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The Circulation of International Legal Terms in East Asia

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THE CIRCULATION OF INTERNATIONAL LEGAL TERMS IN EAST ASIA

HAN SANG-HEE¹

ABSTRACT:

The purpose of this paper is to find the answer to the question: how did the East Asian countries come to share identical IL terms? For this purpose, the paper compares the IL terms used in the textbooks of the East Asian countries in each period, starting from Martin's *Wanguogongfa*(1864), which is regarded as the first IL textbook introduced in East Asia. The paper argues that the real driving force behind the development of identical terms is the two waves of *inner circulation* of IL works among the East Asian countries during the late 19th and early 20th century.

I. INTRODUCTION

International Law ('IL') is translated into 国际法 in China, and 国際法 in Japan and Korea. The former is the simplified version of the latter. They have the same meanings, even though their pronunciations are different, i.e., *Guojifa* in China, *Kokusaiho* in Japan, and *Kukjebup* in Korea, respectively.² Taiwan, Hong Kong, and even North Korea all use, or can understand, these terms. Thus, these countries use the same Chinese characters for *International Law*. And this is just one example of the similarities in the terminology used by these countries. Of course, there are some exceptions. For example, the IL terms in new fields of law, which have developed since WW II, such as 'contiguous zone', 'EEZ (Exclusive Economic Zone)', 'continental shelf', and 'sea-bed' in the law of the sea, are not the same. Nonetheless, most modern IL terms in East Asia³ are identical. How is it then that East Asian countries such as China, Japan and Korea came to share identical IL terms?

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² This paper introduces the names of many scholars and the titles of many books and articles from China, Japan and Korea. In translation, they may not always be understood. Hence, in this paper they will, with some exceptions, appear in Chinese characters in their modern simplified form. With regard to citations, this paper will follow the practice of each country.

³ The term "East Asia" used in this paper refers to three countries – China, Japan and Korea – although the general arguments could apply to any East Asian country which uses Chinese characters.

Quite a lot of research has been carried out on the acceptance of European law of nations in East Asia in the 19th century,⁴ but researchers are silent on the question of why there are so many similarities in IL terminology. Very little research has directly tackled this issue, and what is worse, the research which has taken place has covered a very limited number of books, countries, and periods. For this reason, researchers have failed to grasp the overall picture from a more comprehensive perspective. Some readers may have worked out their own answers to the reasons for there being so many similarities. One possible reason is that the IL terms created by Martin and used in his *Wanguogongfa*(萬國公法 or 万国公法 in simplified form, 1864) were accepted by Japan and Korea. The second possible reason is that the Japanese IL terms were to some extent imposed on China and Korea during the colonial or semi-colonial periods. The third possible reason is that the Japanese IL terms created after Meiji Revolution were intensively imported into China and Korea. And another possible reason is that the IL terms in East Asia were assimilated with each other through continuous contacts and exchanges among scholars. However, none of these possible reasons shows the full story.

The purpose of this paper is to find the answer to the question: how did the East Asian countries come to share identical IL terms? For this purpose, the paper compares the IL terms used in the textbooks of the East Asian countries in each period, starting from Martin's *Wanguogongfa*(1864), which is regarded as the first IL textbook introduced in East Asia.⁵ The paper focuses in particular on how the IL books were *circulated* among these countries, and how they influenced one another. Based on this analysis, the paper argues that most of the IL terms in East Asia became identical through the two waves of *circulation* of IL terms among the East Asian countries. The first one was made by Martin's IL terms in the late 19th century, and the second one by Japanese IL terms in the early 20th century. However, the two cannot be separated, as they are closely linked with one another, and the second circulation was possible only because the first circulation had taken place. In other words, most of the IL terms in East Asia became identical by the intensive importation of Japanese IL terms into China and Korea in the early 20th century.

⁴ With regard to the acceptance of the European law of nations in East Asia, several books have already been published in each country. For example, 一又正雄(ICHIMATA Masao)『日本の国際法学を築いた人々』日本国際問題研究所(1973). 金容九(김용구, KIM Yong-Koo)『世界觀衝突의 國際政治学: 東洋礼와 西洋公法』NANAM 出版(1997). 田涛(TIAN Tao)《国际法输入与晚清中国》济南出版社(2001). This author also published four articles on this topic in Japanese. 韓相熙「19世紀東アジアにおけるヨーロッパ国際法の受容(一)～(四)」『法政研究』Vol.74, No.1(2007)～Vol.74, No.4(2008). Regarding the “translation” or “circulation” of IL terms, see the following material: Lydia H. Liu, ed., *Tokens of Exchange: The Problem of Translation in Global Circulations* (Duke University Press, 1999). Huangdah Chiu, “The Development of Chinese International Law Terms and the Problem of Their Translation into English” (1968) 27(2) *J. Asian Stud.* 485 at 485-501. 伊藤不二男(ITO Fujio)「国際法」『近代日本法思想史』有斐閣(1979) at 461-502.

⁵ I had intended to provide a comprehensive table showing the whole story of this paper. Although that proved to be too great a task, I have included some examples in this paper.

But the Japanese IL terms were based on Martin's IL terms. And Martin's IL terms were created not by Martin alone but by collaboration between Martin and members of the Chinese elite.⁶ This is the reason for them not being two separate processes, and it explains why this paper emphasizes the term "circulation".

The paper consists of several sections. First, it introduces the IL terms in Martin's translations, including *Wanguogongfa*(1864), and explains how they were created, how they were imported into Japan and Korea, and why they failed to survive in the face of the Japanese IL terms. Secondly, it analyzes how the Japanese IL terms were created and how they came to replace Martin's terms in Japan. Thirdly, it looks into how the Chinese elite made efforts to find their own IL terms after Martin's translations, and how Martin's IL terms were replaced with the Japanese IL terms in China. Fourthly, it traces how Martin's IL terms were introduced into Korea, and how they were subsequently replaced with the Japanese IL terms. Finally, the paper shows that most of the East Asian IL terms established in the early 20th century survived the two World Wars and the Cold War, and they are still effectively used in the current IL textbooks of China, Japan and Korea.

II. WHY MARTIN?

Martin (William Alexander Parsons Martin, 1827-1916)⁷ came to China as an American Missionary. He translated many IL books, but the most famous one is his first work, *Wanguogongfa*(1864). This is the translation of *Elements of International Law* by Henry Wheaton, an American diplomat and IL scholar, whose books were highly valued in the IL academic community, which was dominated by the European scholars. The 1st edition of *Elements of International Law* was published in 1836, and has subsequently been published in eight different editions. There has been much debate over which edition Martin translated, but now it is generally agreed that *Wanguogongfa* is based on the 6th edition (also known as Lawrence's 1st edition, 1855). Besides *Wanguogongfa*, Martin also translated other books such as *Xingyaozhizhang* (星轺指掌, 1876), *Gongfabianlan* (公法便览, 1878), *Gongfahuitong* (公法会通, 1880), and *Gongfaxinbian* (公法新编, 1903),⁸ which were translated from the works of the distinguished Western scholars Charles de

⁶ Hence, the expressions "Martin's IL terms" or "Martin's translations" in this paper do not necessarily mean that these IL terms and translations were made by Martin alone.

⁷ 丁韪良 (DING Weiliang) or 丁冠西 (DING Guanxi) in Chinese. With respect to Martin, see the following two books: Ralph Covell, *W.A.P. Martin: Pioneer of Progress in China* (Christian University Press, 1978). Jonathan Spence, *The China Helpers: Western Advisers in China 1620-1960* (The Bodley Head, 1969). Also see his autobiography, W.A.P. Martin, *A Cycle of Cathay (or China, South and North with Personal Reminiscences)*, 3rd ed. (Fleming H. Revell Company, 1900).

