

Trope of a Sovereign State: Treaty-Making by Korea 1876-1899

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In order to understand the history of East Asian diplomatic relations, one needs to keep in perspective the epochal significance of the nineteenth century. In the latter half of that fatal century, the Sino-centric international order that had been in existence for a couple of millennia was replaced by a novel normative discourse that had originated in Europe. In this story of world-historical significance, Korea, starting out as a vassal state of the Celestial Empire, achieved (at least a semblance of) sovereign independence through the conclusion of the Treaty of Commerce with China, the first ever equal treaty between the former suzerain and vassal, in 1899. In this article, I will trace this story from the vantage point of treaty-making. My focus will be on the question of how Korea, becoming increasingly aware of the formative and constitutive power of treaty as a strong indication of independence, tried to employ this medium to become a sovereign self with a distinct political identity, in particular, in relation to China. I will discuss the evolution of the Korean perception of treaty by analyzing landmark treaties such as Treaty of Amity with Japan (1876), Treaty of Amity and Commerce with the United States of America (1882), and Treaty of Commerce with China (1899).

Keywords: Treaty of Amity, *sokguk*, *Yangjeol cheje*, Treaty of Commerce, *Hancheong euiyak gongdok*

I. Introduction

The transformation of international relations in East Asia in modern times could be summarized as the replacement of the traditional East Asian regional order by the “modern” Euro-centric normative order.¹ This process was not about a

1 For a detailed discussion of this topic, see Hsü (1960) and Kim (1997).

monolithic East Asia interacting with a single monolithic Europe. Individual East Asian nations entered into relations with individual European states in a variety of ways. These East Asian states also transformed or reconstructed, on the basis of the new normative system called modern international law, their relations with the other states that had co-belonged to the Sino-centric regional order.

In this story of great transformation in East Asia, Japan played the role of an aggressive innovator emphasizing the inevitability and importance of a “paradigm shift,” while China endeavored to maintain the status quo, i.e., its superior position vis-à-vis other East Asian nations, by arguing for the continued validity of the traditional East Asian order. In this diplomatic struggle, the question of international legal status of Korea, more specifically, how to characterize the relationship between Korea and China, assumed a decisive importance. In this article, I will attempt to analyze how this question played out from 1876 (the year in which the Treaty of Amity between Korea and Japan declared the former to be an “autonomous/independent state” was concluded) until 1899 (the year in which the Treaty of Commerce between Korea and China, regarded as the first ever treaty concluded on an equal footing between the two states, was adopted). In so doing, my focus will be on how Korea’s perception of the meaning and effect of treaty has evolved through a close and complicated interaction with China, Japan, and Western states. It will be shown that in a somewhat Hegelian way Korea became increasingly aware of the significance and impact of treaty-making as a strong indication of sovereign statehood and made conscious efforts to utilize this mechanism of modern international law to transform itself into a sovereign and independent nation vis-à-vis its former suzerain, i.e., China.

This article is divided into three sections. The first section discusses the conclusion of the 1876 Treaty of Amity between Korea and Japan. The second section deals with Korean treaty-making from 1882 until 1895. The third section looks at the 1895-1899 period. In this article, an attempt will be made to show how Korea, which remained oblivious to the purported rupture or break brought on by the 1876 treaty, became gradually alert to the transformative and constitutive effect of treaty-making in the second period, designated *yangjeol cheje* (兩截體制), and succeeded (if in such a short-lived way) in establishing its sovereign independence through the conclusion of the 1899 treaty with China.

II. Persistence of the Old Order: Treaty of Amity between Korea and Japan (1876)

In Korea where the history of relations between Korea and Japan in modern times is often approached from the viewpoint of Japanese invasion of Korea, the 1876 treaty is generally regarded as the prelude to the encroaching subjugation of Korea by Japan, which culminated in Korea's annexation in 1910. Such a view is understandable given that the Unyo Incident, a premeditated provocation by the Japanese Navy in 1875, constituted the direct background to the conclusion of the treaty. Conventional wisdom about the treaty has been that the 1876 treaty was the first "modern" and unequal treaty Korea ever concluded with a foreign nation.

It is to be noted that the question of how to characterize Sino-Korean relations was discussed between China and Japan before the conclusion of the 1876 treaty. In light of the fact that China was the suzerain of Korea, the Japanese government decided to contact the Chinese government first concerning the Unyo Incident. For this purpose, the Japanese government dispatched Minister Mori Arinori (森有禮) to Beijing. The response he received from the Chinese government was that Korea retained complete autonomy over all matters relating to its government and legislation and that Japan should contact Korea directly if it wanted to conclude a treaty of amity (Kim 2001:187-92). The Treaty of Amity between Korea and Japan was negotiated and adopted against such a backdrop.

Japan's intention in concluding this treaty was to extricate Korea from the traditional Sino-centric order by recognizing Korea's independence under modern international law. Article 1 of the 1876 treaty provided that "Korea is an independent/autonomous nation and has equal rights to Japan" (朝鮮國自主之邦, 保有與日本國平等之權).² Now the question is whether Japan's understanding was shared by Korea. In other words, one needs to ask whether Korea believed that it was breaking away from the traditional East Asian order by concluding this modern form of a treaty with Japan.

Japan could argue for the paradigm-shifting significance of the 1876 treaty by pointing out some of the provisions that were intended to put the relations between Korea and Japan on a new normative footing, that is, European interna-

2. Author's translation.

tional law.³ For instance, Article 1 had the fundamental importance from the standpoint of the Japanese government. By declaring Korea to be “an independent/autonomous state,” the treaty could be interpreted as undermining the traditional Sino-centric order in East Asia. According to the Japanese interpretation, Article 1 signaled that Korea was decoupled from the Sino-centric order by declaring itself to be an independent and sovereign state in the sense of modern international law.

The second part of Article 1 which reads “In the first instance all rules and precedents that are apt to obstruct friendly intercourse shall be totally abrogated and, in their stead, rules, liberal and in general usage fit to secure a firm and perpetual peace, shall be established”⁴ could be interpreted as an undertaking by both states to construct future relations between the two on the basis of modern international law (Tabohashi 1940:483). Combined with other provisions such as Article 2, which was interpreted as introducing the modern institution of permanent legation, and Article 10, which provided for a particularly modern practice of international law called “consular jurisdiction,” the 1876 treaty could be evaluated as a legal document that emancipated the relations between Korea and Japan from the traditional encumbrances and thereby modernized them.

