. The nature of the Tokyo Trial is very diverse and complicated. However, the Tokyo Trial, which ordinary Japanese accepted, was the starting point for reconciliation between Japan and the United States. And based on that, the San Francisco Peace Treaty was signed, and Japan regained its independence and returned to the international society⁽¹⁹⁾. Thus the San Francisco Peace Treaty legally

consummated reconciliation between Japan and the United States. Of course, reconciliation does not settle everything. However, it was a manifestation of the intention to rationally “isolate” resentment or grievances by sealing the area of crime, and thus building a good relationship with the United States⁽²⁰⁾. In that sense, the author regards the Tokyo Trial and the San Francisco Peace Treaty as a norm, which post-war Japan should observe as a member of the international society.

2. What does the Japan- China Joint Communiqué signify?

On November 25, 1998, President Jiang Zemin visited Japan, and on the following day, “Japan-China Joint Declaration on Building a Partnership of Friendship and Cooperation for Peace and Development” was released. His visit to Japan was initially set for August, however, it was rescheduled due to catastrophic damages caused by flood. The Chinese President’s visit to Japan was scheduled before the visit by Korean President Kim Dejun in October, but consequently it came after. The fact that the Joint Declaration (“Japan-Republic of Korea Joint Declaration: A New Japan-Republic of Korea Partnership towards the Twenty-first Century”), signed at the Japan-Korea summit on October 8, contains words of apology for Japanese colonial rule, made matters more complicated. Although the Treaty on Basic Relations between Japan and the Republic of Korea was signed in 1965, it contained no words of apology for Japanese colonial rule. As for the declaration of 1998, it is significant in that Japan fulfilled its historical responsibilities to South Korea in response to the Murayama Danwa (Murayama statement)⁽²¹⁾ 30 years after concluding the Treaty on Basic Relations between Japan and

the Republic of Korea.

While Japan asserted that it had already made an apology to China in the Joint Communiqué of 1972, China had insisted on including a document of apology in the 1998 Joint Declaration. On his visit the then President Jiang Zemin mentioned history issues whenever occasions arose, including the banquet held at the Imperial Court, which inflamed Japan's Sinophobia⁽²²⁾.

The fifth paragraph of the preamble to the Japan- China Joint Communiqué signed by the then Prime Minister Kakuei Tanaka and the then Premier Zhou Enlai includes a the following famous statement: "The Japanese side is keenly conscious of the responsibility for the serious damage that Japan caused in the past to the Chinese people through war, and deeply reproaches itself."

This statement showed Japan's obstinate stance that Japan had already apologized on the occasion of Mr. Jiang Zemin's visit to Japan in 1998, and it could not apologize twice. Reading these words in an objective manner, it gives an impression that it is not enough as an apology. As everyone who reads this might perceive that it reads only "deeply regret", but not "apologize", nor even more explicitly, "sorry". "Deeply regret" sounds like a one-sided behavior, not a mutual behavior. According to the recollections of the then Foreign Minister Ohira, however, that expression was the best possible choice that the LDP party could accept since there were relatively many LDP members who supported Taiwan's sovereignty (more specifically, "two-China policy" supporters). In response to Ohira's earnest appeal, it is known that the then Chinese Foreign Minister Ji Pengfei as well as Premier Zhou Enlai accepted Ohira's faith⁽²³⁾. Therefore this wording was Japan's expression of apology materialized on the basis of China's concession, and China also

consented to accepting it as an apology. Hence, China's accusation that Japan never offered an apology in the document is not necessarily accurate. On the other hand, Japan should acknowledge that the expression was rather insufficient for an apology, and it was possible for two countries to reach a compromise only because of China's concession. Were Japan to forget it, it would be called faithless. Specifically because this expression was the revision of the "Gomeiwaku=Mafan" statement made by the then Prime Minister Tanaka at a welcome banquet hosted by Beijing, we should bear that point in mind⁽²⁴⁾. At the same time, the author regards the Japan-China Joint Communiqué which contained the expression of apology as a document of reconciliation between Japan and China. This document dealt with legal matters such as the change in official recognition of the Chinese government from Taipei to Beijing, yet it can't be called a treaty since it didn't go through a procedure of ratification⁽²⁵⁾. Nonetheless, there has been no other document or ceremony that can be called the starting point of reconciliation than the Japan- China Joint Communiqué that top leaders and foreign ministers of both countries signed and declared the normalization of their relations. In this sense, it can be said that the process of establishing the document from its negotiation to signing should have an exemplary significance that is similar to that of the Tokyo Trial.

