An Intellectual Foundation for the Road to Pearl Harbor : Quincy Wright and Tachi Sakutaro

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On February 11, 1948, the International Military Tribunal in the Far East, a year and a half after its opening and after countless hearings, motions and exhibits, reached the stage of the reading of the summation by the prosecution. In this summation, Comyns Carr, one of the prosecutors, explicitly stated the legal principle upon which the tribunal stood in making its judgments. That principle was the Kellogg-Briand Pact of 1928, which had defined wars of aggression as illegal. From this basis, Carr concluded that "those who plan and wage such a war, with its inevitable terrible consequences, are committing a crime in doing so." Reflecting the progressive view on international law, which had come to the fore after World War One, Carr further stated that "International law, like common law, is not a static, but a continually growing body of legal concepts."[1]

The next month, a defendant, Takayanagi Kenzo, responded to this argument. He made the point that the view of international law presented by the prosecutor had been held only by the so-called revisionist school and that their new notions of international law had not been universal. He took the position that there had been an orthodox interpretation of international law, which Japan had followed. Takayanagi explained Japan's position in the following words : "If international law had rapidly and bewilderingly transformed itself during the war, of which we were unaware, it is palpably ex post fact action."[2] Japan, after defeat in the war, argued that the legal

principle presented by the prosecution had not been established in international law before the war.

This difference in understanding of international law, which appeared at the tribunal, can be traced back to discussions before the war between Quincy Wright and Tachi Sakutaro. Wright was an advisor on international law to the United States at the Nuremberg War Crime Trials in Germany.[3] Tachi, on the other hand, had died in 1943 but his arguments were carried on by his colleague, Takayanagi. This paper aims to compare the ideas of Wright and Tachi and discuss their differences in relation to growing conflict between the United States and Japan. Both Wright and Tachi were interested in problems of peace and war seen from the perspective of international law, although their approaches produced distinctly opposed conclusions.

Quincy Wright, born in Medford, Massachusetts in 1890, received his Ph.D. degree in 1915 from University of Illinois. After teaching at Harvard and the University of Minnesota, he joined the faculty of the University of Chicago in 1923. In addition to teaching, research and numerous publications on international law, he was actively committed to public activities. He served as the special advisor on international law for the Unites States Navy Department in 1918 and 1921. Furthermore, he was an active member of such academic societies as the American Society of International Law, the American Political Association and the Institute of Pacific Relations. He also corresponded with congressmen and officials in the State Department, giving legal advice or trying to influence the making of public policy.

Tachi was born in Tokyo in 1874 and graduated from Tokyo Imperial University in 1897. Between 1900 and 1904 he studied international law and diplomatic history in Germany, France and Great Britain, and in 1904 he became a professor of international law at Tokyo Imperial University. He became the most influential international lawyer in prewar Japan for both policy makers and the public, as is shown by his strong connections with the

Japanese Foreign Ministry and apparent influence in the Japanese Army. He also attended several international conferences as a member of the Japanese government delegation, such as the Paris Peace Conference and the Washington Conference of 1921－22.

Prologue to Conflict : the Outlawry of War

The idea of outlawing war had had a tradition in earlier American peace movements, but during World War One Salmon Levinson, a Chicago lawyer, revived and re-activated it.[4] Levinson was shocked by the calamities of war in World War One and surprised to find out that war was not treated as illegal in traditional international law. In December 1921, he established the American Committee for the Outlawry of War. Throughout the 1920's this movement gained significant support among the public－particularly among church and women's peace groups.[5] James T. Shotwell of Columbia University, a defender of the League of Nations who was searching for a way by which the U. S. could cooperate with the League, also contributed to the creation of treaty to renounce war. Shotwell was successful in convincing Aristide Briand, the French Prime Minister, to propose to the United States in 1927 a treaty for the renunciation of war as an instrument of national policy.[6] Levinson and Shotwell differed in strategy and theory about how to achieve the renunciation of war－the outlawry of war－but what should be noted here is that there was a certain basis of support from the American public and intellectuals in the United States for the idea of making war illegal. In Japan, however, there was not such public awareness of or concern for outlawing war.

Wright was acquainted with Levinson and his wife, Louise, was an active pacifist.[7] Early on, he recognized this growing concern for the outlawry of war. In 1924, he published an article entitled "Changes in the Conceptions of War,"[8] arguing that there was a definite trend in the development of

international law toward outlawing war. He noted that most contemporaries who wrote about international law held the position that war was not legal. Although present international law contained laws for war that specified rules of conduct in war, he argued that this did not mean war itself was legal. War was treated as equivalent to an emergency situation, "an event, an unfortunate event, like invasion under municipal law, which renders the operation of normal law impossible and makes application of an emergency law of war a pis aller."[9] In other words, the emergency character of war deprived international lawyers of the opportunity to judge whether a war was illegal or not. However, with growing world interdependence, Wright maintained that there was a need to prevent war and that lawyers themselves had to take the responsibility of judging the appropriateness of making war. Wright concluded this article by proposing three legal devices which lawyers should create to enforce the outlawry of war : criteria for deciding the responsibility of who starts a war, criteria for justifiable acts of self-defense, and the creation of definite agencies to enforce the first two criterion.