However, this interpretation was valid only for Japan. The other party to the treaty, that is, Korea, viewed the treaty from a different vantage point. It is true that the treaty represented a certain divergence from traditional practices and customs. The Korean negotiators were well aware of this fact as well as events such as the defeat of the Qing army and the subsequent looting of Beijing in 1860. However, according to the Korean interpretation, the treaty represented a high degree of continuity (rather than a radical break) with the traditional practice and custom. The Korean side took a firm stand in favor of interpreting the treaty from such a vantage point and made a great effort to put into effect such an interpretation. This attitude of the Korean side could be explained as a result of epistemological inertia originating from the apparent formal and substantive continuity between the 1876 treaty and the pre-1876 diplomatic practices and customs. However, one could go further and argue that the Korean government intentionally highlighted this continuity and thereby tried to structure and steer

3. The following discussion is based on Lee 2004:70-2.

4. 宜先將從前爲交情阻塞之患諸例規一切革除，務開擴寬裕弘通之法，以期永遠相安. The English translation is taken from Bureau of Treaty Affairs, Japanese Ministry of Foreign Affairs, *Kyu Joyaku Isan* (舊條約彙纂) (1934) vol. 3, p. 2.

the negotiation in a direction conducive to the protection of its interests.

In this connection, let me discuss Article 1 of the 1876 treaty. As was mentioned above, Japan attributed a great deal of significance to this provision. However, the Korean negotiators did not go along with the Japanese interpretation and instead interpreted the term “*zizhu*” (自主) as meaning non-intervention by China into internal affairs of its tributary states, notwithstanding subordination of these states to China at the ritualistic and symbolical level. In other words, the Korean side understood the term in the context of the traditional East Asian regional order. In that context, *zizhu* (自主), the conceptual boundary of which remained unclear, was flexible enough to be interpreted in a way compatible with the traditional tributary system. The Korean negotiators utilized the middle zone, which extended from the modern international legal concept of independence and sovereignty to a notion flexible enough to be compatible with the Sino-centric tributary system (which is similar to the modern international legal concept of autonomy), to its own advantage. It anchored its own interpretation of the term firmly within the traditional framework. The usage of the same term by China in its treaty with Great Britain in 1858 could have facilitated Korea’s consent to the use of the term “*zizhu*” (自主) in the 1876 treaty.⁵ If China, the Central or Middle Kingdom, agreed to the use of the term in characterizing its relations with a barbarian state from the standpoint of the traditional Sino-centric order, the Korean negotiators could have easily reasoned that it was fine to use the same term in its relations with Japan. In the final analysis, *zizhu* (自主) as understood by the Korean negotiators had a much shorter semantic reach than as interpreted by their Japanese counterparts.

In a similar vein, it seems difficult to ascribe much meaning to the sentence found in Article 1 of the treaty which provides for the abolition of “all rules and precedents that are apt to obstruct friendly intercourse.” The expression “rules, liberal and in general usage” (寬裕弘通之法) in its original Chinese reads very much like a typical Confucian phrase. It would be a stretch to argue that this expression meant modern European international law, which intended to replace the traditional East Asian order. It is true that the expression “widely recognized” (弘通) is somewhat similar to the phrase “general practice of states” (萬國之通例) that appears often in *Manguk gongbeop* (萬國公法), which was pub-

5. Article 3 of the 1858 Sino-British treaty declares that “[the United Kingdom of Great Britain and Ireland is] an independent nation, on a footing of equality with... China” (英國自主之邦與中國平等).

lished in 1864. However, it is to be noted that the universalist tendency is one of the strong characteristics of Confucianism. In particular, it is difficult to interpret the phrase “rules, liberal and in general usage” (寬裕弘通之法) as meaning modern international law, given that the expression “*kuanyu*” (寬裕) is easily associated with the central concept of Confucianism, i.e., *ren* (仁).

By discussing Article 1, I have tried to show that Korea attempted to read into the document a high degree of continuity between the 1876 treaty and the pre-1876 diplomatic practices and customs. It is to be noted that this is also shown by the negotiation strategy adopted by the Korean diplomats and a controversy over the protocol relating to the ratification of the treaty.

In the first meeting, which took place on February 11, 1876, both sides discussed the Unyo Incident. With respect to this incident, Shin Heon (申櫨), the Korean head negotiator, criticized Japan’s behavior in 1875 by invoking the phrase “*rijing wenjin*” (入境問禁), meaning “when entering a foreign country, one should inquire about its legislation” from one of the best known Confucian texts, *Liji* (禮記).⁶ In countering the Japanese arguments based on modern European international law with which Korea was not familiar, the Korean negotiators invoked the phrase from the Confucian canon which enjoyed universal authority in the East Asian region. In so doing, they hinted at the normative framework they wanted to rely on during the negotiations. In the actual negotiations, they often invoked “time-honored practices or customs” (舊例) and thereby tried to send a message that the 1876 treaty was nothing more than a variation of the traditional East Asian order.

The stance of the Korean negotiators emphasizing the importance of the time-honored practice was put into high relief in connection with a question concerning the ratification of the treaty. The Korean negotiators insisted that it was best to follow the traditional format of a royal letter, i.e., writing down “the King of Korea, Yi So-and-So” and affixing a royal seal with the inscription 爲政以德, meaning “Governing with Virtues.” However, Japan asked the Korean king to put his own signature on the instrument of ratification claiming that this practice was an “internationally established practice.” The Korean negotiators refused this request, arguing that it was in contravention of Korean law and customs for subjects to request their monarch to put his own signature. Finally, a compro-

6. The original sentence is “入境而問禁，入國而問俗，入門而問諱。” A similar principle can be found in *Mencius* (孟子).

mise was adopted. Both sides agreed that the Korean king would not write his own name on the instrument of ratification and that a new royal seal with the inscription 朝鮮國主上之寶, meaning “Seal of the Korean Monarch,” would be affixed (Tabohashi 1940:497). In a sense, the Korean negotiators persisted and prevailed in this controversy.