There is a view that this document was backed by the so-called "1972 system". In other words there were factors that both countries were concerned with, such as the existence of a common enemy in the Soviet Union, the threat of Taiwan's autocrat regime, Japanese interest in China's modernization, and Japanese politicians' war experience (= their sense of atonement). It is certain that these factors supported Japan-China relations at that time, and it is also true that the system no longer

exists today⁽²⁶⁾. Therefore a framework which can replace the 1972 system seems needed for the relations between the two countries. The author keenly feels the necessity for a new system. However, the fact that the 1972 system does not exist any more does not directly lead to the depreciation of the document. It is even possible to say that in order to establish a norm to ensure that Japan-China relations, whose direction is uncertain, move atonement foreword; the Japan-China Joint Communiqué is becoming increasingly important. If a new diplomatic framework is sought for, it should not be something that falls short of the norm that the communiqué set as a document of reconciliation.

Incidentally there is actually a little gap between the way Japan and China perceive the Joint Communiqué. Regarding this point, Masahiko Asada did a specific study. His argument about the stances of both countries to define the end of the war situation and the war reparation claim are as follows:

“Japanese government’s stance on the end of the war situation is, ‘The war situation between Japan and China ended with Article 1 of the Treaty of Peace between Japan and the Republic of China.’ Also on the issue of the reparation claim, ‘from the legal viewpoint the case was settled with Article 14 of the San Francisco Peace Treaty as well as Article 11 of the Treaty of Peace between Japan and the Republic of China, and its Protocol 1-(b).’⁽²⁷⁾

“On the other hand the standpoint of the People’s Republic of China is that the Treaty of Peace between Japan and the Republic of China was ‘illegal’ and ‘invalid’ as stated in the ‘three principles for the restoration of relations’ presented on the occasion of negotiations for the normalization of diplomatic ties between Japan and China in 1972. Therefore the war situation was over with the Japan- China Joint

Communiqué. That is why the draft for the Communiqué proposed by the Chinese government in the process of negotiations for normalizing relations comprised provisions concerning the end of war situation and the waiver of the right to demand war reparations in a newly established way.”⁽²⁸⁾

It is common knowledge that in the process of negotiations for the Joint Communiqué, Japan referred to the stance of the Treaty of Peace between Japan and the Republic of China, and as a result, non-legal expressions were adopted, removing the word “right” from the phrase, “the right to demand war reparations”. “The termination of the state of war” is put in the preface, not in each article, and the expression in the article one described as “the abnormal state of affair…is terminated”. If I were to arrange these points here, it is as follows: the matter of the end of war situation, the validity of the Peace Treaty with Taiwan may be admitted since Japan recognized Taiwan as a legitimate government then. However, even if so, it should be unreasonable to say that the issue of war reparations had completely been settled by the treaty with Taipei which had effectively ruled only limited areas. Furthermore, the then director of China division, the Ministry of Foreign Affairs attested that the release of the right to demand war reparations by China was a crucial factor for the Tanaka Cabinet to decide to normalize diplomatic ties between the two countries. Judging from these, it seems natural that the issue of war reparations was settled by the Joint Communiqué.

Asada himself stated, “Process to settle the disruption of the war end was basically conducted in the Treaty of Peace between Japan and the Republic of China. As a sequel to the change in Japanese government’s recognition of the Chinese government from Taipei to Beijing, its postwar arrangement should be handed over to Beijing. As an exception

to such principles, China and its people's waiver of the right to demand war reparations was the only condition which went against China's general interests (Lauterpacht), therefore, the administration of the People's Republic of China didn't succeed the stipulation. Consequently, it is considered that the Joint Communiqué dealt the issue in its own way."

(29)

However, there is still a very big difference between this interpretation and the viewpoint of the Chinese government who regards the Japan-Taiwan Peace Treaty as illegal and invalid. Although there is a still huge gap between the views of two governments according to Asada's explanation, Kyojuka attempts to harmonize the difference between the views of the two governments. Kyojuka pointed out the following:

"The validity of the Peace Treaty between Japan and the Republic of China shall 'be applicable to all the territories which are now, or which may hereafter be, under the control of its government'. Because this is the contents of the 'Exchange of Notes' which was concluded at the same time with the treaty in 1952, the termination of the Japan-China war is only applicable to 'the territories under the control of Republic of China', that is 'Taiwan' according to this treaty. Strictly speaking, it is correct to understand that the termination with parts of Chinese, ex-hostility who moved to Taiwan was realized, but the terminate with mainland China (the territories not under the control of Republic of China) was not realized. The Japan- China Joint Communiqué' this time realize the terminate of war with latter" (30).