In his 1925 article "Outlawry of War", Wright further developed his ideas about the three devices through which jurists could enforce the outlawry of war. In order to establish definite criteria for deciding responsibility for initiating a war, Wright emphasized the role of general treaties such as the Hague Convention of 1907 and the Covenant of the League of Nations. However, since these existing treaties did not prohibit war in general, he thought that a new comprehensive treaty to outlaw war was necessary, one that would serve as a general standard for denouncing the aggressor. Additionally, to narrow the scope and avoid arbitrary usage of the self-defense rationale, he wanted any determination of justifiable self-defense to be decided at a public forum, such as the Council of the League of Nations. To enforce the outlawry of war, he wanted a prior agreement recognizing both

the compulsory nature of judicial settlements and the enactment of economic or military sanctions through the League of Nations.[10] Wright recognized weaknesses in the outlawry of war and was not completely optimistic about the future of this idea, but he emphasized that the weaknesses would be overcome by the elaboration of concrete devices.

After the Kellogg-Briand Pact was signed in 1928, Tachi Sakutaro, on the other side of the Pacific, produced a cynical interpretation of it. His interpretation emphasized two factors : a critical reading of the text of the Pact itself and reference to the diplomatic notes exchanged during the negotiations prior to the signing of the Pact. Tachi argued that the renunciation of war in the text of the Pact did not signify the absolute abolition of war, because the parties were supposed to renounce war only as a means of the national policy. He wrote that "Prohibiting war as an instrument of national policy is more limited in its scope of application than prohibiting war in general"[11] and pointed out that the Pact did not prohibit the right of self-defense. Quoting an American diplomatic note on self-defense which stated that "the state exercising self-defense alone is competent to decide whether circumstances require recourse to war in self-defense," he concluded that "the act of self-defense is clearly not constrained by the Pact."[12]

Tachi also raised the issue of immediate national interests by referring to a British note on reserving application of the Pact in the areas in which Britain had immediate interests. In the British diplomatic note of May 19, 1928, the Foreign Minister had written that in regions affecting her immediate interests Britain would maintain freedom of action. He called this British proclamation a "New British Monroe Doctrine" and noted that this proclamation was repeated later in a letter dated July 18. Drawing implications for Japanese policy from this stand, he wrote, "Thus, as long as Britain maintains an exception with regard to the application of the Pact, Japan also

has the right to produce a basis for asserting an exception of the Pact, for example, concerning the Manchuria-Mongolia questions."[13] Rather than focusing on possible future refinements of the Pact as Wright did, Tachi's efforts were aimed at revealing the weaknesses in the Pact and to finding loopholes for future Japanese action.

Tachi was not the only Japanese intellectual to respond to the Pact in an unfavorable way. Another writer expressed the opinion that the renunciation of war was just rhetoric, under which each country would pursue its own interest.[14] In addition to skepticism about the effectiveness of the Pact, some publicists criticized United States foreign policy in view of the Pact. For example, Royama Masamichi, a professor of public administration at Tokyo Imperial University, argued that American diplomacy contradicted itself because while the United States supported the renunciation of war it maintained a policy based on the Monroe Doctrine.[15] Kamigawa Hikomatsu also pointed out a contradiction in American foreign policy, citing the fact that the United States, an advocate of the Pact, was not a member of the League of Nations, which would support the enforcement of the Pact.[16] The Japanese phrase coined at the time to translate the title of the Pact, Fusen Joyaku [no war treaty], appropriately conveyed the principle meaning of the Pact, but the Japanese themselves were not very appreciative of the effects the Pact would have.

Official Japanese policy toward the Pact was no more favorable than Tachi or the other intellectuals had been. When the Japanese government first received an invitation to join in the Pact, they considered whether or not to include a clause reserving their actions in Manchuria. However, on hearing the news that Great Britain had made reservations on self-defense and in the area of her national interests, policy makers decided not to make any reservations. They felt that Japan would be able to refer to the British reservations if, in the future, they needed to take actions in Manchuria.