Thus, the 1876 treaty represents a compromise between Japan’s desire to put the relations between itself and Korea on a totally new normative foundation and Korea’s intention to tie down relations between the two countries to the normative confines of the traditional East Asian order. In reaching such a compromise or mutual accommodation, the classical Chinese language played an important role. The diachronic continuity at the linguistic and rhetorical level mediated through the classical Chinese, coupled with the flexibility or variability of the conceptual boundary of terms and concepts expressed in that language, enabled each party to interpret the entire document or specific provisions in a way conducive to the protection and promotion of their national interests. Under the surface of the one and the same document called the Treaty of Amity between Korea and Japan, two conflicting world views (or two conflicting conceptions of the East Asian order) existed in a state of strained co-habitation, mediated through classical Chinese.

What is important for our purpose is that the Korean government, in emphasizing the commonality between the 1876 treaty and the pre-1876 East Asian diplomatic practices and customs, tried to minimize or deny the paradigm-shifting effect or impact of the 1876 treaty. In so doing, the relevance of the traditional East Asian order was preserved as far as Korea was concerned. A great deal of uncertainty and ambiguity thus created in East Asia persisted until the conclusion of the Treaty of Shimonoseki or more correctly the Treaty of Commerce between Korea and China.

III. Uneasy Coexistence of the Two Orders: Korea’s Treaty-Making in 1882-1895

1. Korea’s Entry into Treaty Relations with Western States

The policy of the Korean government to regard the 1876 treaty largely as a continuation of the traditional East Asian order and, as a corollary, to deny the relevance of the modern European international law, however, could not be main-

tained much longer. This is clearly shown by the fact that the Korean government concluded a series of treaties of friendship and commerce with nine Western states from 1882 to 1902. The list of the states presented in chronological order is:

United States of America (22 May 1882)

Great Britain (26 November 1883)

Germany (26 November 1883)

Italy (26 June 1884)

Russia (7 July 1884)

France (4 June 1886)

Austria (23 June 1892)

Belgium (23 March 1901)

Denmark (15 July 1902)

Out of these nine treaties, seven were concluded before April 1895 when the Treaty of Shimonoseki was concluded. Article 1 of this treaty provided:

China recognizes definitively the full and complete independence and autonomy of Korea, and, in consequence, the payment of tribute and the performance of ceremonies and formalities by Korea to China, in derogation of such independence and autonomy, shall wholly cease for the future.⁷

Relations between Korea and China in the period 1882 to 1895 were highly convoluted, oscillating between China's intention to transform a relationship of largely symbolical and ritualistic subordination into that of real subjection, on the one hand, and Korea's effort to gradually extricate itself from Chinese control by resorting to the "public law of Europe." Yu Giljun (兪吉濬), who was a prominent scholar and politician during the late Joseon period, called this complicated situation *yangjeol cheje* (兩截體制) (Kim 1997:231). By that expression, he meant the legal and diplomatic situation in which Korea had to respect both the traditional East Asian order and the new international normative system called international law.

7. 中國認明朝鮮國確為完全無缺之獨立自主。故凡有虧損獨立自主體制即如該國向中國所修貢獻典禮等嗣後全行廢絕。

It was China's policy to induce Korea to enter into diplomatic relations with Western states so that the Japanese influence over the Korean Peninsula could be diluted (Gwon 1986:81-2). In the late 1870s, China had serious misgivings about the Japanese policy toward Korea after suffering a humiliating setback over the Okinawa question. This did not mean that China recognized the independence or sovereignty of Korea in the sense of modern international law. China made a systematic effort to firmly anchor the Sino-Korean relations in the traditional suzerain-vassal framework and went so far as to transform Korea into a real dependency or protectorate (Gu 2006:100). Korea had a split or double personality, as it were, since it maintained a relationship of subordination vis-à-vis China but found itself on an (at least formally) equal footing with its Western treaty partners. Such a normative and political dilemma is well reflected in the treaties negotiated and concluded in this period.

2. Analysis of the 1882 Korean-American Treaty of Amity and Commerce

The Treaty of Amity and Commerce between Korea and the United States of America, the first treaty that the Korean government concluded with a Western state, is a text filled with the tension between the persistence of the Sino-centric regional order and the emergence, if in an inchoate and embryonic fashion, of sovereign independence of Korea. That the 1882 treaty represented a great deal of continuity as far as the Sino-Korean relations were concerned is amply shown by the following facts. First of all, the conclusion of the treaty was not initiated by the Korean government, but was strongly put forth by the Qing government. Not only that but the negotiations for the treaty were mostly conducted between Ma Jian Zhong (馬建忠), a Chinese official, and Robert W. Shufeldt, a U.S. Navy commodore. Secondly, the Chinese government tried to confirm that the traditional vertical and hierarchical relationship between Korea and China would not be affected by the conclusion of an apparently equal treaty. During the negotiations, the Chinese negotiator insisted that a clause declaring the tributary relationship between China and Korea be inserted in Article 1 of the treaty. It was also proposed by him that a clause requiring the Korean monarch to submit the draft treaty to the Chinese Department of Rites for ratification be inserted. These measures were intended to make clear that, notwithstanding the conclusion of an apparently equal treaty between Korea and the United States, the traditional suzerain-vassal relationship between China and Korea remained unaffected.

These proposals were firmly rejected by Shufeldt and, in the end, a compromise of the Korean monarch sending a diplomatic note to the United States president confirming Korea's subordinate status vis-à-vis China was agreed upon (Kim 2001:359-62).

Thirdly, treaty-making as a trope of sovereign and equal nations is usually governed by strict and meticulous rules of diplomatic protocol, including those on the calendar to be used to indicate the date of conclusion. This question had a particular political and diplomatic significance in East Asia. When one of the tributary states of the Central Kingdom (中國) attempted to declare its independence, one of the first things it did, besides calling its monarch an emperor, was the adoption of a new era name. The Korean government did exactly this when it declared itself an independent state called the Korean Empire in 1897. In this sense, the question of what era name was to be used in treaties concluded between Korea and other states assumes a heightened importance. In most treaties Korea adopted with the seven Western states from 1882 to 1892, two era names (the Korean era name followed by the Chinese one) were used; this being a powerful corroboration of the dual nature of Korea's relations with the outside world, called *yangjeol cheje*. A typical example of this is the Treaty of Friendship and Commerce between Korea and Great Britain. In the main text, the date is indicated as follows (italics and underline added):

Done in triplicate at Hanyang, this twenty-sixth day of November, in the year eighteen hundred and eighty-three, *corresponding to the twenty-seventh day of the tenth month of the four hundred and ninety-second year of the Corean^s era, being the ninth year of the Chinese reign Kuang Hsii*

The same formula was repeated with a few exceptions in subsequent treaties and other diplomatic documents.⁹ The 1882 Treaty of Amity and Commerce between Corea and the United States of America and the 1883 instrument

8. Until the end of the nineteenth century, the spelling "Corea," rather than "Korea," was prevalent. In this article, I will leave "Corea" unchanged when it was used in the original treaty provisions.