⁸ Three different years (1901, 1902 and 1903) appear in *Gongfaxinbian* (公法新编), and this explains why many scholars are confused about the year of publication. In my opinion, 1903 is correct because it is written on the Chinese cover (光绪二十九年) as well as English cover.

Martens, Theodore Woolsey, Johann Caspar Bluntschli, and William Edward Hall, respectively.⁹

Martin was not the only Westerner who translated the European law of nations into Chinese. For example, John Fryer (傅兰雅, FU Lanya in Chinese) who worked with *Jiangnanzhizaoju* (江南制造局) also translated three books of public international law,¹⁰ and Allen Young (林乐知, LIN Lezhi in Chinese) also translated a book.¹¹ There has, however, been very little research done on Martin's works, apart from *Wanguogongfa*, or on the works of Fryer and Allen. Why, then, has most research on the acceptance of IL in the East Asia focused on Martin's *Wanguogongfa*? The main reason must be that this was the *first* translation ever made in the history of East Asia.

The fact that it was the first translation is extremely significant. First, until this translation was made, it was impossible to have concepts and terms which corresponded with the European law of nations in East Asia because the European modern international system was totally different from the traditional regional order in East Asia. In other words, Martin had to find or invent new terms that could bridge the gap between two totally different normative structures. Even though Martin had already spent more than 10 years in China when he started his translation, this must have been a very difficult task. Secondly, as it was the first translation, the terms used in *Wanguogongfa* were destined to set the standard for IL terms in subsequent translations. These IL terms were not only used in Martin's other works, but they were also imported into countries such as Japan, Korea and even Mongolia¹² and Vietnam.¹³ This explains why Martin is so important in the history of international law in East Asia.

From what perspective should we look at Martin's translations? In fact, most of the research has been based on the assumption that the Qing Government and Chinese elite passively accepted the European law of nations. As no Chinese person had shown any interest in translating the work, *Wanguogongfa* was translated by Martin, a Westerner. No Chinese person could have translated it, even had he wished to do so, since he would have lacked sufficient knowledge of IL and foreign languages. This has been the view shared by

⁹ KIM(金)'s two books contain a detailed introduction with respect to these books, including which editions Mark translated. 金容九(김용구, KIM Yong-Koo), *supra* note 4 at 53-67. 金容九, 『万国公法』小花(2008) at 79-89.

¹⁰ 傅兰雅(John Fryer), 汪振声(同译): 《公法总论》(1894), 傅兰雅(口译), 俞世爵(笔述), 汪振声, 钱国祥(校正): 《各国交涉公法论》(1894), 傅兰雅, 程瞻洛(合译): 《邦交公法新论》(1901).

¹¹ 林乐知(Young J. Allen): 《万国公法要略》(1903). For other translations, see, for example: 金楷理, 查某(合译): 《公使指南》(1901).

¹² 橘誠(TACHIBANA Makoto) 「モンゴル語訳『万国公法』について」 『内陸アジア研究』 Vol.21(2006) at 85-96.

¹³ 武山眞行(TAKEYAMA Masayuki) 「ベトナム版丁韞良『万国公法』: 植民地化進行過程下での翻刻」 『法学新報』 Vol.109, No.5-6(2003) at 217-240.

most of the researchers on this topic. However, recently, some scholars have reached an entirely different conclusion. According to them, the Qing government actively wished to publish IL books, as they urgently needed IL knowledge. For this reason, the Qing Government fully supported Martin's translation and publication of *Wanguogongfa*, which was thus actually a part of the Qing diplomatic policy.¹⁴

A more objective and correct perspective probably lies somewhere between these two views, and it is that perspective which this paper will take. This paper argues that Martin's translations, including *Wanguogongfa*, were not made by Martin alone, and that they were not simply the product of the Qing diplomatic policy either. They resulted from a collaboration between Martin, his students, and members of the Qing Government. According to this perspective, Martin must share the credit for his work with others. On the other hand, others must share in the responsibility for negative aspects of Martin's translations, since the translations were not his alone. In addition, this perspective helps to explain why Martin's IL terms failed to survive.

Martin's translation of *Wanguogongfa* contains several clues to the history of international law in East Asia, and to why East Asian countries came to share identical IL terms. Revisiting Martin's translation of this work, the next section focuses on three questions: who was the main translator; how the IL terms were arrived at; and whether or not the IL terms in Martin's translation survived.

III. DECIPHERING WANGUOGONGFA

Did Martin translate *Wanguogongfa* alone? This question relates directly to the question of whether or not the first IL terms in East Asia were created by Martin. In his autobiography, Martin noted a meeting he had with Qing officials to consult about the translation of *Wanguogongfa*. He wrote: "The translation, I explained, was not complete, but I intended to finish it without delay. All I asked of them was to appoint a competent official to assist me in a final revision, and then to print it at public expense."¹⁵ Martin asked for just one competent official, but the Qing Government dispatched four men: "A commission of four – all of high literary grade, one a member of the Hanlin Academy – was appointed by Prince Kung to aid me in the revision".¹⁶ Martin's remarks clearly show that he did not work alone. However, it is very difficult to find evidence showing the roles of four men sent by the Qing Government.

¹⁴ See, for example, Zhang(张)'s paper, which clearly mentions this. 张用心(ZHANG Yongxin): 《《万国公法》的几个问题》北京大学学报(哲学社会科学版), Vol.32, No.3 (2005) at 81.

¹⁵ W.A.P. Martin, *supra* note 7 at 233-234.

¹⁶ *Ibid.* at 234.

It is the paper written by LEE(李)¹⁷ which analyzes this issue in depth. By examining the process of translation used in *Wanguogongfa*, LEE(李) argues that the contribution of the four Chinese collaborators is far more important than we previously imagined. LEE(李) provides the following reasons for this. First, some (English) terms are translated into several different (Chinese) terms. For example, *interference* is translated into seven different Chinese terms, which suggests that there was more than one translator. Secondly, the term *ratification* was frequently used in several treaties concluded between China and some Western countries, and this term was generally translated into “pizhun”(批准) in Chinese. Martin was involved in the negotiation of the Tianjin Treaty in which the term *ratification*(批准) was used seven times. It is impossible that Martin would not have known this term. The best explanation for the fact that *ratification* was not translated into “pizhun”(批准) is that this part was translated by the Chinese collaborators who were not familiar with the treaty terms. Thirdly, some terms were translated into Chinese expressions with a typically Chinese or East Asian perspective, and some other terms were borrowed from the Great Qing Code. This could not have been done without the help of Chinese collaborators. Finally, some sentences in Confucian canons, such as Lunyu (论语), Mengzi(孟子), Zhongyong(中庸), Shujing(书经), were used. This also suggests the contribution of Chinese collaborators.

For these reasons, LEE(李) emphasized the role of the four Chinese collaborators in the translating process of *Wanguogongfa*(1864). However, he concluded that Martin, and not his Chinese collaborators, was the final arbiter. According to LEE(李), only Martin could ultimately decide the terms, as he was the only man who understood both English and IL. He concludes that Martin, as the final arbiter, also tried to advance his own ideologically-charged conception of international law.¹⁸ I agree with LEE(李)’s conclusion that the four Chinese collaborators contributed far more than we previously thought. However, with regard to Martin’s status as the final arbiter, I think there is a possibility that the Chinese collaborators contributed more than LEE(李) argues, and that Martin did not necessarily have the final say.