Concerning the right of self-defense, a memorandum drafted by the Foreign Ministry noted that the notion of self-defense in international law is ambiguous and that, therefore, the right of self-defense would be "elastic enough to rationalize future Japanese actions in China."[17] Japan's acceptance of the Pact showed that she was willing to make a commitment to international peace, but this commitment was good only in so far as it did not conflict with her interests in China. This stance was borne out in 1929 when the Secretary Stimson tried to orchestrate a collective intervention based on the spirit of the Pact to end the conflict between the Soviet Union and China over the Chinese Eastern Railway. The Japanese government declined the diplomatic proposal from the United States, thinking that internationalization of issues involving Manchuria would be harmful to Japanese interests there.[18]

In the meantime, Wright and some other international lawyers continued in their efforts to develop devices with which to enforce the provisions of the Pact. One such possibility that Wright began working on was changing the traditional concept of neutrality. At the annual meting of the American Society of International Law in April, 1930, Wright delivered an address on "Neutrality and Neutral Rights Following the Pact of Paris for the Renunciation of War."[19] According to the traditional interpretation of international law, non-belligerents were supposed to treat all belligerents impartially and equally. Even though one country was the obvious aggressor, non-belligerents were to treat that country in the same manner that they did the victim of aggression. However, Wright argued that the establishment of the Pact transformed this traditional concept of neutrality. Since the signatories of the Pact were committed by the principle of the Pact to renounce war, they had an obligation to abolish the policy of treating belligerents impartially. Wright argued that signatories should take steps both to punish aggressors and to help the victims of aggression. In fact, the efforts

to put an end to the traditional concept of neutrality led to arms embargo bills being introduced in Congress at that time.

A later speaker at the annual meeting, Clyde Eagleton, professor of Government at New York University, referred to these bills. There were two types : one to enact an arms embargo on all belligerents, the other only on the aggressor nations. Eagleton called the former bill irresponsible and the latter responsible. However, Wright's and Eagleton's interpretation of neutrality was not the dominant view among the American international lawyers. For example, in the discussion following Wright's and Eagleton's papers, Edwin Borchard from Yale Law School posed the question of what steps would be taken to determine the aggressor.[20] Also, Manley Hudson, a famous professor of international law at Harvard University, remarked that "the papers that were read tonight overstated the effect of the Pact on neutrality."[21] These contrary opinions concerning the Pact highlight the fact that Wright was playing an active role in trying to create as strong a meaning as possible for the Pact in the United States' efforts to achieve collective security.

At about the same time, Tachi was working on his two volume interpretation of international law. These two volumes, over 1,300 pages in total, were heralded as the first original and comprehensive analysis of international law by contemporary Japanese. Tachi divided the two volumes between the international law of peace and the international law of war.[22] He maintained this dualistic approach to international law by adhering to the traditional notion that war was admissible, not illegal, under international law.[23] If war in general had been illegal, he argued that there would have been no room to elaborate a theory of international law of war. Some American and European international lawyers also recognized this contradiction between the laws of war, which acknowledged the actuality of war, and the aims of international law, which was to maintain peace. There even appeared opinions

that the laws of war should not be taught at schools.[24]

Eruption of Conflict : the Manchurian Incident and the Stimson Doctrine

When the Manchurian Incident broke out, Tachi presented an argument to justify the Japanese invasion. First, he accepted the position enunciated by the Japanese government that the Japanese actions in Manchuria were intended to respond to an immediate danger caused by the Chinese. Second, he noted that the Japanese actions had been based on the right of self-defense. According to Tachi, the right of self-defense was to be interpreted broadly and should include not only dangers threatening the survival of the country caused by another state but also the right to defend the lives and property of nationals in other states. For instance, he wrote that protecting both legal rights with regard to mines or railways owned by the state or individual nationals as well as security interests in foreign regions should be seen under the heading of self-defense. As a basis for this broad interpretation, in addition to citing academic works which interpreted the notion of self-defense broadly, he mentioned the example of the U.S. expedition in Mexico from 1915 to 1919, which, he argued, was conducted in the name of self-defense.[25] He concluded that the Monroe Doctrine and the British special reservations of self-defense over a particular area in the application of the Pact could serve as the basis for Japanese claims of self-defense in Manchuria. Thus, on the applicability of the Pact to the Manchurian Incident, he reiterated the arguments he had brought up at the completion of the Pact. Citing again the United States diplomatic note of June 1928 to the effect that only states themselves can determine the rights of self-defense, he concluded that "It is obvious that the action of our Army in Manchuria did not violate the Pact."[26]

Wright, in turn, refuted the bases of Tachi's argument, writing that even though the Pact allowed room for self-defense and defensive action, this did

not mean that all use of force could be justified under the right of self-defense. So, "the state defending itself must, in other words, subsequently make good its case in the international forum or its action will be condemned."[27] With regard to the British reservation on the application of the Pact in areas of her special interests, Wright called the Japanese who supported this argument "apologists" and said that "Great Britain made no claim of a new right to act in these "regions, but only to protect them as a measure of defense."[28] In other words, he saw Japan's claim of self-defense in Manchuria as an attempt to cover over an aggressive military action aimed at acquiring new special interests, while he viewed the British reference as being only for the defense of an already acquired special interest. In acknowledging the previously acquired fruits of imperialism while not permitting new attempts to acquire such special interests, Japanese understood that the new international order that he was trying to establish in effect froze the status quo.