9. The exceptions include (i) the 1883 Regulations between Korea and Great Britain on British trade to be conducted in Korea, (ii) the 1883 Rules between Korea and Great Britain on customs duties, (iii) the 1885 Protocol between Korea and Italy concerning the extension of the period within which the 1884 Treaty of Friendship and Commerce was to be ratified, and (iv) the 1888 Regulations between Korea and Russia on frontier trade. These treaties used the Korean era

between the two states relating to the exchange of ratifications diverged from the established formula. In these documents, equivalence between the Chinese and the English texts was lacking as far as the recording the date of signature was concerned. In the 1882 treaty, while the Chinese version provides “大朝鮮國開國四百九十一年即中國光緒八年四月初六日，大美國一千八百八十二年五月二十二日，” the English version confined itself to indicating only “Chosen, May the 22nd, A.D. 1882,” without mentioning either the Korean or the Chinese era name. The 1883 instrument also indicated only the Western calendar date in its English version. The consistent use of the dual era names in these treaties and international documents faithfully reflects the duality with which Korea’s relations with foreign states were characterized, in particular, the purported superiority of China vis-à-vis Korea.

3. Sino-Korean Relations As Represented by the Bilateral Arrangements between the Two States

The hierarchical relationship that China tried to impose on Korea as its “dependent state”(屬國) found its clear expression in the bilateral documents adopted between Korea and China in the 1880s. The 1882 Regulations for Maritime and Overland Trade Between Chinese and Corean Subjects (韓清商民水陸貿易章程), which is regarded as “an attempt to transform the tributary relationship under the Sino-centric order into a relationship of genuine subordination and dependence under modern international law,” is a prime example. The preamble states:

All that pertains to the relations of Corea as a boundary State of China has been long ago [sic] regulated by fixed rules, and no change is required in this respect... the new regulations for the maritime and overland trade now decided upon are understood to apply to the relations between China and Corea only, the former country granting to the latter

name (大朝鮮國開國) only in the Chinese version. The same applies to the 1883 agreement between Korea and the United States of America relating to the exchange of ratifications. In its Chinese version, the combination of the Korean era name (大朝鮮國) and the traditional zodiac year name (癸未) was used. Notwithstanding these exceptions relating to the lesser form of international agreements such as regulations or rules, the fact remains that all seven treaties of amity and commerce used the Chinese era name as well as the Korean one.

certain advantages as a tributary Kingdom, and treaty nations are not to participate therein.¹⁰

In Article 1, the king of Korea is designated as the counterpart of the Superintendent of Northern Trade (北洋大臣) “in the event of important cases arising” in the open ports of Korea which the Chinese commissioners of trade therein cannot settle on their own. The same rule of precedence is replicated in article 8:

Whatever points may have to be enlarged upon or canceled in the future will be discussed and settled by correspondence between the Superintendent of Northern Trade and the King of Corea, whereupon supplementary rules will be submitted to the [Chinese] Throne and put into force after having obtained the Imperial sanction.¹¹

In this article, the superintendent of Northern Trade and the king of Korea were supposed to discuss by correspondence, on an equal footing, any matter to be enlarged upon or canceled. The Chinese emperor appeared as the highest decision-maker in the matter. Under the circumstances, no doubt could exist about the hierarchical or vertical relationship between the Korean king and the Chinese emperor.

The same idea was reflected in a more detailed way in the 1883 Twenty-Four Rules for the Traffic on the Frontier between Liatung and Korea (奉天與朝鮮邊民交易章程24條). Article 1 confirms the traditional suzerain-vassal relationship when it states that “[t]he overland traffic at the Corean frontier is not on the same footing as the trade carried on at the Treaty ports, inasmuch as it was originally established by the Court of China (天朝) as a benefit to one of its tributary States (屬國), with the distinct understanding that it should be a convenience to the population.”¹²

10. 朝鮮久列藩封典禮所關一切均有定制毋庸更議… 此次所訂水陸貿易章程係中國優待屬國之意，不在各與國一體均霑之例。As far as the 1882 regulations and the 1883 rules are concerned, no official English version was adopted. The English translations are taken from China, Imperial Maritime Customs, *Treaties, Conventions, Etc., Between China and Foreign States* vol. II (Shanghai: Statistical Department of the Inspectorate General of Customs, 1908).

11. 以後有須增損之處，應隨時由北洋大臣與朝鮮王咨商妥善，請旨定奪施行。

12. 邊界陸路交易原係天朝優待屬國，專為便民而設，與各海口岸通商事情不同。

The politically and diplomatically charged expression “Celestial Court”(天朝) is repeated in other provisions such as articles 3, 14, and 23. Article 8 reminds in no uncertain terms that the tributary trade between Korea and China was to be maintained. It provides that “[a]ll that pertains to the annual tribute to be sent by Korea to the Court of China as the customary national gift is regulated by established rule.”¹³ Article 19 also relates to the tributary mission to be sent by Korea and provides that “[t]he duties connected [with the reception and accommodation of the Korean delegations] pertain alike to the Court ceremonial of tribute missions, must be discharged in due obedience to the existing regulations.”¹⁴

China’s intention to freeze the Sino-Korean relationship to the pre-1882 status (and then transform it into a relationship of real dependence under modern international law) is clearly indicated by the liberal use of the terms “established rule” (Article 8), “existing regulations”¹⁵ (Articles 19 and 23), “customary rules” (Article 23) and “established principle” (Article 23) throughout the document.