For example, when you carefully read the *preface* and *fanli*(凡例) of *Wanguogongfa*, you can find the names of eight Chinese men, not four. There are four names in Dongxun(董恂)’s *preface*: 陈钦(CHEN Qin), 李常华(LEE Changhua), 方濬师(FANG Junshi), 毛鸿图(MAO Hongtu),¹⁹ Most of the papers which mention the Chinese collaborators, including LEE(李)’s, usually list these four names. However, when you read the *fanli*, another four names appear: 何师孟(HE Shimeng), 李达文(LEE Dawen), 张炜

¹⁷ 李根寬(이근관, LEE Keun-Gwan), 「東아시아에서의 유럽 國際法の 受容에 관한 考察: 『万国公法』의 翻譯을 中心으로」 『서울國際法研究』 Vol.7, No.2(2002) at 17-44.

¹⁸ *Ibid.* at 30.

¹⁹ The original sentence is as follows: 韙良能華言, 以是書就正, 爰屬歷城陳欽, 鄭州李常華, 定遠方濬師, 大竹毛鴻圖, 刪校一過以歸之.

(ZHANG Wei), 曹景荣(CAO Jingrong).²⁰ Who, then, were these men, and what was their role?

As far as I know, only HE(何)'s paper²¹ and ZHANG(張)'s paper²² mention these eight names. The latter, in particular, analyses the matter as follows:

“一八六四年に世に問うた『万国公法』は、マーティン一人の仕事ではなく、その訳書の「凡例」で述べてあるように、最初の原稿ができあがるまでは、四人の中国人、即ち江宁の何师孟，通州の李达文，大兴の张炜及び定海の曹景荣の協力を得ており、また董恂の書いた原序によれば、その後さらに四人の総理衙門の秘書たち一 历城の陈钦，郑州的李常华，定远の方濬师，大竹の毛鸿图—が半年がかりで校訂を加えて、完成した作品であった”。²³

According to Zhang(張), there were two groups of Chinese officials, each group consisting of four. The first group (何师孟, 李达文, 张炜, 曹景荣) helped Martin to finalize his first draft, and the second group (陈钦, 李常华, 方濬师, 毛鸿图) from *Zongliyamen*(总理衙門), revised the draft. This is consistent with the fact that *Wanguogongfa* has eight names in its *preface* and *fanli*. It is also difficult to deny that there were, respectively, two different groups and two different revisions made by each team of four. In my opinion, the first group consisted of the four men whom the Qing Government sent when Martin asked for “a competent official” at the initial stage. And the Qing Government then sent another four men to finalize the draft for publication, which took six more months. Why, then, did it need two revisions? And, why did the Qing Government send eight men for the translation and publication of *Wanguogongfa*?

I think that Zhang(張)'s analysis is quite convincing. However, the problem is that we do not have sufficient evidence to explain the situation in a clearer and more detailed way. Nonetheless, I believe that Zhang's conclusion is the most logical, all things considered. In my opinion, the most likely possible scenario is as follows:

First, Martin's draft was not, initially, a success. As mentioned above, there were no corresponding concepts and terms that could link the two totally different normative structures. It could be done after a fashion, but it could not be done well. That was why the

²⁰ The original sentence is as follows: 是书之译汉文也，本系美国教师丁韪良。视其理足义备，思于中外不无裨益，因与江宁何师孟，通州李达文，大兴张炜，定海曹景荣，略译数卷，呈总理各国事务衙门批阅。蒙王大臣派员校正底稿，出资付梓。

²¹ 何勤华(HE Qinhu): 《万国公法》中国政法大学出版社(2003) at 8.

²² ジャニン・ジャン(張嘉寧, ZHANG Jianing) 「『万国公法』成立事情と翻訳問題: その中国語と和訳をめぐって」 in 加藤周一・丸山真男『翻訳の思想』岩波書店(1991) at 381-400.

²³ *Ibid.* at 387.

Qing officials had difficulty in understanding Martin's draft when they first read it.²⁴ And that is the reason why the Qing Government decided to send four men, even though Martin had only asked for one.

Secondly, the four Chinese collaborators also failed in their attempt to make Martin's draft work. They didn't understand English and they lacked the necessary knowledge of IL. And in the same way that Martin must have had his own political and religious motivations, they must have been following directives from the Qing Government, which had, from the beginning, been suspicious of Martin's motives.²⁵ On top of that, the Chinese officials were still very proud of their tradition,²⁶ which must have created invisible tensions between Martin and his collaborators.

Thirdly, for these reasons, it is probable that no one was able to take the initiative in translating *Wanguogongfa*. This might have led to a number of inconsistencies, which caused the Qing Government to consider that the draft needed more revisions. That was probably the reason for their decision to send another team, and it explains why they worked for six more months to finalize it for publication.

Fourthly, the Qing Government urgently needed some practical IL knowledge. It had a lot of difficult issues to deal with at the time, such as the conclusion of treaties, exchanges of diplomatic missions, and issues such as China's neutrality in the Danish-Prussian War (1864), which required practical IL knowledge. Most of the Chinese elite might have regarded Martin's translation as a part of 以夷制夷(yiyizhiyi) policy, using the barbarian against barbarians, in the same way that Lin Zexu(林则徐) had had his men translate the Vattel to handle the opium issue more than 20 years previously. This must have been why the Qing Government supported Martin, and provided him with eight assistants, even though they did not respect the European law of nations. The Qing Government could not wait too long, as they urgently needed the translation. It is highly likely that the Qing government pushed their men to finalize the draft as soon as possible even though it was not really ready.

²⁴ 金容九(김용구, KIM Yong-Koo), *supra* note 4 at 129. 李根寬(이근관, LEE Keun-Gwan), *supra* note 17 at 24.

²⁵ Wang(王) analyzes Martin's motives in a detailed way. See 王维俭(WANG Weijian): 《丁韪良和京师同文馆》《中山大学学报》1984年第2期 at 100-117.

²⁶ Martin introduces one episode in this way: "Besides teaching English to my ten pupils, I gave them lessons in the use and management of the telegraph. With a view to the introduction of that wonderful invention, I had myself taken lessons in Philadelphia; and I had brought with me, at my own expense, two sets of instruments, one on the Morse system, the other with an alphabetic dial-plate, easy to learn and striking to the eye. Before taking charge of this class I invited the Yamen to send officials to my house to witness experiments. Prince Kung deputed the four Chinese who were aiding me in the revision of Wheaton. During the performance they looked on without giving any sign of intelligence or interest; one of them, a Hanlin, or academician, observed contemptuously that 'China had been a great empire for four thousand years without the telegraph'". W.A.P. Martin, *supra* note 7 at 299.

In fact, everybody worked hard. Martin, the Qing Government and the eight Chinese assistants all did their best. Nonetheless, the translation of *Wanguogongfa* was far from perfect by modern standards. This was no one's fault. It was merely the unavoidable outcome of the situation in China at that time. Whatever the inconsistencies and flaws, the publication of *Wanguogongfa* marked the first translation of IL terms in the history of East Asia.