Based on this understanding, Kyojuka regards Japan- China Joint Communiqué as the "declaration of the end of the war" which exists between the armistice agreement and the peace treaty. This treaty is concluded to establish diplomatic relations in a hurry at the stage when

time was no ripe to resolve territory issue and other legal problems before and after war. Kyozyuka emphasize its similarity to the 1956 Joint Declaration by USSR and Japan.⁽³¹⁾

This view of Kyozyuka is different from the official standpoint of the Treaty Department of Japan's Ministry of Foreign Affairs in 1972. It is, however, imaginable that it is close to the Japanese idea when she concluded peace treaty with the Republic of China. In addition, this does not damage the standpoints of both sides, and is a harmonious interpretation between the two governments. It is certainly necessary to erect this kind recognition as points of agreement between both sides. It is worth noting that the view point of treaty department of Ministry of Foreign Affairs mentioned above reflect the opinion of Masuro Takashima, the then Director of Treaty Department, and there were another viewpoint in Japan's Ministry of Foreign Affairs which Takashima himself referred to later.⁽³²⁾

3. Historical Perception as a Norm

The Tokyo Trial and the Japan- China Joint Communiqué, the former was a trial that took about two and a half years to conclude while the later was a joint statement that was formed in a rather short period of time of less than three months after the Tanaka administration was born in addition to several days of Tanaka's visit to China. Drawing an easy analogy from them must be avoided in terms of their forms or contents. The trial had a meaning that the accused Japan should be deprived of its value, while the joint declaration is significant in that China would disclaim the right to demand war reparations (though the waiver of the

right to demand war reparations was included in the San Francisco Peace Treaty). The Tokyo Trial was conducted on the many to one basis, while the Joint Communiqué was formed bilaterally. Moreover the trial took under the GHQ occupation, while the Joint Communiqué was conducted by exercising Japan's sovereignty. In addition, one was an act to exact punishment one-sidedly, the other was a conclusion drawn by negotiations on an equal basis. Despite the above-mentioned differences, we cannot ignore some common features between them, either. Both were conducted as part of the process of postwar arrangement. They had characteristics that led to the Peace Treaty, and most of all, both included contents that favored Japan concerning the most crucial issues among the postwar arrangement. In other words, they were the Emperor's exemption from responsibility for the war in the Tokyo Trial, and the waiver of war reparations based on the idea that the Japanese people were not offenders but victims in the Joint Communiqué. Taking these points into consideration, both the Tokyo Trial and the Japan-China Joint Communiqué can be called ceremonies of reconciliation.

The Joint Communiqué was a document which indicated reconciliation between Japan and China, and to leaders of both countries, its signature is ceremony of reconciliation. Its significance is shown by the fact that a huge picture of Zhou Enlai and Kakuei Tanaka shaking hands in 1972 is displayed in the Anti-Japanese War Memorial Museum in Beijing. When the Tokyo Trial and the San Francisco Peace Treaty were concluded, Japan was an occupied country with no power, but the Japan- China Joint Communiqué was concluded as a result of diplomatic negotiations on an equal footing. Also the records of the negotiations revealed that China had made many concessions. Hence, the binding force as a norm that the communiqué holds should be respected all the more for these

reasons⁽³³⁾.

It is hard to say that Japan's attitude has been ideal since then. In the Communiqué, China's concessions were quite noticeable⁽³⁴⁾. They were not only the issues of war reparations but also the facts that China accepted the expression saying "Japan will understand and respect China's assertion on Taiwan," and China did not adhere to the peace treaty. On the Japanese side, however, there arose a series of controversial issues in the 1980's such as the issues of history textbook and inappropriate remarks uttered by some cabinet members. Since the Tiananmen Incident in 1989, Japanese people had started casting a chilly glance at China. The Third Taiwan Strait Crisis in 1996 even brought about revulsion against China. In the end of the 1990's, there was a voice saying that China didn't appreciate a great amount of ODA provided by Japan⁽³⁵⁾. Certainly, Japanese ODA to China was truly extraordinary. While ordinary ODA was designed for 1-year unit, Japan's ODA to China was designed for 5-year unit with extremely low interest rates, which was prominent in terms of net amount. From 1990 to 1991 the amount of Japan's ODA provided to China accounted for more than half of the total bilateral ODA that China received⁽³⁶⁾. There was an understanding that the ODA was an alternative measure for war reparations that China abandoned. Needless to say, we should be careful when it comes to what the money is used for since the source of ODA is Japanese people's tax revenue. Having said that, it would be understandable for Japan to take such attitude and utter such remarks if it were a gift given to China from Japan, but it was a loan, however low its interest rate was. We cannot deny that it was an act which lacks magnanimity to demand appreciation for a loan that was an alternative to the reparations⁽³⁷⁾. The ODA to China was not a simple expression of good will. In the first place,

it is to create demand for Japanese companies, and thus it was not only an economic strategy taken in relation in the interest of Japan but also a diplomatic strategy in relations to other OECD countries.⁽³⁸⁾