Article 23, which is highly reminiscent of Article 50 of the 1858 Treaty of Tientsin between China and Great Britain, demonstrates China’s strong desire to preserve its customary superiority vis-à-vis one of its most important tributary states. In this article alone, the term “existing regulations” and other similar expressions were used no less than three times. This article reads as follows:

When the newly established Customs stations and the local authorities have occasion to correspond, the dispatches to be exchanged must be drawn up in accordance with the customary rules of politeness. Coreans must speak of China as “The Heavenly Court” and as “The Superior Country,” and in the ordinary correspondence they must also use the style prescribed by Government; they must not resort to careless scribbling. The use of the characters 中 (*chung*) for China and 東 (*tung*) for Korea is forbidden by rule; and, in order to show due national consideration, the Chinese authorities on the frontier in Liatung will write 朝鮮國 (*ch’ao-hsien kuo*) for Korea, and speak of 貴國 (*kuei-kuo*, our respected country) when writing about or to Korea.¹⁶

13. 當年朝鮮入京朝貢典禮攸關一切恪遵定例。

14. [護送以及差官通官迎送]等事均係朝貢典禮所關仍應遵照定制

15. The same expression was in the preamble to the 1882 regulations.

16. 中江新設關市及地方官遇有交涉事件，來往文書應遵體制。朝鮮必須尊稱天朝或稱上國字樣。即屬尋常文移亦當遵循成憲，不得率書中東等字有違定制。至奉省邊界官員則稱朝鮮國或稱貴國字樣以示優待。

It needs to be noted, however, that the 1883 rules were not premised on the idea that Korea became an integral part of the Chinese territory. In other words, the continuance of Korea as a tributary or vassal state of China did not mean that the former was annexed or incorporated into the latter's domain. Although highly dependent on China politically and otherwise, Korea still retained its jurisdictional separateness or autonomy, if not amounting to independence in the sense of modern international law. This idea is clearly expressed by Article 14 which provides:

As regards Corea's relation as a tributary State of China, it must be kept in mind that although Corea is regarded as *quasi*-Chinese territory, yet the Liatung merchants are not allowed to trespass on Corean territory in opposition to the restriction made on that score. Offenders are to be punished.¹⁷

The 1882 regulations and the 1883 rules merit our attention since they were attempts by China to clarify and redefine (to some extent, at least) the Sino-Korean relations under the ominous pressure from an extraneous normative system called modern international law. These documents can be regarded as elaborations on the Chinese position of Sino-Korean relations which were enunciated since the mid-1860s. After the General Sherman Incident (1866), the United States of America requested China's intervention in Korea for the rescue of American survivors. *Zongli yamen*, the Foreign Ministry of China, declined to comply with this request by pointing out that "Since Korea, despite being a vassal state of China, retains complete autonomy over all the matters relating to its government and legislation, it has been China's policy not to interfere in Korean affairs."¹⁸ Similar statements were repeated after the 1871 Shinmi Incident and the 1875 Ganghwa Island Incident.

As far as China was concerned, these statements were mainly negative in that they purported to repudiate China's responsibility for or jurisdiction over Korea's external relations. On the other hand, these announcements can be interpreted in Korea's favor since they seem to emphasize the genuine autonomy of

17. 至朝鮮爲天朝屬國，視同內服，奉省商民亦不得違禁侵越。犯者懲辦。

18. 朝鮮雖臣服中國，其本處一切政教禁令，既由該國自行專主，中國向不與聞。 Author's translation.

19. The following explanation is based on Kim 1997:219-22.

Korea notwithstanding its subordination to China at the symbolical or ritualistic level. From the viewpoint of the Chinese government, the high degree of uncertainty and ambiguity underlying statements from 1866-1875 was largely eliminated through these documents. China's understanding as reflected in the 1882 regulations and the 1883 rules are as follows.

First, notwithstanding Article 1 of the 1876 Treaty of Amity between Korea and Japan which declared Korea to be an autonomous/independent state, Korea still remained a tributary or vassal state of China as defined by long-established customs and practices. After 1882, the argument for the dependent or subordinate position of Korea was fortified by China's military presence in Korea, numbering approximately 3,000. Based on such military and political superiority, China tried to impose a relationship of real dependency. Second, the relations between Korea and China were still immune to modern international law that regulated Korea's diplomatic interaction with Western states. Thus, the idea that the traditional East Asian order and modern international law could coexist in one way or another formed the premise of the 1882 regulations and the 1883 rules. Third, the notion of Korea's jurisdictional distinctiveness or separateness was recognized even though the fact remained that a suzerain-vassal relationship between Korea and China did not signify Korea's complete incorporation into China's territory.

4. Korea's Attempt to Reconstruct Sino-Korean Relations Using Treaties as a Means for Securing Independence

The problem with these understandings was that a substantial degree of instability is found in them, in particular, in connection with the tenability and durability of the argument that in East Asia the traditional Sino-centric order and a new normative system called modern international law could peacefully coexist. Another serious problem was that the Korean government did not fully share China's interpretations. On various occasions in the post-1882 period, the reformist elements within the Korean government tried hard to extricate Korea from the yoke of the suzerain-vassal relationship with China by relying on an alternative and supposedly more powerful normative order called modern international law.

For example, the Korean delegation that was sent to Tokyo to settle questions relating to the 1882 military rebellion met with the Russian minister R. R. Rozen.¹⁹ According to a telegram dated November 13, 1882, sent by Rozen to

the then Russian Foreign Minister Girs, Park Yeong-Hyo (朴泳孝), Kim Ok-Kyun (金玉均), and Min Yeong-Ik (閔泳翊) argued that the military intervention by China into Korea was not based on Korea's request or invitation. They claimed that it was an unprovoked action initiated by Li Hong Zhang (李鴻章). Their main contention was that "Korea was a fully autonomous and independent state and was not a vassal state in the sense as understood in Western Europe." According to them, the Sino-Korean relationship, as represented by the same religion, written characters, and calendar was largely spiritual (Pak 2004:139-40). Most importantly for our purpose, the Korean reformist politicians emphasized that the best way for guaranteeing Korean independence and autonomy was to conclude a Russo-Korean treaty through direct negotiations and without China's intervention or cooperation (Pak 2004:140). From this episode, it is clear that some Korean leaders thought that independent treaty-making was a strong indication of sovereignty and independence under international law.