IV. REVISITING MARTIN'S STUDENTS

What, then, of Martin's other works, which were translated after *Wanguogongfa*? Again, we do not yet have sufficient information about these translations, and we need to take account of all possible evidence, including the identities of the main translators. In his autobiography, Martin noted that: "With the help of my students, I have since given the Chinese translations..."²⁷ The implication is that Martin is the main translator and that his students merely helped. However, when Covell, Martin's excellent biographer, introduced Martin's translations, he referred to "The books he helped to translate ...",²⁸ which implies that Martin in fact only "helped" his students to translate the books. These remarks may be somewhat confusing, and may cause one to question who was actually the main translator. In this respect, it may be helpful to look more closely at Martin's other works, i.e., *Xingyaozhizhang*(1876), *Gongfabianlan*(1878), *Gongfahuitong*(1880) and *Gongfaxinbian*(1903).

When you read the *fanli* of *Xingyaozhizhang*(1876) carefully, you find the following sentence: 其翻譯華文, 系同文館學習人員聯芳、慶常初稿, 而貴榮、杜法孟稍加潤色, 復經丁總教習為校覈. According to this sentence, the first draft was made by LIAN Fang(聯芳) and QING Chang(慶常). This draft was embellished or enriched by GUI Rong(貴榮) and DU Fameng(杜法孟). And the final revision was made by Martin(丁). We thus have four Chinese men involved again, but this time they were not officials sent from the Qing Government, but rather Martin's students in Tongwen Guan(同文館). Very interestingly, it was not Martin who drafted the translation, but his students. Martin's role was to make the final revision.

Gongfabianlan, which was published two years after *Xingyaozhizhang*, follows a similar pattern. One of the sentences in its *fanli* reads as follows: 譯書六卷歷時三載同文館學習人員司繙譯者四人為汪鳳藻鳳儀左秉隆德明而大半出於汪鳳藻一手司校閱者二人為貴榮暨前同文官學生桂林而貴榮更於前後加以琢磨而潤色之事既竣乃呈. This can be summarized as indicating that the first draft was made by four men, i.e., WANG Fengzao(汪鳳藻), FENG Yi(鳳儀), ZUO Binglong(左秉隆), and DE Ming(德明). However, the greater part of the draft was made by WANG Fengzao(汪鳳藻). And this draft was revised by two men, GUI Rong(貴榮) and GUI

²⁷ W.A.P. Martin, *supra* note 7 at 235.

²⁸ Ralph Covell, *supra* note 7 at 194.

Lin(桂林). It was again embellished or enriched by GUI Rong(貴榮). Strangely enough, Martin's name does not even appear here. In addition, WANG(汪)'s role sounds impressive. In fact, in the *preface* of this book, Martin praised WANG Fengzao(汪鳳藻) highly for his excellent English and his remarkable contribution in the translation.²⁹ Martin's high evaluation of WANG also appears in his autobiography.³⁰

In *Gongfahuitong*(1880), you can also find a sentence that describes the translating process in a quite detailed way as follows: 前半為法文館副教習聯芳慶常聯興繙譯餘為余口譯由天文館副教習貴榮前同文官學生桂林筆述復經貴榮前後逐細校閱既竣乃呈.³¹ According to this sentence, LIAN Fang(聯芳), QING Chang(慶常) and LIAN Yu(聯興) translated the first half of the book and verbally explained it to Martin. Then, GUI Rong(貴榮) and GUI Lin(桂林) wrote down the verbal explanations in the draft. And finally, GUI Rong(貴榮) carefully revised, completed and submitted the draft. The translating process shown here is quite similar to Covell's description,³² but Martin's role is not clear. He might have revised the draft verbally. However, it is likely that most of the work at most phases was done by Martin's students.

In the English *preface* to *Gongfaxinbian*(1903), Martin wrote: "When in 1898 I was appointed by a decree from the Throne to the Presidency of the Imperial University, I look up this task but it was interrupted by the outbreak of the Boxer war. Luckily I was able to save my manuscripts and I completed it in the summer of 1901 at my retreat in the Western Hills. Happily my able assistant Professor Ch'i with whom I had begun remained with me to the end". The "assistant Professor Ch'i" here must be his former student, CE'Ao(策鰲). It seems that CE'Ao(策鰲) worked with Martin from the beginning to prepare the manuscripts. And from the fact that he has his own *preface*, we can also presume that CE'Ao(策鰲) contributed a lot. No collaborator ever had his own *preface*

²⁹ The original sentence is as follows: 茲譯以華文而詞義尚能明晰者則汪君芝房鳳藻之力為多芝房具敏才復精英文余為之講解一切易於領悟其筆亦足以達之且能恪遵原本不減不增使余省點竄之勞焉故叙及之。

³⁰ "Among them are found all three of the regular degrees, and many who came with the lowest degree have while in the college succeeded in winning the highest. One, Mr, Wang Fungtsao, has plucked the bright honor of a membership in the Imperial Academy. The college is accordingly regarded with much respect by the literati, and students from the best families are anxious to enter. This was not the case at first. The call for cadets from the Hanlin Academy was viewed as an indignity to Chinese learning; and Wojin, president of the academy, protested so energetically as to keep them away". W.A.P. Martin, *supra* note 7 at 311–312.

³¹ There are also two more sentences. The first is: 余督率館生繙譯此書既將洋文為之講解於前復將譯稿詳加校閱於後而魯魚亥豕之訛仍恐在所不免。The second is: 原書係布文後譯為法文茲由法文譯漢文復與布文核對以免舛誤。

³² Covell wrote that: "The procedure employed in the translation work was fairly simple. Martin or one of his colleagues made a rough oral translation of the English text to Chinese aides who wrote it in Chinese. After this had been further checked for accuracy of meaning, it was edited again by the Chinese translators". Ralph Covell, *supra* note 7 at 181.

before *Gongfaxinbian* (1903). In his *preface* under the name of *bianyan*(弁言), CE' Ao(策鰲) wrote “又三閱月書成將告歸”, indicating that he spent three months to review the draft.

All this evidence clearly shows that Martin did not translate these works alone, and that his students were far more deeply involved in the translations than we previously imagined. The question is how much of the translation is in fact the work of his students? Before we reach a conclusion on this point, there are two things that should be carefully considered.

First, there was a 12-year interval between Martin's first and second works, *Wanguogongfa* and *Xingyaozhizhang*. During this interval, Martin became the president of Tongwen Guan(同文館). Chinese students in this college studied foreign languages intensively and at the same time were taught international law by Martin. It seems that some outstanding students remained there after graduation. They became lecturers or assistant professors, and assisted in Martin's translations. The names of some students such as LIAN Fang(聯芳), QING Chang(慶常) and GUI Rong(貴榮) repeatedly appear on the documents regarding Martin's translation projects, even though there is very little information available about their lives.³³

Secondly, Martin must have been extremely busy. In fact, he organized many teams for systemic translations, and they translated around 50 books, including several IL books. At the same time, as the President of Tongwen Guan(同文館), he had to manage and reform the school. In addition, he must also have been involved in diplomatic affairs between China and America or between China and European countries.

Put simply, Martin was too busy to be responsible for both the drafts and their meticulous revisions. The most probable scenario is that he divided the translation work into several stages, and allotted it to his students. The students probably made the drafts and then reviewed, completed and submitted them for publication. Martin's main role must have been to supervise the whole process. This was possible because Martin's students already understood foreign languages and international law, and would have been familiar with Martin's IL terms. And after a certain degree of training and practice, they must already have become experts, even though they might not have understood every aspect of the material they were translating. This is almost certainly how Martin's other translations were made.

³³ In Martin's autobiography, he talks about QING Chang(慶常) as follows: “On the eve of setting out he requested me to select one of our students to act as interpreter for the French language, I named Mr. Tching Tchang, a young Catholic, who has since continued in the service and greatly distinguished himself, being more than once *chargé d'affaires* at Paris and entrusted with special missions in connection with the Pamir question”. W.A.P. Martin, *supra* note 7 at 380. With respect to WANG Fengzao(汪鳳藻), see *supra* note 30.