Wright and Tachi differed about whether and to what extent the Pact prohibited the use of force and about how to come to terms with historical imperialist practices. However, a more basic difference in the approach to international law appeared in their interpretations of the so-called Stimson Doctrine of 1932. Wright found great innovation in the Stimson Doctrine, and he wrote that, "No diplomatic note of recent or even more distant years is likely to go down in history as of greater significance in the development of international law than that sent by the United States to China and Japan on January 7, 1932."[29] Specifically, he found in it the three universal propositions which he thought would lead to radical new developments in international law : "(1) De facto occupation of territory gives no title ; (2) Treaties contrary to the rights of third states are void ; (3) Treaties in the making of which non-pacific means have been employed are void."[30] Up to that time, international law had given legal recognition to changes effected by

the use of force. Wright noted that "recognition has been the magic formula that has converted violation into legality, robbery into title, might into right."[31] However, he believed that the world had reached a stage of rationality where might did not equal right. He also saw the Stimson Doctrine as a progressive step following in line with the spirit of the Pact. Writing, "If these three principles were really made effective, international law would be revolutionized,"[32] it is apparent that Wright did not think that the Stimson Doctrine had already changed the principles of international law. But he did hope that they might in the future induce positive changes in international law.

Against Wright's innovative interpretation of the Stimson Doctrine, Tachi replied with an article to directly refuting the arguments. The essence of Tachi's criticism was that Wright's argument had not been accepted as the established principle or understanding of international law. Although Tachi did mention some theoretical works on international law which argued against Wright's position, in the main he favored the use of such stock phrases as "actual international law," or "established international law." For instance, Tachi wrote that "Wright's argument is not compatible with the judicial belief in international law as it has been up to now."[33] In short, Tachi did not agree with Wright's progressive interpretation of the Stimson Doctrine. Wright's interpretation might have been an effort to develop a new, progressive, and forward-looking principle in international law, but Tachi preferred to stay with the established views. Wright committed himself to an effort of reform, while Tachi maintained a conservative and past oriented view of international law.

Development of Conflict

The general trend of international law in the West favored the new interpretations set forth by Wright rather than the traditional view of

international law supported by Tachi. On August 8, 1932, Henry L. Stimson, then Secretary of State, gave an address to the Council of Foreign Relations in New York entitled, "The Pact of Paris : Three Years of Development." Stimson stated that the Pact "signalize[d] a revolution in human thought. . . . War between nations was renounced by the signatories of the Kellogg -Briand Treaty. This means that it has become illegal throughout practically the entire world."[34] Further, he mentioned that the Pact had made war a concern for all nations, whereas before it had usually been deemed the concern only those parties involved in the conflict. This position illustrates the influence of Wright's interpretation of the Pact. Stimson then quoted President Hoover, to the effect that the Pact created a "positive obligation to direct national policy in accordance with its pledge,"[35] and pointed out that U.S. diplomatic actions during the hostilities between Russia and China in northern Manchuria in 1929 and also during the Manchurian Incident proved the U.S.'s willingness to adhere to the Pact.

The international lawyers who attended the conference of the International Law Association at Oxford welcomed Stimson's address. Two years later in 1934 when the Association held its conference in Budapest, one international lawyer wrote in retrospect that "When our Oxford conference took place in 1932, we were fortunate indeed to meet perhaps on the very day when the American Secretary of State, Mr. Stimson, made his famous oration."[36] At the Budapest conference, international lawyers held special discussion on how to make the interpretations of the Pact more unified and meaningful. The result was the adoption of a set of guidelines for interpretation of the Pact, "the Budapest Articles of Interpretation." These guidelines included five articles, and the general tone accorded with the new interpretations for which Wright had argued. Article (4)(c) confirmed the changes in the traditional conception of neutrality and stated that in the event of a violation of the Pact states may "supply the State attacked with financial or material

assistance, including munitions of war."[37] More importantly, Article (5) amounted to a codification of the Stimson Doctrine : it stated that "The Signatory States are not entitled to recognize as acquired de jure any territorial or other advantages acquired de facto by means of a violation of the Pact."[38]

Tachi, not surprisingly, objected to the new interpretations adopted at Budapest. As a basis for his refutation, he referred to general principles concerning how to interpret treaties according to international law. Since nothing had been specified about the abolition of the traditional concept of neutrality when the Pact was originally completed, Tachi thought that the new interpretation was intended to exercise a retroactive power, which the established principles of international law did not allow for. Here again, in his arguments Tachi often used such phrases as, "legal understandings according to established international law do not acknowledge it."[39]

Whether the new interpretations could be considered retroactive or not was another conspicuous difference between Wright and Tachi. Wright responded to such criticism, stating that the non-recognition of advantages gained in violation of the Pact, which was proclaimed by Stimson, had in fact been seen as implicit in the Pact by a number of writers long before the Stimson's note. He cited the example of a plan to outlaw war by Salmon Levinson and Frank Knox in 1921 which contained the non-recognition doctrine.[40] Wright viewed the new interpretations as merely historical progress, and he was confident that that trend would contribute to peace in the world. Since he foresaw a gradual transformation of international law toward a recognition of the outlawry of war, Wright's approach was essentially meant to challenge established interpretations and principles. In this connection, it naturally contained a retroactive element. On the other hand, Tachi wanted to preserve the old notions of international law which were at the basis of his arguments, and he held that the already established principles of international law were more important than the progressive aims embodied in the Pact.