A Korean delegation visited the United States minister Bingham in November 1882 and assured him that "the Korean Government greatly desired ratification" of the Treaty of Amity and Commerce between Korea and the United States of America (Treat 1932:164). The supposed role of independent treaty-making as a trope of a sovereign and independent nation came to the fore in the conversations between the Korean reformist politicians and the British minister Parkes. When Park and Parkes exchanged visits in Tokyo in December 1882, one of the major topics concerned the ratification of the so-called Willes treaty concluded between Korea and Great Britain through the mediation of China in June 1882, immediately after the conclusion of the Chinese-mediated U.S.-Korean treaty. Great Britain dragged its feet in ratifying the treaty, claiming that the terms of the treaty, in particular, the rate of import duties, were unfavorable to Great Britain as compared with the arrangements between Korea, on the one hand, and China and Japan, on the other. Therefore, Parkes opined that "it would be useless ... for British or any other foreign merchant to endeavour to compete against the favoured treatment which Corea had accorded to those two nations" (Nish 1989:107). One possible solution was to renegotiate or conclude a new treaty. Park opined that if Western powers proposed the conclusion of a new treaty "direct to Corea, and not through China," the Korean government would be willing to accede to it (Nish 1989:108). When Kim Ok-kyun visited Parkes on January 1, 1882, they discussed the same topic. While Kim requested prompt ratification of the Willes treaty, Parkes argued for the conclusion of a new treaty. Kim "inquired whether a Treaty with Great Britain would secure the

independence of Korea” (Nish 1989:112). Kim Ok-kyun met with the successor of the Russian minister Rozen, A. P. Davydov, in December 1883 and January 1884. In those meetings, he stressed the importance of treaty-making with Russia (Pak 2004:140).

That Korea became increasingly aware of the importance of treaty-making in the period concerned is shown by the fact that the Korean government published manuals on treaty affairs. *Gakguk yakjang happyeon* (各國約章合編, “A Compilation of Treaties and Agreements with Foreign States”), which seems to have been published in 1890, is a prime example. This manual presents a detailed comparison of the five virtually identical (i) treaties of amity and commerce, (ii) trade regulations attached to these treaties, (iii) regulations on import tariffs, (iv) addendum to the tariff regulations, and (v) additional protocol Korea concluded with Great Britain, Germany, Russia, Italy, and France. To this comparative analysis is added (i) the 1884 Agreement respecting a General Foreign Settlement at Chemulpo (仁川濟物浦各國租界章程), (ii) the 1882 Treaty of Amity and Commerce between Korea and the United States, and (iii) the 1888 regulations for the Frontier Trade between Korea and Russia. Thus, this manual is composed of two parts: the first part dealing with a detailed comparative analysis of the five sets of almost identical treaties and agreements with five Western states and the second part containing other treaties and agreements that could not be subsumed under the template treaties and agreements.

The first part of the manual presents a meticulous comparative analysis of the treaties and other agreements Korea concluded with Great Britain, Germany, Russia, Italy, and France. For instance, in Article 1 of the template treaty of amity and commerce, it was provided that perpetual peace and friendship was established between the two monarchs, their “heirs and successors” (後代嗣君), and their respective dominions and subjects. However, in the treaties with Germany, Russia and France, the phrase “heirs and successors” plus “與其” was missing. The manual points out this fact by saying that “in the treaties with Germany, Russia and France, the six Chinese characters 後代嗣君與其 are lacking” (*Gakguk yakjang happyeon* 1890:5).²⁰ The manual also adds explanatory notes to the main text. For instance, the treaties and agreements used the distance unit *ri* (里) which varied from one East Asian country to another. The notes inserted to the manual text clarify that *ri* as used in the treaties and agree-

20. 德俄法無後代嗣君與其六字.

ments referred to the Korean *ri* (朝鮮里) (*Gakguk yakjang happyeon* 1890:10).

The fact that the Korean government published a comprehensive and systematic collection of treaties and agreements amply attests to the importance it laid on treaty-making and treaty implementation. More importantly for our purposes, the compiler moved away from the time-honored tradition of indicating the year based on the Chinese era name. As we saw above, double era names were used to indicate the calendar year. In stark contrast, in this manual the Chinese era name was used only once, i.e., the text of the 1882 Treaty of Amity and Commerce. In the two prefaces prepared by the superintendents of Foreign and Trade Affairs Cho Byeong-Sik (趙秉式) and Min Jong-Muk (閔種默), only the Korean era name was used. In the list of five treaties to be comparatively analyzed, only the zodiac year name was written. This constitutes a substantial divergence from the original treaty texts where the Korean era name was immediately followed by the Chinese one.

Thus, in this transitional period extending from 1882 until 1895 China's intention to transform Korea into a real dependency co-existed uneasily with Korea's attempt to extricate itself from the Chinese yoke. In its struggle for sovereign independence, Korea tried to use the modern mechanism of conducting international relations as a powerful means. Such an attempt came to be realized in the 1899 Treaty of Commerce between Korea and China.

IV. Treaty as a Trope of Sovereign Statehood in Sino-Chinese Relations: An Analysis of the 1899 Treaty between Korea and China

As was pointed out above, it was the Treaty of Shimonoseki that clearly recognized "the full and complete independence and autonomy of Korea." The fact that Article 1 of the peace treaty between China and Japan dealt with the international status of Korea clearly shows the root cause of the war, i.e., the rivalry between China and Japan over Korea. By inserting this provision at the head of the 1895 peace treaty, Japan confirmed beyond any doubt its own interpretation of the phrase "zizhu" (自主) as used in Article 1 of the 1876 Treaty of Amity between Korea and Japan. As a result, sovereign equality between Korea and Japan as was originally stipulated in the 1876 treaty was clearly reconfirmed. Now the question is whether Article 1 of the 1895 Treaty of Shimonoseki automatically translated into sovereign equality between Korea and China. In terms

of formal logic, the answer to this question should be in the affirmative. The 1895 treaty signified the decisive replacement of the traditional East Asian order by a new and more powerful normative system called international law. Article 1 of the protocol attached to the treaty, which recognized the English version of the treaty to be the authoritative version, is emblematic of this epochal change.

Korea, which had struggled to liberate itself from China's control over and interference with its internal and external affairs, attempted to confirm "the full and complete independence and autonomy of Korea" by concluding a treaty on an equal footing with China. It is at this juncture that the act of treaty-making assumes a heightened significance as a trope of sovereign equality vis-à-vis its former suzerain. It was not surprising, therefore, that Korea made strenuous efforts to conclude an equal treaty with China after the adoption of the Treaty of Shimonoseki.