On top of that, the then Prime Minister Koizumi's visit to Yasukuni Shrine delivered a further blow. For China, the Yasukuni shrine itself is not an issue, but Class A war criminals are. As aforesaid, there is a widespread feeling of sympathy among the Japanese for Class-A war criminals⁽³⁹⁾. Along with this, there is also a pent-up feeling of revulsion against the Tokyo Trial. Although the People's Republic of China, newly established in 1949, did not attend the Tokyo Trial, it is reasonable for China to request other countries to respect the decisions of the trial as the government that succeeded the republic of China as well as the legitimate government of the Chinese people. Moreover China was the most seriously damaged victim in the war of aggression by Japan. The Tokyo Trial was, as already mentioned, a ceremony of reconciliation between Japan and the Allied Powers. If I may put it in extreme terms, the trial was a magnificent ceremony in which the Emperor and the rest of the Japanese were acquitted by charging all the responsibilities of the war to the twenty-five Class A war criminals and other related people. The Allied Powers including China abandoned examining other damages caused by Japan, and acquitted many Japanese people of the responsibilities for the war by accepting such a rationale. The Japanese virtue to not to lash the dead is admittedly respectable⁽⁴⁰⁾. Nonetheless if we assume that even Class A war criminals were victims and innocent, then no offender would exist in the historical incident in question. Then who should be blamed for the tremendous damages of the war⁽⁴¹⁾? This question does not only pertain to the Japanese people but also to the victims who died or sustained injuries in that war. In addition, from the

viewpoint of China, it is unacceptable for the political leaders of Japan who are supposed to accept the decision of the Tokyo Trial, to visit Yasukuni Shrine where Class-A war criminals are enshrined. And it is difficult to tolerate this breach of the fair and equitable principles set forth in the Joint Communiqué. Thus the crux of history issues does not simply lie in the Yasukuni Shrine or Class A war criminals, but in Japan's attitude towards the Tokyo Trial and its responsibility for the war.

Beijing has repeatedly denounced the Japanese Prime Minister's visit to the Yasukuni Shrine as an act that spoiled the spirit of the Joint Communiqué. As stated, it can be said that it was an act that trampled the cause of the Joint Communiqué which aims at mutual reconciliation. During Prime Minister Koizumi's tenure of office, some exclaimed that Japan should not tolerate China's intervention in traditional Japanese traditional such as the worship at a shrine. These opinions seem to misread the crux of the problem.

Thus it is hard to say that Japan has certainly kept faith along with the guideline of 1972, the Japan- China Joint Communiqué. Having considered these, Japan seems to have once again the chance to face history in the generous context of the Joint Communiqué. Both the Tokyo Trial and the Japan- China Joint Communiqué signify ceremony of reconciliation, at the same time their magnanimous characters bear a close parallel in terms that the Japanese was taken away the motives to reflect history.

Conclusion

It is certain that what is called the system of 1972 does not exist today. Above all, there lie at least several big issues between Japan and China.

The first one is the issue of territory including their claims to Senkaku (“Diaoyu” in Chinese) Islands, which involve resource problems. The second one is the issue of the perception of history, and the third is the security issue related to the augmentation of Chinese defense expenditure and the increasingly close defense relationship between Japan and the United States⁽⁴²⁾. Other issues include their competition for leadership in the region and problems of economic frictions. None of them can be solved easily.

Among these issues, the perception of history has special status. Perception of history lies in the deepest foundation of a nation. Though it does not involve conflicts of interests very often, once a controversy happens, it can easily become complicating. This is because how a people perceive history is related to the people’s sentiments such as national dignity and pride. Once principles of both countries clash, this issue may become uncontrollable and can also affect other issues. It is thus desirable that both sides make much of the rules and act prudently. To argue against China with the intention to vent one’s dormant dissatisfaction about Tokyo Trial is nothing but stupidity. If people were not satisfied with the Tokyo Trial, they should express it to those who occupied Japan. And if they did not dare to express it, then there is no choice left but for them to keep quiet. This is the premise of the San Francisco System. Of course, Japanese has the qualification to seek revision of history concerning the unreasonable measures taken around the war period⁽⁴³⁾. In order to assert this, however, they would need to first deal with the historical problems sincerely⁽⁴⁴⁾.

Though the 1972 System does not exist, the 1972 Joint Communiqué is still considered extremely important as the standard for historical perception between the two countries⁽⁴⁵⁾. Unexploded shells can

completely be disposed of only through the efforts to get such a standard established. It is in the will to inherit the attitude to deal with unexploded shells that the true value of Japan's perception of history has been examined.⁽⁴⁶⁾