Thus, Tachi labeled the new trends as idealistically based on what he called the new spirit of the 20th century in the field of international politics and said that writers in the West confused the idealism in international politics with realism in international law. He wrote,

> The Budapest articles of interpretation of the Pact adopted by the International Association was based on idealism in the study of international politics for the purpose of facilitating cooperation among nations. As a result, these interpretations sought to claim new implications which had not been agreed to by other signatories at the time of the completion of the Pact. These new interpretations oppose the principles of how to interpret treaties in established international law.[41]

Tachi confined law within realism while leaving idealism to politics, but Wright wanted to introduce idealistic elements into international law and, based on the normative aspect of law, establish a durable international order.

In an article published in 1934 entitled "Manchuria and Panama," Tachi not only refuted the new interpretations of the Pact, but also elaborated his argument that Manchuria for Japan was similar to Latin America for the United States.[42] The publication of this article preceded the official Japanese proclamation of an Asian Monroe Doctrine. Amou Eiji, spokesman for the Japanese Foreign Ministry, stated in the spring of 1934 that Japan would henceforth not look favorably on Western political or economic activities in East Asia. This informal talk by Amou was called the East Asian Monroe Doctrine and Amou himself admitted that his statement was the equivalent of the U. S. Monroe Doctrine.[43] Responding to the statement, the United States sent a diplomatic note to the effect that U. S. relations with both Japan and China were governed by the principles of international law and treaties. In particular, the United States mentioned "one great multilateral treaty to which practically all the countries of the world are parties,"[44]

obviously referring to the Pact, as one of the treaties to which the United States would adhere.

Wright continued to push for passage of a law that allowed for an arms embargo against aggressor nations ; this he felt was "a necessary corollary of our adherence to the Kellogg Pact."[45] In the mid 1930's the international lawyers fiercely debated the question of whether the traditional neutrality should be changed or not. Charles Warren, a distinguished international lawyer, proposed adopting an impartial embargo on all belligerents, arguing that with an impartial arms embargo the U.S. risk of getting involved in a war would be reduced.[46] Other international lawyers who supported the enforcement of the Pact, as Wright did, and those who favored an active American role in the effort to attain a collective security agreement strongly favored the discretionary arms embargo. At the annual meeting of the American Society of International Law in April 1935, Henry. L. Stimson epitomized the mood of these lawyers. He delivered a paper calling on the United States to give up the old concept of neutrality and approve the discretionary arms embargo to punish the aggressors. Clyde Eagleton led the discussion session which followed Stimson's presentation and criticized Warren's impartial neutrality as supine submission."[47]

Neutrality became a major political issue involving not only international lawyers but also Congress and the public, as the isolationist sentiment was inflamed by Senator Nye's investing committee on munitions makers during World War One. The strong tendency toward isolationism led Congress to enact the Neutrality Bill, which included an impartial arms embargo. This was a setback for Wright, and soon after the Neutrality act of 1935 passed, he joined other internationalists to form the Committee for Concerted Peace. The Committee aimed at revising the Neutrality Act's approval of impartial arms embargo. It included such well-known internationalists as Clark Eichelberger of the League of Nations Association, James Shotwell of Columbia University

and international lawyers like Eagleton and Wright. After much study, the Committee prepared several draft revisions of the Neutrality Act. Wright continuously emphasized the importance of the Pact for the Neutrality Act, and he even commented on one draft of the revision that he wanted "more definite reference to the Pact of Paris."[48]

While Wright dedicated himself to enforcing the Pact, Tachi also continued his work to refute the new interpretation of international law that was based on the "new spirit in the 20th century." Between 1934 and 1935, Tachi developed a theory that the Open Door principle did not apply to Manchukuo. His interpretation held that the obligation of the Open Door, which derived from the Nine Power Treaty, applied only to the Chinese government and that thus Manchukuo did not fall within its judicial obligations. Actually, Manchukuo had unilaterally declared observance of the Open Door policy, but Tachi argued that from a purely judicial point of view it had been an unnecessary act. He also wrote that Manchukuo was not obliged to observe this principle, since the Powers did not officially recognize her.[49] Tachi sent this article to the *American Journal of International Law* for publication and Wright, who was then serving on the editorial committee, reviewed it. Wright commented that Tachi's article was "exceedingly disappointing" and judged that it was not appropriate for publication. Wright summarized Tachi's argument that the Open Door principle did not apply to Manchukuo and concluded, "It is clear that Japan is anxious to do away with the Open Door legally in the Far East, having already abolished it in a considerable measure practically, but I hardly think that we should honor their arguments by publication."[50]