V. THE STRANGE DEMISE OF MARTIN'S IL TERMS

We have seen that most of Martin's translations – thus the first IL terms in the history of East Asia – were made not by Martin alone, but Martin in collaboration with Chinese individuals, whether Government officials or Martin's students. How, then did Martin and his collaborators create the IL terms? Were the IL terms in *Wanguogongfa* consistently used in Martin's other works? Are all of these terms still used today? How should we evaluate Martin's translations in the history of international law in East Asia? These are the questions that will be addressed in this section.

First, how did Martin and his collaborators create the Chinese IL terms? In this respect, we must look first at *Wanguogongfa*. If it was translated by Martin along with others, some of the terms must have been proposed by Martin, some by the Chinese officials, and some others as a result of serious debate among them. But, given that there were no corresponding terms between the two different normative structures, no matter who proposed the terms, their options must have been limited. They would have been limited to three possibilities. As the first option, they could have borrowed the terms from the Chinese legal documents or classic cannons. For example, according to LEE(李)'s paper which provides the table for comparisons of 194 terms, 72 terms were used both in *Wanguogongfa* and the Great Qing Code at the same time.³⁴ The second option would have been to translate one original (English) term flexibly into several different (Chinese) terms. For example, LEE's table shows that *treaty* and *territory* were translated into 5 different Chinese terms respectively, and *interference* even had 7 different translations.³⁵ The third option would have been to create totally new terms. HE(何)'s paper³⁶ shows some new terms created for *Wanguogongfa*, including: 万国公法, 性法, 公师, 法师, 主权, 权利, 责任, 法院, 人民, 国体, 赔偿, 自治, 限制, 章程, 邦国, 政治, 选举, 司法, 争端, 国会, 制宪, 领事, 利益, 管辖.³⁷

Secondly, were the IL terms in *Wanguogongfa* consistently used in the other works of Martin? If you carefully compare the works, you can find some inconsistencies. One of the examples is *interference*. Even though the word has 7 different translations in *Wanguogongfa*, *yuwen*(与聞) was the term most frequently used. However, *yuwen*(与聞) was slowly replaced with *ganyu*(干預) in Martin's works after *Gongfabianlan*. Another example may be *Occupation*. It had 3 different translations in *Wanguogongfa*, but they

³⁴ Appendix (2) attached to Lee(李)'s Paper. 李根寬(이근관, LEE Keun-Gwan), *supra* note 17.

³⁵ *Ibid.* Appendix (1).

³⁶ 何勤华(HE Qinhu), *supra* note 21 at 28.

³⁷ However, 赔偿 and 管辖 are also found in the LEE(李)'s list of the terms which were used both in *Wanguogongfa* and the Great Qing Code. Appendix (2) attached to Lee(李)'s Paper. 李根寬(이근관, LEE Keun-Gwan), *supra* note 17.

were later replaced with the term *zhanju*(占据).³⁸ However, most of the terms in *Wanguogongfa* seem to have been consistently used in Martin's other translations. Why was this? *Wanguogongfa* was the first and the only book which translated the European law of nations into Chinese. Hence, the only realistic option was to keep using the terms of *Wanguogongfa*, even though they were problematic, at least until there was time for more relevant terms to be developed.

Thirdly, are all of these terms still used today? It is not easy to give a definitive answer to this question, but some examples can be provided by taking several terms from HE(何)'s list above, which were newly created for *Wanguogongfa*. There are six terms which have a relatively clear history: 万国公法(Law of Nations), 性法(Law of Nature), 主权(sovereignty), 权利(right), 责任(responsibility), 争端(dispute). These terms can be categorized into three groups. 万国公法(Law of Nations) and 性法(Law of Nature) belong to the first group. These terms were used initially, but they fell into abeyance in the late 19th century and are no longer used. 主权(sovereignty), 权利(right), and 责任(responsibility), belong to the second group. They survived, and are still used in China, Japan and Korea. 争端(dispute) belongs to the third group. This term is still used in China, but not in Japan and Korea.

What should be emphasized here is the fact that most of the IL terms used in Martin's translations belong to the first group. Only a very limited number of terms belong to the second and third groups, even though some of these are core terms in international law. So why, despite the fact that Martin and his brilliant students and some Chinese officials worked so hard on these translations, did so few of them survive? As mentioned earlier, the explanation lies in the fact that the terms were problematic from the beginning. They were not the products of full reflection, deliberation, trial and error. Out of necessity, they were urgently hammered out in a very short period of time, and were therefore destined to fall into disuse when more relevant terms were developed.

Finally, how should we evaluate Martin's translations in the history of international law in East Asia? In my opinion, the translations have both positive and negative aspects. Martin's translations made an extremely positive contribution to Qing society, as well as some other East Asian countries, by providing the *first* Chinese IL terms, and they were the stepping stones for later elaborations. However, it can be also said that they had a negative impact by using less relevant Chinese IL terms as the standard for IL translations. In a conservative society like China, it must have been very difficult to change or revise these terms. That is why it took more than 40 years for the Chinese elite to find more relevant IL terms, this time through Japan.

³⁸ How should we interpret these changes? It is likely that Martin's students proposed some new terms to replace terms which they did not consider relevant. Martin might have accepted some of their proposals.

VI. HOW JAPANESE IL TERMS WERE BORN

Martin was of course proud of his IL translations. When he introduced his translations in his autobiography, he wrote: “Most of these have been reprinted in Japan; and nothing additional on the subject of the law of nations has, so far as I am aware, been rendered into the language of either empire”.³⁹ Martin would have been shocked if he had known how many IL books had already been published by Japanese people by that time, and how many IL books would be published in Japan in the very near future.

Wanguogongfa was imported into Japan in 1865, one year after it was published in China. Its Japanese pronunciation is *Bankokukoho*. Unlike the Chinese elite, the Japanese elite showed very strong interest in this translation of the European law of nations. *Wanguogongfa* was translated into Japanese by Japanese scholars.⁴⁰ However, it was natural that the Japanese people also had difficulty in understanding *Wanguogongfa* (or *Bankokukoho*) which was inherently difficult to translate. Hence, some Japanese scholars tried to translate directly from Wheaton’s *Elements of International Law*.⁴¹ Martin’s other translations were also imported into Japan. But, interestingly, some of them had already been translated from the English originals into Japanese before the Chinese translations reached Japan.⁴² In addition, several books by distinguished Western scholars such as Kent, Heffter, which were not translated into Chinese, were also translated into Japanese.⁴³

In fact, in 1862, the same year as Martin started his translation of *Wanguogongfa*, the Japanese government sent 15 students to the Netherlands to study European institutions, and one of them, NISHI Shusuke(西周介, later NISHI Amane 西周), was ordered to study the European law of nations. NISHI(西) studied the European law of nations intensively

³⁹ W.A.P. Martin, *supra* note 7 at 235.

⁴⁰ There are four translations: 1. 堤穀士志訳『万国公法積義』(四冊, 1868年), 2. 重野安繹訳『和訳万国公法』鹿兒島藩出版(三冊, 鹿兒島藩, 明治三年), 3. 鄭石十郎・吳碩三郎共訳『和解万国公法』政府用刊行物(慶應四年), 4. 高谷竜州注訳『万国公法蠡管』(明治九年, 1876年).