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- (1) This is also recognized by the leaders of the conservative party. See Koichi Kato, “Taibē-Mondai tonaru maeni Kaiketsu-shinakereba naranai [This should be Solved before Becoming a Problem between Japan and the US],” *Chuokoron*, July, 2006. Kato is the former Secretary General of the LDP and was once a presidential candidate of the LDP. He can be called the one to carry out the mainstream conservative party. His keen sensitivity is worth admiring.
 - (2) *Yomiurishimbun*, May 17, 2006.
 - (3) Masui, “Perry Moto Kokubochōkan Kōen : Nihon eno Kōitekina Keikoku : Nicchū Kankei e Kitaitisuyoku [The Speech by Perry, the Former Secretary of Defense: a Favorable Warning to Japan: with Great Expectation to the Japan-China Relationship],” *Niigatanippō*, October 24, 2006.
 - (4) For example, the decision by the Osaka High Court on September 30, 2005 rejected the compensation claim but it recognized the Prime Minister’s visit to Yasukuni Shrine as an official action, also the court judged the visit to be against the Constitution. However, it is often that the District Courts refrain from judging if a prime minister’s visit to Yasukuni Shrine is constitutional.
 - (5) It is difficult to say that Judge Pal’s thoughts are understood by the Japanese people without prejudice. His view did not set out to affirm the so-called Great East Asian War, but to pursue the moral responsibility of the war. See especially chapters 3 and 4 of Takeshi Nakajima, *Pal Hanji [Pal, Judge]*, Hakuuisha, 2007.
 - (6) On this issue, the following incident occurred. That is David F. Smith, the counsel pointed out “unreasonable interference” by William Flood Webb, the chief judge, and the counsel was forced to leave the court.
 - (7) Many Japanese have repeatedly asked the question whether the death penalty for Koki Hirota was sentenced intentionally, even though it is not certain that this is a correct question to ask. See Saburo Shiroyama’s novel: *Rakujitsu Moyu [Burning Sunset]*, or the movie *the Tokyo Trial [Tokyo Saiban]*, 1982 directed by Masaki Kobayashi.
 - (8) See the opinion of Counsel Ben Bruce Blakeney, the minority opinion of Judge Pal, and the reminiscences by Judge B. A. Röling. On the contrary, Judge Pal did not regard the atomic bombings as crimes according to international law because “crime against humanities” is an ex post fact law.

See op.cit, *Pal Hanji*, pp.136-138

- (9) For example, when Japanese invasion of Asia was on trial, the UK, the Netherlands, and France were in the midst of their "reinvansion" of Burma, Indochina, and Indonesia. "Shasetsu:Tokyosaiban 60nen:Sensō-sekinin Kyumei wa Kokumin Jishin no tede [Editorial: 60 years after the Tokyo Trial: Close Examination of War Responsibility should be made by the People Themselves]," *Yomiurishimbun*, May 2, 2006.
- (10) This also caused inequality among the sentences.
- (11) Tojo's effort to break the spell of the Meiji Constitution by concurrently holding the posts of the Prime Minister, the Minister of Army, and the Chief of the General Staff has sometimes been referred as grievous. At the same time, it is written that when Tojo formed the cabinet in 1941, he, as a faithful subject to the emperor, exerted himself to the utmost to avoid the outbreak of the war between Japan and the US, under the Emperor's will. See Minoru Yamazaki, "Moto-hisho ga Kaisō suru A-kyū Senpan Kaya Okinori no tsugunaikata [A Class A War Criminal, Recollected by his Secretary: How Okinori Kaya Expiated]," *Ronza*, July, 2006, and Naoki Inose, "Nihonjin wa naze senso wo shitaka [Why the Japanese Waged the War?] *Inose Naoki Chosakushū Vol.8 [Works of Naoki Inose Vol.8]*" : (Shogakkan, 2002), pp.70-97. When people talk about Tojo from such point of view, it seems that they do not sincerely consider him responsible forcing innocent soldiers to Gyokusai (prefer death to dishonor) through coercing them to follow Senjinkun (the combatant's code). Regarding the relationship between the Tojo Cabinet and the declaration of war and his supreme command, the author relied on the follows: Committee for the Verification of War Responsibility of Yomiurishimbun, ed., *Kenshō-Sensō Sekinin II [Verification War ResponsibilityII]*, Chuokoron Shinsha Publisher, 2006, pp.88-90, p.118, p.122, p.147, pp.234-235, pp.236-237, pp.240-241. Tetsutya Murai, "Tojo-Naikaku-ki niokeru Senjिताisei-saihen II [The Rebuilding of the War Regime in the Period of the Tojo Cabinet (2)]", *Tokyo-Toritsu-Daigaku Hohgakukai-Zasshi, Tokyo Metropolitan University [Journal of Law and Politics]* No.1, July, 1999, pp.586-587.
- (12) The author considers the incidents which occurred before December 1941 as not under the jurisdiction of the Tokyo Trial as far as it is based on the Potsdam Proclamation. Here, however, I would like to develop my argument based on the actual Tokyo Trial, putting aside my claim for the

jurisdiction of the Tokyo Trial. In addition, Judge Pal is said to regard that the object of war as those matters happening after 1937. Please see op.cit, *Pal Hanji*, pp. 107-108