Wright also gave a harsh judgment to an article submitted to the Association for publication by a Mr. Ninomiya, another international lawyer from Japan. The argument in "The Kellogg-Briand Pact Re-examined" closely resembled Tachi's argument concerning the Pact. Wright commented

that "Japan having violated the Kellogg Pact in the general opinion of the world, appears now to be trying to persuade the world that the Pact never meant much of anything anyway."[51] Wright's remark became even more apropos in 1938 when Tachi published a book on international law and the Sino-Japanese War. In it Tachi wrote that "since the Kellogg Pact reserved broad rights of self-defense, it was meaningless from the beginning."[52]

Throughout the changing international situation of the late 1930's, Wright never took his eyes off the principle of the Pact. In 1938, he published an article on the denunciation of treaty violators, arguing that the signatories of the Pact had a duty to denounce breaches by other states. He developed a theory that multilateral treaties created the obligation for the signatories of denouncing treaty violators, writing that "The assertion by the United States that Japan had violated the Pact of Paris and the Nine-Power Treaty through invasion of China was in connection with such a duty at the Brussels Conference."[53]

When the European war broke out in 1939, Wright joined the Committee to Defend America by Aiding the Allies which was established for the purpose of strengthening America's effort to help Great Britain and the other victim countries of Nazi aggression. In the so-called White committee, Wright played an active role as legal advisor. He justified the destroyer-base agreement of 1940, calling it a corollary to the Pact. He explained that "Germany has gone to war in violation of the Pact of Paris to which we are a party and we are, consequently, justified under international law in discriminating against Germany."[54] For the basis of this argument, he cited the Budapest Articles of Interpretation of the Pact of 1934. Wright used the same argument to support the Lend-Lease bill in the spring of 1941 and the repeal of the Neutrality Act in the fall of 1941. Wright deduced the basis for the American policy of contributing to the cause of collective security from the Pact, and he conveyed this view to both policy makers and

the public.

In the late 1930's, Wright often wrote to Secretary of State Cordell Hull to convey his views on international affairs. Wright found Hull a defender of international law and encouraged Hull's views. On July 16, 1937, the Secretary delivered a speech in which he held that the use of force as a means of national policy in international affairs should be avoided and that the Unites States stands for "the revitalizing and strengthening of international law."[55] Wright praised this statement and in subsequent letters to Hull often mentioned it, while writing that the United States should not retreat from the principles advocated in his address. Even in the fall of 1941, right before the breakdown of the relations between the United States and Japan, Wright found continuity with Hull's position in 1937. Seeing the Hull note in the newspaper after it had been presented to Japan in lieu of a modus vivendi, he wrote to Secretary Hull that the "fundamental principles of international policy sent to all the governments in July 1937 still represented the position of this government."[56]

The gap between the perspectives of American and Japanese international lawyers was deepened by another development in the late 1930's : the presentation of German interpretations of international law in Japan. In 1937, Tachi published an article introducing the German view of international law. Nazi Germany, Tachi argued, had developed theories of international law which were opposed to those of the Anglo-Americans. Tachi noted that the German attitude toward international law was based on pragmatism and realism and hence opposed to "idealistic" Anglo-American international law. By pragmatism and realism, Tachi meant that for Germany the final aim of international law lay in the elaboration of a theory to justify a change of the postwar international order found in the Versailles treaty system.[57] That is, German international lawyers interpreted international law in such a way as to support their own interests. Although Tachi criticized their theories

for being arbitrary and sometimes theoretically contradictory, he seems to have allied himself with the German view of the practical nature of international law, at least insofar as that view opposed the idealistic approaches of the English and Americans. Tachi believed that his own interpretations were well within the framework of established and traditional understandings of international law. But if the general trend of international law was moving in the direction supported by lawyers like Wright, then he saw himself as, in effect, challenging that current of change in international law. Both in their interpretations of international law as well as in their actual foreign policies Germany and Japan tended to ally with each other against the Anglo-American powers. Also, Japanese international lawyers came more and more to recognize that there was a diversity of interpretations of international law. In fact, with the outbreak of war in Europe and the emergence of Germany and the Soviet Union as regional powers, Japanese international lawyers talked often about the existence of different interpretations of international law among the Western powers, Germany and the Soviet Union.[58]

One of the basic elements in Tachi's approach to international law — his refusal to outlaw the use of force — was carried further in an article he wrote in 1939, which produced a new interpretation of the effect of treaties signed under duress. He introduced a British scholar's argument that justified the effectiveness of treaty signed not by peaceful means but by force, and he explained that there was a new trend in international law according to which strong nations could dictate treaties to weak nations by force.[59] After the European war broke out, Tachi published many commentaries about ongoing incidents in the war and described their implications for international law. In short, he was pleased with the fact that his conception of the international law of war remained in effect.

Conclusion

Wright wrote in a letter to Takeuchi Tatsuji, a Japanese student of his, that "The reasons why the liberals and believers in peace in the West resent the Japanese action particularly is because it initiated the reversion to old imperialistic policies."[60] Wright held that the world had moved beyond the stage of imperialism, into one in which countries abolished their imperialistic policies that had been supported by national power. He viewed the nations of the world as seeking to establish an international order based on the notion of law. For this reason, he saw Japanese military action in Manchuria and China as "a step backward" or a "setback."