In contrast, China tried to minimize the significance of the 1895 treaty as far as Sino-Korean relations were concerned. To the extent that treaty matters were involved, China reasoned, the recognition of Korea as a fully and completely independent and autonomous state necessitates only the termination of the pre-1894 agreements and regulations. According to the Chinese view, it did not follow that China was obligated to conclude new treaties with Korea, thereby recognizing its sovereign equality with China. Based on such reasoning, China's Korean policy was that in case the Sino-Korea relations that had been ruptured since the Sino-Japanese War were reestablished, China would restrict its dealings with Korea to trade relations only through the conclusion of trade agreements and the exchange of consular officers. China intended to maintain its policy of treating Korea as a dependent state by refraining from concluding a treaty of amity, exchanging formal diplomatic agents, or sending official imperial letters (Gu 2006:120). China could not bring itself to treat Korea on the same footing as Western states despite having clearly recognized Korea as a fully independent country in the 1895 treaty.

It was only after persistent requests from Korea and pressures exerted by foreign powers such as Japan and Russia that China finally agreed to enter into negotiations for a new treaty with Korea. Korea's requests fell on deaf ears as long as King Gojong took refuge in the Russian Legation (February 1896 – February 1897). King Gojong's policy to place the Sino-Korean relations on an equal footing as regulated by modern international law regained momentum with the establishment of the Korean Empire in October 1897. Faced with this defiant attempt to constitute itself as a full-fledged member of international soci-

ety composed of equal nations, China, holding that King Gojong's self-stylization as an emperor was not legitimate, paid close attention to whether foreign nations recognized the newly declared Korean Empire. Korea put pressure on China by proposing the dispatch of its envoy to Beijing for the conduct of negotiations (Eun 2005:33).

It was against such a backdrop that China decided in August 1898 to comply with Korea's repeated requests for negotiations for a new treaty. China feared losing face if a diplomatic envoy of the former tributary state appeared in China's capital for the conclusion of a treaty as an equal to its former suzerain. China also decided to base the content of the new treaty on its previous treaties with other states lest they suspect that China was trying to maintain the former suzerain-vassal relationship toward Korea under the disguise of a new treaty (Eun 2005:33).

When China's decision to send Xu Shou Peng (徐壽朋) to Korea as an imperial envoy was made known, foreign diplomats dispatched to Seoul showed keen interest in the matters such as whether full powers were conferred, the rank of the envoy to be sent by China, whether the expression of "resident" would be included in the title of the Chinese envoy, the protocol and style of the imperial letter, and how to indicate the official name of Korea (Gwon 1987:89). These matters were closely linked with the question of whether sovereign equality between Korea and China would be confirmed by the new treaty. When the chief commissioner of Korean customs J. McLeavy Brown criticized China for using the expression "resident" in the envoy's title even before concluding the treaty, thereby revealing China's inclination to treat Korea still as a dependent state, the Chinese Consul-General in Korea Tang Shao Yi (唐紹儀) tried to dispel such misgivings. Tang explained that the term "resident" was meant for the post-conclusion stage and that the treaty would be concluded on an equal footing (Gwon 1987:89).

The Korean government's desire to use the new treaty as a strong symbol of Korea's sovereign independence was largely satisfied in substantive terms as well as on the stylistic and protocol level. China prepared an imperial letter in which Korea was designated as the "State of Great Han" (大韓國) and the Korean monarch was indicated as the "Great Emperor" (大皇帝). On February 1, 1899, this imperial letter was submitted to the Korean emperor together with full powers. This event was reported in the Korean newspapers and was enthusiastically received by reform-minded Koreans as signaling the start of an equal Sino-Korean relationship (Eun 2005:42). The final text was adopted and signed

on September 11, 1899, after eight rounds of bilateral negotiations. A publication issued by the Korean government titled *Hancheong euiyak gongdok* (韓清議約公牘, Collection of Official Documents Relating to the Negotiations for the Treaty between Korea and China) shows how the negotiations progressed.

In the negotiations for the final text of the treaty, two issues loomed as major bones of contention, i.e., the termination of the privileges of Chinese merchants residing in Seoul and the delimitation of boundaries between the two states. Rather than devising clear solutions to these questions, both parties agreed to defer the final settlement until a later date. The Korean government was willing to accept such a compromise solution since the conclusion of a new treaty, if falling short of Korea's objectives, carried a substantial amount of symbolic significance. Korea was ready to yield on some substantive points as long as it could achieve (at least the appearance of) sovereign equality with China.

That Korea succeeded in transforming its relationship with China into an equal one through the medium of treaty-making is vividly shown in the final text of the Treaty of Commerce between Korea and China and in the negotiation process as well. The Korean documents used in the negotiations and the final text all use Korea's own era name, Gwangmu (光武). The documents also utilized the Western solar calendar, instead of the Asian lunar calendar, in indicating the dates. That the Korean monarch was called the Great Emperor in the same way as the Chinese monarch was designated was already mentioned. Korea's aspiration for an equal status can also be seen in its attempt to call China "the Kingdom of Qing" (清國) rather than "the Central or Middle Kingdom" (中國). In so doing, Korea attempted to deny the positional superiority underlying the expression "*zhongguo*" (中國). This proposal was rejected by China with the argument:

In all the treaties and agreements China has concluded with Western powers that are equal to China, the expression "*zhongguo*" (中國) was used. Therefore, the term "*zhongguo*" (中國) is merely a customary name established through long practice, having nothing whatsoever to do with the principle of equality and not affecting trading interests or rights.²¹

21. *Hancheong euiyak gongdok* 1899:44. 查中國與東西洋平行諸大國所訂約章各條內皆書中國，然則中國二字不過積慣通稱，既與平行體制毫無關礙，並於通商利權亦無出入。

This argument is mostly true. However, one should note that there are some important exceptions. In the 1895 Treaty of Shimonoseki and the 1896 Treaty of Commerce and Navigation, the Chinese version used the expression “*zhongguo*” (中國) but the Japanese text employed a different name, i.e., Qing China (清國).

That Korea, positing itself as a sovereign subject under modern international law, intended to confirm its equal status to China is amply demonstrated by its negotiation tactics. During negotiations, Korea frequently invoked “the general practice of states” (各國通例) to justify its positions (*Hancheong euiyak gongdok* 1899:35). Korea also set great store by the principle of reciprocity or mutual benefit in the negotiations (*Hancheong euiyak gongdok* 1899:58, 88). Korea often placed reliance on the provisions from the treaties it had concluded with Western states. In so doing, it signaled its view that treaty relations between Korea and China should be put on an equal footing.