- (13) Also arbitrary expansion of the jurisdiction of the Tokyo Trial to the already solved incidents between Japan and the Soviet Union, including Battle of Lake Khasan (1938) and the Nomonhan Incidents (1939) could have been avoided.
- (14) “The Written Statements by Hideki Tojo” in the Tokyo Trial, “Summary” No.156, Kogen University ed. *Seigi wo tsuranuita Tojo Hideki Tokyo Saiban Kyojyutsusho [The Written Statements in the Tokyo Trial by Hideki Tojo who Held on Justice]*, Head Office of Kogen University, 1998, pp.171-172. Also see op.cit. Naoki Inose, *Nihonjin wa naze Sensō wo shitaka, Inose Naoki Chosaku-shū Vol.8*, p179.
- (15) According to a certain source, the total number of deaths and of those dead and missing of the army and civilian war workers is about 1,860,000. The army account for 77%, or about 1,440,000. The number of victims of the army by country and occupied area is as follows: the US about 520,000 or 36.3%, the UK and the Netherlands about 350,000 or 24.2%, China about 290,000 or 20.3%, Australia about 210,000 or 15.0%, French Indonesia about 9,000 or 0.6%, and Manchuria and the Soviet Union about 12,000 or 0.8%. In other words limiting only to the Pacific War, the number of casualties at the Pacific Ocean Front accounts for 76.1% and that at the China Front is 21.1%, even including Manchuria and the Soviet Union. These figures are from Takahide Nakamura, Masayasu Miyazaki ed. *Shiryō: Taiheiyo-Sensō Higai Chōsa Hōkokusho [Data, Investigation Report of the Damage from the Pacific War]*, Tokyo University Press, 1995, pp.289-291. Also the total number of the victims of the main islands of Japan is about 670,000 (which includes about 300,000 of deaths and about 24,000 of missing), and as for the causes of these damages, air raids account for 99.5% and the casualties in urban area account for 94%. Ibid. p.12, pp.277-288.
- (16) Despite making this point, I do not mean to deny the war responsibility of Japan, especially that of decision makers. In this regard, I consider the attitude of Japanese decision makers as fatal. The war criminals and suspects later reinstated and took offices of not only prime minister but also other ministers and important posts in the government. Of course a question still remains if all can be treated on the same ground. See op.cit. “Moto-hisho ga kaisō suru A-kyū senpan Kaya Okinori no tsugunaikata.”

- (17) During the Tokyo Trial, the occupation policy of the US changed along with the advancement of the Cold War, which had positive effect on Japan. Also the extended trial decreased the enthusiasm of the Allied Powers.
- (18) At the beginning of his speech to accept the San Francisco Peace Treaty, Plenipotentiary Yoshida narrated as follows, "It is not a treaty of vengeance, but an instrument of reconciliation."
- (19) Joseph Clark Grew and Edwin Oldfriend Reischauer, who were American ambassadors to Japan, were favorably disposed to Japan. They considered that Japan only took the wrong road that led to the Pacific War in 1930, though it was a modern nation. In other words, they considered that Japan had been developing normally as a constitutional monarchy but it took the wrong way in the 1930s. Besides this view, some say the victory of the Russo-Japanese War disillusioned Japan into considering itself a first-grade country, and other consider the Japan-Chinese War as the point when Japan took the wrong way. On the other hand, the San Francisco treaty was paid little attention to China. U.S.A. and U.K. gave up the idea of inviting the mainland Chinese delegation to the San Francisco conference and decided to let Japan herself choose Taiwan or mainland China as the object to conclude the peace treaty. This decision was a humiliation to China since China is after all a member of the Allied Powers. It means that China as a victorious country was made to be chosen by Japan when considering the object of the peace treaty. Concerning this point, see Yin Yanjun, "Nihon no Sengoshori [Japan's Postwar Arrangement]", *Kōwamondai to Ajia [Peace issue and Asia]*, Gendaishiryō-Shuppan, 1999, p. 90-91.
- (20) The author used the word "reconciliation" an inspiration from the following work. Nobuko Kosuge, *Sengo-Wakai: Nihon wa "Kako" kara tokihanatarerunoka? [Reconciliation after the War: Can Japan be Released from "the Past"]*, Chukoshinsho, 2005. Though I am afraid I understood her idea superficially, it is certain that I was inspired by her book.
- (21) The Murayama Danwa (Murayama Statement) is the official view of the Japanese government, which was decided at the cabinet meeting with unanimous approval. Compared to any official statement which had been made by the Japanese government, the content of this statement is particularly humanistic with regard to the sincere usage of words, especially given its usage of the expression "heartfelt apology". Murayama

Statement became the principle for Japanese governments afterward. Prime Minister Tomiichi Murayama's leadership played an important role in achieving the statement. At the same time, the Foreign Policy Bureau of MOFA also had great influence to it, which reflects the diplomatic goal of MOFA in the long run. Please refer to Shin Kawashima, Ryuji Hattori, *Higashi-Ajia Kokusai-Seijishi [History of East Asian International Politics]*, Nagoya University Press, 2007, PP.334-335. In this sense, the statement bears clear strategic intention, but this will not jeopardize the value of the sincere attitude in it.