⁴¹ Three books were translated. The first two books translated only one part of Wheaton’s book, and the third translated the whole book: 1. 瓜生三寅『交道起源 一名万国公法全書』慶應四年(1868年), 2. 大築拙蔵『惠頓氏万国公法』(二卷)明治寮出版(明治八年, 1875年), 3. 大築拙蔵『惠頓氏万国公法』(完訳, 一五卷)司法省版出(1882年).

⁴² For example, *Gongfabianlan* was translated into Japanese in the same year it was published in China: 妻木頼矩・水野忠雄(訓点)『訓点公法便覧』, but MITSUKURI Rinsho(箕作麟祥) had already translated Woolsey’s book in 1875, with the title of 『国際法 一名万国公法』.

⁴³ For example: 1. 蕃地事務局訳・大音龍太郎校正『堅土氏万国公法』(坂下半七出版, 明治九年, 1876) which translated James Kent’s *Commentaries on International Law*. 2. 荒木邦蔵・木下周一訳, 海弗得原著『海氏万国公法』(司法省出版, 明治10年, 1877). This book translated Heffter’s French version. A.W. Heffter’s book was written in German, but it was translated into French with the title of *Le droit international de l’Europe, traduit par J. Bergson* (1873).

under Vissering's supervision. When *Wanguogongfa* was imported into and reprinted in Japan in 1865, it was NISHI(西) who used Japanese *kunten*(訓点).⁴⁴ NISHI(西) was the first man who studied the European law of nations directly from a European scholar in the history of East Asia. He must have had a lot of thoughts when he first read *Wanguogongfa*, translated by Martin and his Chinese assistants. Based on the notes he took while he was studying IL under Vissering's supervision, NISHI(西) published two books, one for his government,⁴⁵ and the other for the ordinary citizens.⁴⁶

Interestingly, a lot of Chinese terms used in *Wanguogongfa* were also used in NISHI(西)'s books. For example, the term "Wanguogongfa(萬国公法)" was used for the titles of NISHI(西)'s books, even though the pronunciation is different. However, there are several terms in NISHI(西)'s books, which cannot be found in *Wanguogongfa*. For example, the terms such as *sovereignty* and *independence*, which Martin and his collaborators had a hard time translating, were translated by Nishi in different ways. In *Wanguogongfa*, 主权, 自主之权, 管辖之权, 国权 were used for *sovereignty*, and 自主, 自秉, 自立, 主权 were used for *independence*. This shows that 主权 and 自主 were used interchangeably. In NISHI(西)'s *Bankokukoho*, 特立 and 独立 were used for *independence*, and 特立(独立)自主の権 were used for *sovereignty*. In modern translations of *independence* in East Asian countries such as China, Japan and Korea, the word used is 独立 or 獨立. It means that NISHI(西)'s term replaced the Chinese term, even though it is not clear whether or not NISHI(西) himself created it. One more thing should be noted here. When NISHI(西) used the terms 特立自主の権 or 独立自主の権, he used two words for one term, i.e., 独立 plus 自主 to translate *sovereignty*, because he must have realized that neither 特立((独立) nor 自主 alone could fully explain the Western concept of *sovereignty*. In fact, this kind of assembly was quite frequently used in East Asia at that time.

How many IL books were published in Japan in the 19th century? In my survey, I counted around 90 books published in Japan during 1865-1899. In the 1860s and 70s, most books were translations, including Martin's. However, since around 1880, Japanese scholars such as 鳩山和夫(HATOYAMA Kazuo), 秋山雅之介(AKIYAMA Masanosuke), 有賀長雄(ARIGA Nagao), 中村進午(NAKAMURA Shingo), 高橋作衛(TAKAHASHI Sakue) began to write their own books. The Japanese attitude during this period was in

⁴⁴ ジャニン・ジャン(張嘉寧, ZHANG Jianing)「万国公法」in 加藤周一・丸山真男『翻訳の思想』岩波書店(1991) at 404.

⁴⁵ 西周助(NISHI Shusuke)『官版万国公法』慶応四年(1868)和四冊. However, the official title is quite long as follows: 『畢洒林氏説・官版, 万国公法, 全四冊, 慶応四戊辰年, 西周助訳述・官版書籍製本所大阪心斎橋通敦賀屋為七』.

⁴⁶ 西周助(NISHI Shusuke)『和蘭畢洒林氏万国公法』(民間版) 慶応四年(1868)和四冊, 京都. This one also has a very long official title: 『西周助訳・和蘭畢洒林氏万国公法, 平安書館竹苞楼・瑞巖堂, 慶応四年戊辰夏発行』.

this respect quite different from that in China, where it was really only Westerners who took on the task of translating the European law of nations.

Through writing or translating so many books, the Japanese began to create their own IL terms. The fact that they needed to do this suggests that the Chinese IL terms imported were not sufficiently accurate to be accepted and to survive in Japan. As NISHI(西)'s case above shows, more and more Japanese IL terms were created to replace the IL terms imported from China. However, it should not be forgotten that the Chinese terms in Martin's translations provided the Japanese people with excellent *basis* for the creation of their own IL terms.

The most distinctive example of the Japanese creation of IL terms to replace Chinese ones must be the term *International Law* itself. *International Law* was translated into *Wanguogongfa* in Chinese by Martin and his collaborators, and was accepted by the Japanese elites including Nishi as *Bankokukoho*. As mentioned earlier, *International Law* is translated into 国际法(Guojifa) in China, 国際法 in Japan (Kokusaiho) and Korea (Kukjebup) nowadays. Then, when and how 万国公法(萬国公法) was replaced with 国际法(国際法)?

In 1868, when URYU(瓜生) translated one part of Wheaton's book, he used the title 『交道起源 一名万国公法全書』. Even though he used the terms 交道起源 (Kodokigen) and Bankokukoho(万国公法) at the time, his purpose was to propose 交道起源 (Kodokigen) as a new term for *International Law*. However, unfortunately this proposal was not accepted by other Japanese scholars.⁴⁷

It was not until 1875 that MITSUKURI Rinsho(箕作麟祥) used the term Kokusaiho(国際法) for the first time as his title when he translated Woolsey's book. The title was 『国際法：一名万国公法』. In his *preface*, he explained why he used the term 国際法 instead of 万国公法. He wrote that Martin created the term 万国公法 and that it was gaining universal recognition, even being used by Nishi. However, when one reads the book carefully, it is clear that 国際法 is closer than 万国公法 to its original meaning.⁴⁸ Of course, 国際法 didn't replace 万国公法 in a day. Indeed, it took quite a long time. The term 万国公法 remained the dominant title of IL books for some time. It is difficult to find IL books with the title of 国際法 in 1875, when MITSUKURI(箕作) proposed the term 国際法. It was not until around 1888 that the term 国際法 reappeared and began seriously to compete with 万国公法. Eventually, the latter was totally replaced by the former. As far I as I know, the last book with the title of 万国公法 was published by HATOYAMA(鳩山)

⁴⁷ However, some scholars valued his attempt to create a new term 交道起源. For example, see 尾佐竹猛(OSATAKE Takeshi) 『近世日本の国際観念の発達』 共立社(1932) at 40-43.

⁴⁸ See 箕作麟祥(MITSUKURI Rinsho) 『国際法：一名万国公法』 弘文堂(1875).

in 1896.⁴⁹ This means that it took more than 20 years for the term 國際法 to fully replace 万国公法 in Japan. Later, this term 國際法 was imported and used in China and Korea, and it finally replaced the term 万国公法 in these countries in the early 20th century.