Tachi, on the other hand, still lived according to the rules of the imperialist era, and his understandings of international law remained those of the age of imperialism. He did not agree that the use of military force and war had been outlawed. Since for Tachi the international system operated not on the basis of cooperation but on competition, the Monroe Doctrine was not a heritage of the past ; it still something alive and effective.

In response, Wright often mentioned the Clark Memo of 1928, which repudiated the imperialistic interpretations of the Monroe Doctrine. He insisted that even though the United States had given up her imperialistic policies, Japan still adhered to hers. Wright believed that Japan had veered off from the proper course, and he wrote that "Many people here of course, express the hope that Japan will eventually gain wisdom in the same way the United States did."[61]

From Wright's perspective, the Japanese view of the world was unenlightened and anachronistic. From our perspective now, Tachi's views indeed appear to be simply a justification for Japan's actions on the Asian continent. He seems to have been nothing more then a scholar who propagandized for the Japanese government. I have no intention of apologizing

for Tachi's perspective for the sake of justifying Japanese militaristic policies, but it should be noted that the discrepancy between the views of Wright and Tachi reflected a tension that derived from a fundamental disagreement about whether the international order should be fixed at a certain point or allowed to evolve. The international order which Wright sought to establish would have had the effect of freezing the status quo at the certain point in history. Wright implied as much when he differentiated between British areas of special interest, which had already been acquired, and Japanese actions to acquire new interests. Wright himself was not ignorant of the fact that the international order he supported was unequal and problematic. And in the late 1930's he recognized the necessity for a more equitable international order, particularly in the fields of trade, tariffs and natural resources.

In conclusion, in the disagreements between Japanese and American international lawyers presented in this paper can be seen one set of problems that faced the world as the age of imperialism drew to a close. That is, at which point in history can an equitable international order be established and whether and how changes within that order are to be allowed. Wright wanted to establish an international order after World War One and to mandate that the change be carried out peacefully. Tachi thought that Japan should be allowed to expand before the new order was determined, and he viewed military force as an appropriate means for expansion. From the perspective of the interpretations of international law presented above, the differences between Wright and Tachi reveal that the conflict between the United States and Japan was based on a discrepancy between one country operating from a post-imperialist basis and the other acting in the midst of imperialism. Those who sought an end to imperialism thought that an international legal order could replace the naked force of military might, while those acting within imperialism sought to expand their interests by military force. The difference between Wright and Tachi, in this sense, was also a collision

between the search for order through the rationality of law and the quest for interest by means of military force. This difference definitely comprises one very important intellectual foundation on the Road to Pearl Harbor.

1 Annotated, compiled and edited by R. John Pritichard and Sonia Magbanua Zaide, *The Tokyo War Crimes Trial* (London : Garland Publishing, 1981) 16 : 39006-39014.

2 Ibid., 17 :42177.

3 As for Wright's view on war trial, see Quincy Wright, "The Law of the Nuremberg Trial," *American Journal of International Law* 41 (January 1947) : 38-72.

4 Concerning Levinson, see, John E. Stoner, *S. O. Levinson and the Pact of Paris* (Chicago : the University of Chicago Press, 1942).

5 Robert Ferrel, *Peace in Their Time* (New Haven : Yale University Press, 1952), 37.

6 Harold Josephson, *James T. Shotwell and the Rise of Internationalism in America* (Cranbury, New Jersey : Associated University Press, 1975), 156-176.

7 At that time, Mrs. Wright was chairman of the Department of International Cooperation to Prevent War for Illinois League of Women Voters.

8 Quincy Wright, "Changes in the Conceptions of War," *American Journal of International Law* 18 (October 1924) : 755.

9 Ibid., 761.

10 Quincy Wright, "The Outlawry of War," *American Journal of International Law* 19 (January 1925) : 76-103.

11 Tachi Sakutaro, "Fusen Joyaku no Kokusaiho-kan [View of International law in the Kellogg-Briand Pact]," *Kokusaiho Gaiko Zasshi* 27 (December 1928) : 7.

12 Ibid., 9.

13 Tachi Sakutaro, "Eikoku no shin Monnro-shugi Sengen oyobi Fusen Joyaku no Jikko [British New Monroe Doctrine and the Effect of the Pact]," *Gaiko Jiho,* no. 577 (December 1928) : 4.

14 Yanagisawsa Shinosuke, "Fusen Joyaku no Seiritsu to Beikoku no Sekinin [The Pact and American Responsibility]," *Gaiko Jiho* no. 570 (September 1928) : 96.

15 Royama Masamichi, "Fusen Joyaku to Taiheiyo no Shorai [The Pact and Future of the Pacific]," *Chuo Koron* 43 (October 1928) : 47.