Korea’s yearning to restructure its relations with China through the medium of modern international law did not stop at the attempt to set the relationship on an equal footing. In some instances, Korea, regarding itself as a (though partially or incompletely) modern and civilized subject, put itself on a superior position vis-à-vis the still “uncivilized” China. For instance, when China persisted in rejecting Korea’s request for the conclusion of a new treaty, a very negative public opinion against China and Chinese merchants developed in Korean society. An editorial of the reformist daily *Dongnip Shinmun* (*The Independent*), published on December 21, 1897, went so far as to suggest the invasion and colonization of Liaotung and Manchuria. The Chinese merchants residing in Korea who often engaged in illegal trading of opium or ginseng were a symbol of China as an “uncivilized” nation (Eun 2005:35-6).

Such a radical repositioning of the former suzerain did not come about in the public sphere or imagination only. The question of judicial control over Chinese merchants active in Korea became an important issue in the negotiations for the 1899 treaty. Concerning this question, there were two solutions: either the mutual recognition of consular jurisdiction (also known as the capitulatory system) or the more fundamental solution of mutually abolishing consular jurisdiction in the Sino-Korean relations. At the initial stage, the latter found more support in Korea. However, in light of the virtual impossibility of modernizing the Korean legal and judicial system up to the level of Western “civilized” states (the precondition for the abolition of consular jurisdiction) in such a short time, the actual negotiations were based on the former solution (Eun 2005:36-7).

Although, on the surface, the two proposals appear to be similar in that both of them are based on formal equality between Korea and China, the latter reflects Korea's change in its perception of China after its defeat in the Sino-Japanese War and the establishment of the Korean Empire. In this connection, it needs to be noted that Article 5(4) providing for the abolition of consular jurisdiction on the attainment of a modern legislative and judicial system was inserted on the suggestion of Korea. In explaining its proposal, the Korean side observed that "while China still uses the old legal system, Korea applies a new legal system, if in an insufficient manner yet" (*Hancheong euiyak gongdok* 1899:35).²²

Thus, the conclusion of the 1899 treaty announced to Koreans and the outside world that Korea and China stood from then on as sovereign equals whose relationship should be governed by modern international law. In other words, the conclusion of the treaty signified the definitive replacement of the traditional East Asian regional order by an extraneous normative system also known as the public law of Europe. In the negotiations for the treaty, some elements in Korean society went as far as to reverse the Sino-Korean relationship so that Korea could be positioned as a more "civilized" and superior subject of modern international law toward a still "barbarian" China.

That the Korean government was fully aware of the political and symbolic meaning of the 1899 treaty is clearly demonstrated by the fact that the content of the treaty was carried by one of the leading newspapers of the day, *Hwangseong Shinmun* (皇城新聞). The treaty text was carried by the newspaper from December 19-25, 1899. In the same period, the newspaper put out advertisements for the book *Hancheong euiyak gongdok*. A powerful trope of a sovereign and independent state, i.e., a new treaty with China concluded on equal footing, the conclusion of which was meticulously documented in a book of mass circulation, was being offered to the newly emerging public sphere.

V. Concluding Remarks

In trying to understand the history of East Asian diplomatic relations, one needs to keep in perspective the epochal significance of the nineteenth century. In the

22. 貴國仍用舊律敝國參用新法猶未臻。

latter half of that fatal century, the Sino-centric international order that had been operating over a couple of millennia was replaced by a novel normative discourse that had originated in Europe. In this story of world-historical significance, Korea, starting out as a vassal state of the Celestial Empire, achieved (a semblance of) sovereign independence through the conclusion of the Treaty of Commerce with China, the first ever equal treaty between the former suzerain and vassal, in 1899. In this article, I have endeavored to trace this story from the vantage point of treaty-making. In so doing, I have focused on the question of how Korea, becoming increasingly aware of the formative and constitutive power of treaty as a strong indication of independence, tried to employ this medium to become a sovereign self with a distinct political identity, in particular, in relation to China.

When Korea concluded the Treaty of Amity with Japan in 1876 that declared Korea to be an “autonomous/independent state on an equal status with Japan,” Korea was not fully aware of the transformative effect of its own conduct. Although it was forced to confront the novelty of the treaty form and the practices attendant on its making, such as full powers and royal ratification, Korea tried hard to interpret the act of treaty-making and the treaty itself in terms of its continuity with past diplomatic practices. By so doing, the effect of the treaty, as purported by Japan, as an emblem of sovereign independence could not be registered as far as Korea and China were concerned.

In the 1882-1892 period, which is characterized by some scholars as *yangjeol cheje* (兩截體制), in which the traditional Sino-centric order and modern international order co-existed in Korea under a growing tension, both China and Korea became acutely aware of the importance of treaty-making in the management of international relations. China tried to counteract the surging Japanese influence over the Korean Peninsula by urging Korea to enter into treaty relations with a series of Western states. China did not pursue this policy out of an altruistic motive. It tried to transform Korea from a tributary state in the traditional sense, i.e., a dependent state mostly at the symbolical and ritualistic level, into a state of real dependency as defined under modern international law. Korea defied such an attempt by resorting to the practices widely recognized as the indications of sovereign statehood such as independent treaty-making, dispatch of permanent diplomatic missions, and use of its own era name in its publications. However, these efforts cannot be judged to have been successful, given the overwhelming military and political superiority of China on the Korean Peninsula. As a result, the Korean situation remained in a state of substantial

uncertainty and suspense throughout this period.

The political and normative deadlock over the Korean Peninsula was broken only after Japan's convincing victory over China in the Sino-Japanese War. The 1895 Treaty of Shimonoseki sounded the death knell for the Sino-centric world order in East Asia. However, this did not mean the automatic reconstruction of relations between China and Korea as sovereign equals. Notwithstanding "the full and complete independence and autonomy" recognized to Korea in the 1895 treaty, China strongly resisted according an equal international status to Korea. The recognition of sovereign equality had to be earned, as it were, by Korea through the conclusion of an equal treaty. In this sense, the 1899 Treaty of Commerce between Korea and China assumes a heightened significance. The mechanism of treaty-making under modern international law was consciously utilized to reconstruct the Sino-Korean relationship as an equal one. The Korean government published a book of the major documents produced in the process of negotiation and gave it a wide publicity. The treaty became a powerful trope of the sovereign independence of Korea. Although the significance of the 1899 treaty was soon eclipsed by the subsequent events leading to the outbreak of the Russo-Japanese War and the creeping annexation of Korea by Japan, one should be more attentive to its symbolical and practical importance in the history of East Asian diplomatic relations.

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