The process of replacing the term 万国公法 with 國際法 is only one example of how Japanese IL terms were created on the *basis* of Martin's terms, and how the latter was replaced by the former. However, it should also be emphasized that Japanese IL terms were not created in a day. As with some plural Chinese terms in *Wanguogongfa*, some IL terms still competed with each other in Japan in the late 19th century, even though many IL terms were already identical with those used nowadays. For example, the Japanese terms such as *treaty*(条約), *recognition*(承認), *obligation*(義務), *interference*(干涉) etc in the 1890s were already identical with modern IL terms. However, for *subject*, several terms such as 主体, 人格, 当事者, 主格 etc were used. The term *territory* also had many different terms, such as 土地, 領地, 領土, 領域, 版圖 etc.

It can be said that, between the mid-1860s and the 1880s, Japanese scholars created their own IL terms on the *basis* of Martin's terms. And most of the Japanese IL terms were established during the 1890s and 1900s, in the sense that the IL terms used today were already among those being used then. This can, for example, be seen in the cases of *subject*(主体) and *territory*(領域) above. Around 1900, Japanese IL scholars such as 鳩山和夫(HATOYAMA Kazuo), 秋山雅之介(AKIYAMA Masanosuke), 有賀長雄(ARIGA Nagao), 中村進午(NAKAMURA Shingo), 高橋作衛(TAKAHASHI Sakue), 寺尾亨(TERAU Toru), 千賀鶴太郎(SENGA Tsurutaro), 松原一雄(MATSUBARA Kazuo), 遠藤源六(ENDO Genroku) published a lot of IL books, some of which were imported into China and Korea, and they eventually replaced Martin's terms in those two countries in the early 20th century. The next two sections will explain how this happened.

VII. THE IMPORTATION OF JAPANESE IL TERMS INTO CHINA

As the Chinese elite slowly came to realize that many of the IL terms in Martin's translations, including *Wanguogongfa*, were not relevant, they tried to find their own IL terms. Four alternatives were available in this respect. The first was to make direct translations of Western IL works without the help of the Westerners. The second was to reinterpret or rephrase Martin's translations. The third was to write IL books themselves. The fourth was to import Japanese IL books.

The first alternative was to translate the Western IL works directly themselves, with no Westerners involved. Actually, several books were translated this way – one from Russia,⁵⁰ one from France,⁵¹ and one from Germany.⁵² But, this effort did not last long.

⁴⁹ 鳩山和夫(HATOYAMA Kazuo)(述)『万国公法』東京専門学校(法律科第3年級第6回講義録)(1896).

⁵⁰ (俄)腓列特芬马丁斯(著)：徐家驹(译)手稿(1900年,存上海图书馆).

The second alternative was to reinterpret or rephrase Martin's translations. The most important example must be ZHANG(张)'s 《万国公法提要》(1904) which I found last year.⁵³ This book has several *prefaces* written by high officials in the Qing Government, including 钦差直隶总督部堂袁. All of them emphasized the role of international law in international relations, and the necessity of studying IL. According to ZHANG(张), even though many IL books were already published, *Wanguogongfa* was still the most important, because these books heavily relied on it. However, it was not often read, since it was too difficult. This is the reason why ZHANG(张) rephrased *Wanguogongfa*, using simpler terms and more basic vocabulary. Through ZHANG(张)'s efforts, *Wanguogongfa* was reborn 40 years after its first publication. However, this was the last time such an effort was made.

The third alternative was for the Chinese to write their own books. In fact, a lot of scholars share a vague assumption, without any concrete basis, that no books were written by the Chinese in the late 19th century and early 20th century. However, this is not the case. There is, for example, HE You(何祐)'s 《最近公法提要》(1904),⁵⁴ which I found recently. According to HE(何), all the IL books at that time were written by the Western scholars from "their perspective" and for "their national interests", and China also needed this kind of book written from a Chinese perspective. This was his motive for publishing his book. The book lists 25 Western scholars including Grotius and Vattel, whose books he read before writing his book. One notable characteristic of this book is that it has 106 sections, without any chapters or parts. Moreover, besides three doctrines of IL introduced in his *preface*, this book has no general introduction of IL theory and history. It directly jumps to the rights of the State, and the contents mainly deal with practical knowledge of IL.⁵⁵ It should be noted that the structure of, and the terms used in, this book were quite different from Martin's translations.

One more book should be introduced here. It is 《公法导源》(1899), written by HU Weiyuan (胡薇元).⁵⁶ It seems that HU(胡) was a local officer. This book offers important evidence to suggest that even local officers in China knew the European law of nations at that time. Interestingly, he emphasized the fact that the European law of nations was consistent with the teachings of Confucius and Mencius. It seems that he tried to

⁵¹ (法)铁佳敦(著), 吴启孙(译): 《支那国际法论》(上海作新社, 1902年).

⁵² (德)雷士特(著)商务印书馆(译): 《国际公法大纲》上海商务印书馆(1903年).

⁵³ 张凤壹(ZHANG Fengyi)《万国公法提要》(光绪30年, 1904年).

⁵⁴ 何祐(HE You)《最近公法提要》(1904). According to his *preface*, HE(何) was a diplomat working at Chinese Consulate in San Francisco at the time. He said that he had studied foreign law and how to negotiate with foreign diplomats while working with senior officials.

⁵⁵ As a diplomat, he must have tried to compile the IL knowledge and terms urgently required by Chinese diplomats at that time.

⁵⁶ 胡薇元(HU Weiyuan)《公法导源》(1899).

understand the European law of nations from the traditional Confucian perspective. He also emphasized the fact that international law served national interests, which means that he had quite a realistic understanding of IL. So is 《公法导源》(1899) the first IL book written by a Chinese person in the 19th century? This is not clear, since there is reference in HE(何)'s work to another book written in 1898.⁵⁷ Unfortunately, this book is not available, but if it is not just a compilation of cases or treaties as its title “释例” indicates, it could be the first IL book. There is also the possibility that 《公法导源》(1899) could be regarded as the first. There are probably even older books. The fact remains, however, that the attempt to produce purely Chinese books was not particularly effective.

While these three alternatives didn't work well, the fourth one, that is, the importation of Japanese IL books, especially through Chinese students studying in Japan, was a huge success. Before examining the importation of Japanese IL books into China, there is some data to examine on the number of IL books published in Chinese in the early 20th century. HE(何)'s paper⁵⁸ provides the best data. It lists 95 IL books published in China between 1900 and 1947. This includes some books on private international law and some specific themes such as unequal treaties. If we count only public international law, including several books on IL history and theory that are very important to understand the history of international law in East Asia, the number is 41. However, we recently made an intensive survey on this issue and found 126 books published during the same period (1900-1947).⁵⁹ And what is important here is that around 69 books out of 126 were published during 1900-1915, and almost all of them were imported from Japan.

18 books clearly show the names of the Japanese scholars whose works were translated:⁶⁰

	Authors & Translators	Titles	Published Years & Publishing Companies
1	(日)岸崎常, 中村孝(著), 章宗祥(译)	《国际法》	东京译书汇编社(1902)
2	今西恒太郎(著), 江郁年(译)	《国际法学》	上海文明书局(1903)
3	北条熊谷、元笃直太原著, 范迪吉等(译)	《国际公法》	上海会文学社(普通百科全书之一)(1903)

⁵⁷ The full name is as follows: 丁祖荫撰《万国公法释例》(1898).

⁵⁸ 何勤华(HE Qinhu): 《中国近代国际法学的诞生与成长》《法学家》2004年第4期 at 49-60.

⁵⁹ This survey is made on the basis of HE(何)'s list.