- (22) This process is written in detail in Yoshikazu Shimizu, *Chūgoku wa naze “Hannichi” ni nattaka [Why China became Anti-Japan?]*, Bunshun-shinsho, 2003. According to Shimizu, some Japanese member sought to put the expression of apology in the declaration.
- (23) *Asahishimbun* September 29, 2002. Also see Akira Ishii et. al., *Kiroku to Kōsyō: Nicchū-Kokkō-Seijyōka/Nicchū-Heiwayūkō-Jyōyaku Tēketsu-Kōshō [Record and Historical Investigation, Normalization of Japan-China Relations: Negotiation to Conclude Treaty of Peace and Friendship between Japan and the People's Republic of China]*, Iwanami Shoten, 2003, pp 81-82.
- (24) Kazuko Mohri expressed this as the “morality of Chinese diplomacy”. See Note 33 of this paper. The author saw an exhibit that denounced the “Gomeiwaku=mafán” remark at the Chinese People's Resistance against Japanese Aggression War Memorial in 2002. To make an exhibition at a public place denouncing a remark that was later corrected later obviously breaks faith, though this exhibition was not continued in 2006.
- (25) Concerning the fact that this joint communiqué was not treated as an issue to be ratified, see Sakutaro Kyojuka, “Kokusaihō yorimita Nicchū-Kyōdō-seimei [Japan-China Joint Communiqué from International Law]”, *Hakumon*, Vol. 25 No.3, March, 1973.
- (26) Ryosei Kokubun, Hitoshi Tanaka, “Taidan : Nationalism no Shōtotsu wa Kaihi dekiruka [Discussion : Is it possible to avoid Conflicts between Nationalisms?],” *Chuokoron*, March 2006. See also Kazuko Mohri, “Nicchū Kankei no Saikōchiku no tameni [For the Reconstruction of Japan-China Relation],” and Shin Kawashima ed., *Chūgoku no Gaikō [Chinese Diplomacy]*, Yamakawa Shuppansha, 2007, p. 220 and p.235. The author agrees to the existence of some problems of the 1972 agreement and the necessity for redefinition. However, this does not directly deny the Japan- China Joint Communiqué's position as norm, which the author described in this paper.

If we do redefine this Joint Communiqué and Japan-China relations, it is impossible to reach an agreement with this principle denied. Jin Xide (Institute of Japanese Studies, China Social Science Academy) also asserted the principle of the 1972 agreement. See *Zhongri Guanxi [Japan-China Relations]*, Shijie-zhishi-chubanshe, 2002.

- (27) Masahiko Asada, “Nikka-Heiwa-Jyōyaku to Nihon 5 [Treaty of Peace between Japan and China and International Law 5],” *Hogakuronō*, Vol. 156, No. 2, 2004, p.4.
- (28) Ibid. p.4.
- (29) Ibid. pp. 35-36.
- (30) Op.cit. “Kokusaihō yorimita Nicchū-Kyōdo-seimei,” p.47. If we take this stand, the Japan-China peace treaty can be understood as to limit Japan’s relationship with Taiwan and to leave room for possibilities in its future relationship with mainland China. (Op.cit, “Nihon no Sengoshori,” pp. 92-93)
- (31) Op.cit. “Kokusaihō yorimita Nicchū-Kyōdō-seimei,” p.48. Because of the similarity with the Japan-USSR Joint Declaration, Kyozyuka holds more doubt towards the lack of ratification in the procedure of Japan-China Joint Communiqué (Ibid. p.49). In addition, because of the existence of Japan-China Peace Treaty, Japan-China Joint Communiqué, which is different from Japan-USSR Joint Declaration, bears the significance of the changing the government recognition. Although Kyozyuka’s paper was written in 1973, we can understand that he considered it was a matter of course to negotiate a “peace treaty” with China in the near future. As we know, however, the Japanese government does not regard the 1978 Japan-China Peace Friendship Treaty as a “peace treaty”, but just a “friendship treaty.”
- (32) There is a contradiction in the views of the Japanese government between the Yoshida-Hatoyama era and the period before and after the Japan-China Joint Communiqué, especially regarding the object area of Japan-China peace treaty. Concerning this point, see op. cit., “Nihon no Sengoshori,” pp. 107-109. About the situation in the Ministry of Foreign Affairs before the normalization of diplomatic relations with China, please see the interview of Masuo Takashima, *Sankeishimubun*, February 7, 1985.
- (33) As Mohri pointed out, then Japanese diplomats and politicians in 1990’s have not paid enough attention to China’s sense of morality to give up reparation in order not to burden the greater part of the Japanese population. Please see, op. cit., *Zhongri Guarxi*, p.88, p.90.