16 Kamigawa Hikomatsu, "Fusen Joyaku no Kachi Hihan [Critics on the Value of the Pact]," *Gaiko Jiho,* no. 572 (October 1928) : 68.

17 Gaimusho, "Fusen Joyaku ni kansuru Taibei Toan chu ni Teikoku no Taishi Kodo no Jiyu o Ryuho suru no Tokushitsu [Advantage and disadvantage in making reservation for Japanese action in China to proposed treaty]," Fusen Joyaku Kakuju Kosho Kankei 3, Japanese Foreign Ministry Archives, Tokyo, Japan.

18 See, Toshi Tetsudo kankei ikken [Materials on the issue of the Chinese Eastern Railway], Japanese Foreign Ministry Archives, Tokyo, Japan.

19 *Proceedings of the American Society of International Law*, 1930 (Washington, 1930) : 79-89.

20 Ibid., 102.

21 Ibid., 107-8.

22 Tachi Sakutaro, *Heiji Kokusai-ho ron* [International Law of Peace] (Tokyo 1930) ; *Senji Kokusai-ho ron* [International Law of War] (Tokyo 1931).

23 Onuma Yasuaki, "Japanese International Law in the Prewar Period — Perspective on the Teaching and Research of International Law in Prewar Japan," *Japanese Annual of International Law* 29 (1986) : 37.

24 As for the international lawyers' discussion on the laws of war,

Proceedings of the third Conference of Teachers of International Law (Washington : Carnegie Endowment for International Peace, 1929), 91-124.

25 Tachi Sakutaro, "Jiei-ken Gaisetsu [An Overview on the Right of Self-defense]," *Kokusaiho Gaiko Zasshi* 31 (April 1931) : 6,15-16.

26 Tachi Sakutaro, "Saikin Manshu-jihen ni kanrenshite Fusen Joyaku o Yomu [Reading of the Pact in Connection with the Current Manchurian Incident]," *Gaiko Jiho* no. 649 (December 1931) : 7.

27 Quincy Wright, "Meaning of the Pact of Paris," *American Journal of International Law* 27 (January 1933) : 47.

28 Ibid., 49.

29 Quincy Wright, "The Stimson Note of January 7,1932," *American Journal of International Law* 26 (April 1932) :342.

30 Ibid., 344.

31 Ibid.

32 Ibid., 348.

33 Tachi Sakutaro, "Fubar-shugi (ichimei Suchimuson-shugi) no Jittai [Nature of the Hoover Doctrine (in another words) the Stimson Doctrine]," *Gaiko Jiho* , no. 674 (January 1933) :203.

34 Henry L. Stimson, *The Pact of Paris : Three Years of Development* (Washington : G. P. O., 1932), 4.

35 Ibid., 8.

36 International Law Association, *Briand-Kellog Pact of Paris* (August 27, 1928) : *Articles of Interpretation as Approved by the Budapest Conference* 1934 (London, 1934), 17.

37 Ibid., 64.

38 Ibid.

39 Tachi Sakutaro, "Fusen Joyaku no shin Kaishaku o Ronnansu [To Refute the New Interpretations of the Pact]," *Gaiko Jiho,* no. 752 (April 1936) : 29.

40 Wright, "The Meaning of the Pact of Paris," 49-50.

41 Tachi, "Fusen Joyaku no shin Kaishaku o ronnansu," 29.

42 Tachi Sakutaro, "Manshu to Panama [Manchuria and Panama]," *Gaiko Jiho* no. 698 (January 1934) : 1-14.

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53 Quincy Wright, "The denunciation of Treaty Violators," *American Journal of International Law* 32 (July 1938) : 532.

54 Quincy Wright to the President, 31 May 1940, Papers of Quincy Wright.

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57 Tachi Sakutaro, "Nachis no Kokusaiho-kan [the Understandings of International Law in Nazi Germany]," *Kokusaiho Gaiko Zasshi* 36 (January 1937) : 27.

58 See, Ichimata Masao, "Bei So Doku no Kokusaiho kan ni taisuru Jyakkan no Kosatsu [A Consideration on the Understandings of International Law in the United States, the Soviet Union and Germany]," *Kokusaiho Gaiko Zasshi* 39 (October and November 1940) ; Matsubara Masao, "Ashita no Kokusaiho [International Law in future]," *Kokusaiho Gaiko Zasshi* 39 (November 1940).

59 Tachi Sakutaro, "Kyoseitekini musubaretaru Joyaku no Koryoku oyobi Kokusaiho no Engen ni kansuru Shinsetus [A New Doctrine on the Treaties signed under Duress and the Source of International Law]," *Kokusaiho Gaiko Zasshi* 38 (November 1939) : 20.

60 Wright to Takeuchi Tatsuji, 2 February 1938, Papers of Quincy Wright. Takeuchi received his degree at the University of Chicago in 1931 and went back to Japan where he taught international law. Wright and Takeuchi corresponded frequently.

61 Quincy Wright to Takeuchi Tatsuji, 2 July 1940, Papers of Quincy Wright.