- (34) Tatsumi Okabe, *Chūgoku no Taigai-Senryaku [Foreign Strategy of China]*, Tokyo University Press, 2002, p.195 ; op. cit., “Japan and Postwar Arrangement,” p. 106.
- (35) See the next article. “Kūkō, Chikatetsu, Tai-enshakkan 900 oku-en nari : Chūgoku irei no ‘Kansha’ [Airports and Subways, 90 billion yen of Yen-Dominated Loan; Exceptional Remark of ‘Gratitude’ from China],” *Asahishimbun*, September 30, 1999.
- (36) Quansheng Zhao, *Interpreting Chinese Foreign Policy*, Oxford University Press, 1996, p.151.
- (37) On November 8, 2007, the Japanese Government decided that the last loan to China amounted to 46.3 billion yen. Because of this, the loan to China, which began in 1979, came to an end. The total amount of loan accounted to 3,316.5 billion yen, *Yomiurishimbun*, November 9, 2007
- (38) For example, please see chapter 6 of op. cit., *Interpreting Chinese Foreign Policy*.
- (39) Some express strong sympathy for Class A war criminals. However from the standpoints of the Chinese people (noncombatants), whose lands were trampled and who lost their lives or the standpoints of the Japanese private soldiers who died in vain in severely cold wildernesses or in incandescent jungles or in raging waves, it is quite questionable how persuasive that kind of sentimentalism could be.
- (40) Some claim that all the people are the same after they die. Although this way of understanding is shared to a certain extent by Japanese, considering the massive damages caused by the decisions and judgments of leaders to other countries and to their own people, this claim is not persuasive in other countries.
- (41) Needless to say, this issue may reopen the discussion of the Emperor’s war responsibility.
- (42) Murai and Asano wrote and edited, *Chūgoku wo meguru Anzen-Hoshō [Security around China]*, Minerva shobo, 2007. Here Iwashita wrote that the gap of military powers between the US and China kept widening, and the military expansion of China could be considered a necessary counter measure against the containment policy conducted by the US and Japan. See Akihiro Iwashita, “National Borders of China and Diplomacy around Them [Chūgoku no Kokkyōsen to sorewo meguru Gaikō],” op.cit., *Chinese Diplomacy*, p. 210.
- (43) See Tsuyoshi Hasegawa, *Hoppō-ryōdo-mondai to Nichi-ro Gaikō [Northern*

Territory Issue and Japan-Russo Diplomacy], Chikuma Shobō, 2000, p.59

- (44) Japanese often refer to and pride themselves on the positive side of their post-war achievements, for example, article 9 of the new constitution, demilitarization, economic recovery and development of democracy. To the contrary, however, they do not refer to the negative side. For example, People who were born in Korea peninsula and Taiwan used to be Japanese subjects, but their Japanese citizenship were denied and thrown away to the miserable hell at the same time when the Japan Empire collapsed. It is rather unfair that people started to avoid talking about these facts as entering the post-war era.
- (45) Every nation has history that it does not want to be referred to. For Japan, the Nanjing Massacre or the Bacteriological Unit 731 could be regarded as such examples. Is not this the same for the party who refer to these issues? Although I could understand the discomfort of the Japanese when these incidents are taken up, it is necessary for us to consider one's country when it makes matters worse, especially the attitude of policy makers, when it drives the other country to refer to these issues. There have been criticisms in Japanese intellectual forum regarding China's use of the "history card" in Japanese diplomatic relations. The Memorial Museum of Nanjing massacre that opened in 1985 is given here as a typical example. We should bear in mind that the direct cause to the creation of this museum was the 1982 History Textbook Issue in 1982, when the Japanese authority attempted to rewrite history by changing the wording from "invasion" (*shinryaku*) to "enter into or develop" (*shinshutsu*). In addition, the enlargement of the museum began in 2005 when the Koizumi government incurred needless friction between Japan and China by his official visit to the Yasukuni Shrine. The author reckons that history issue could have been resolved much earlier, without dragging for 60 years, if we have adopted the ideal attitude and diplomacy. The same can be said regarding the colonial rule of the Korean Peninsula.
- (46) To the Japanese people, the Prime Minister's visit to Yasukuni Shrine, more than its the relationship with neighboring nations, is question of whether it should be permitted as constitutionally.

On the Tokyo Trial, I mainly referred to the following three books.

Takesi Igarashi, Shinichi Kitaoka, "*Sōron*" *Tokyo Saiban towa Nan-datta noka* [*"Discussion" What was the Tokyo Trial?*], Tsukiji Shokan, 1997.

Editorial Committee, *Tokyo Saiban Handbook [Handbook for the Tokyo Trial]*, Aokishoten, 1989.

B. V. A. Röling, A.Cassese, Nobuko Kosuge translated, *Röling Hanji no Tokyo Saiban [the Tokyo Trial For Judge Röling]*, Shinyosha, 1996.