⁶⁰ These tables were created on the basis of HE's paper, TIAN's book and our own survey. 何勤华(HE Qinhu), *supra* note 58 at 50-53. 田涛(TIAN Tao) *supra* note 4 at 131-144.

4	花井桌藏（著）黄皋瑞（译）	《非常国际法论》	光绪三十年(1904)
5	中村进午编，华开琼（译）	《平时国际公法》	东京湖北法政编辑社(1905)
6	中村编，张福先（译）	《战时国际法》	东京湖北法政编辑社(1905)
7	高桥作卫编	《万国公法提要》	东京泰东同文局(1905)
8	有贺长雄讲，张知本（译）	《局外中立》	湖北政治俱乐部光绪 31 年(1905)
9	绪方雄一郎讲，熊开先（编）	《平时国际公法》	上海商务印书馆光绪 32 年(1906)
10	绪方雄一郎讲，赵象谦（译）	《战时国际公法》	上海商务印书馆光绪 32 年(1906) 再版
11	美浓部达吉（著），熊范舆、金保康（译）	《战时国际公约》	天津丙午社光绪 33 年(1907)
12	高桥作卫（著）	《平时国际法》	东京法政新书局(1907)
13	有贺长雄编，严献章（译）	《战时国际公法》	东京清国留学生会馆(二册) (1907 or 1908)
14	高桥作卫（著），徐锷、郭恩泽（译）	《最近战时国际公法论》	国际法研究社光绪 34 年(1908)
15	治崎甚三编著，袁飞（译）	《万国公法要领》	东京译书汇编社(1911)
16	中村进午编，陈时夏（译）	《战时国际公法》	上海商务印书馆(1911)
17	远藤源六（著），王广圻（译）	《中立之国际法论》	1912
18	今井嘉幸（著），李大钊，张润之（译）	《中国国际法》	1915

Some other books also indicate the names of Japanese scholars whose works were influential. The following two books published in 1905 are good examples: 叶开琼(编辑)《平时国际公法》(1905) and 张福先(编辑)《战时国际公法》(1905). The former is based on NAKAMURA(中村)'s class. According to his *preface*, YE(叶) edited this book based on the notes that he took from this class. He added that he also used the books of TAKAHASHI(高橋) and AKIYAMA(秋山). ZHANG(张)'s book is based on NAKAMURA(中村), MATSUBARA(松原), TAKAHASHI(高橋), ARIGA(有賀), and AKIYAMA(秋山), but he said that most of the parts came from NAKAMURA(中村).

In addition, we can easily see that some other books came from Japan, because the publishing companies or the cities in which they were published were in Japan, mostly Tokyo.

	Authors & Translators	Titles	Published Years & Publishing Companies
1	王鸿年 (编)	《国际法总纲》	东京 (编者自刊) 清光绪 27 年 (1901)
2	吴振麟 (著)	《局外中立国法则 (上篇) (下篇)》	东京战时国际法调查局光绪 30 年 (1904 年) 版
3	王鸿年 (纂)	《战时现行国际法规》	东京: 株式会社秀英舍 1904 年版 (明治 37, 光绪 30)
4	叶良 (编译)	《国际公约关系诸条约及法规》	东京: 科学编译社 光绪 32 年 (1906 年) 版
5	史书 (译)	《国际公法述要》	东京清国留学生会馆 光绪 32 年 (1906 年) 版
6	文溥、陈厉洁 (编辑)	《平时国际公法》	东京: 並木活版所 1907 年版 (光绪 33)
7	方庚源、陈英 (编辑)	《战时国际公法》	东京: 並木活版所 1907 年版 (光绪 33)

Even some Western books already translated into Japanese, were retranslated into Chinese.⁶¹ According to our survey, out of 69 books published in China during 1900-1915, more than 60 books came from Japan.

Here we need to go back to HU(胡)'s book,《公法导源》(1899) which was mentioned above. There are two more things to be noted regarding this book. First, it includes some terms which were rarely if ever used in China but were frequently used in Japan at that time, such as 承认, 独立, 干涉, 版图, 海贼. And, as you can see from the title of the book, the terms 国际法 and 国际公法 are used interchangeably. These terms are never found in Martin's works. What is more, 外务省 and 外交部 are also used interchangeably for *the Ministry of Foreign Affairs* in his book. China currently uses the term 外交部. As far as I know, Japan is the only country that always used and still uses the term 外务省(外務省). It may need more analysis, but there is an extremely high possibility that Japanese IL books had already been introduced into Chinese provinces in the 19th century. Secondly, there are also some terms in HU's book that can be found neither in Martin's translations nor in Japanese IL books. For example, he used some terms⁶² when he was explaining how

⁶¹ For example, [法]罗诺而(著)《国际法论》(1901). This is a French book translated into Japanese. And a Japanese translation of Hall's book was also translated into Chinese: 条熊谷, 元笃直太原(著), 范迪吉等(译)《国际公法》(1903).

⁶² 列国所公认之版图法有五
 一 占领地
 二 割让地 一曰 移易地
 三 久领地 一曰 历年地
 四 略取地 一曰 功陷地

to get territory in international law, but it is not clear where terms such as 移易地, 久領地, 历年地, 略取地, 功陷地 came from. How should we interpret this? We will consider this book again later in this paper, since it is closely related to the circulation of IL books in China, Japan and Korea.

It is certainly clear that Japanese IL books were intensively imported into China during 1900-1915, and that Japanese IL terms were accepted by the Chinese elite to the extent that they began to replace Martin's IL terms in China. However, as mentioned above, this does not mean that all Japanese IL terms had already been established in Japan before they were imported into China. Rather, many alternative versions of some terms were still being used even after they were imported into China. During 1900-1915, more than 60 books imported from Japan were used in relation to Western IL, not only in schools but also in governmental institutes and even in military. It was during 1900-1915 that most of the modern IL terms were established, especially by the intensive importation of Japanese IL textbooks, and their replacement of Martin's terms in China.

VIII. THE IMPORTATION OF JAPANESE IL TERMS INTO KOREA

It is generally agreed that *Gongfahuitong* was reprinted in Korea in 1896, with a *preface* by the editor-in-chief in the Ministry of Education (学部), and that it played a very important role in many legal issues in Korea, including the issue of adopting the Emperor's title. However, it is not clear exactly when Martin's other translations, such as *Wanguogongfa* and *Gongfabianlan*, were introduced in Korea. In fact, there is a historical record showing that *Wanguogongfa* was introduced in 1876, but most Korean scholars believe that it was introduced far earlier than that.⁶³

Besides Martin's translations, only four IL books were published before 1910, that is, before the annexation by Japan. They were: LEE Yong-Moo(李用戊)'s 國際公法(平時之部),⁶⁴ SEOK Jin-Hyoung(石鎮衡)'s 平時國際公法,⁶⁵ PARK Jung-Dong(朴晶東)'s 國際公法志,⁶⁶ and JU Jung-Kyun(朱定均)'s 戰時國際公法.⁶⁷ It is clear that PARK(朴)'s book was published in 1907. However, since the publication dates for the other works are undocumented or missing, it is not possible to identify which was the first

五 天然擴張地

⁶³ For this part, see the following research: 金容九(김용구, KIM Yong-Koo), *supra* note 4 at 177-285. 金孝全(김효전, KIM Hyo-Jeon) 「W.A.P. 마틴의 漢譯 國際法 책과 東아시아」 『東亞論叢』 Vol.35 (1998) at 123-169.

⁶⁴ 李用戊(이용무, LEE Yong-Moo), 『國際公法: 平時之部』.

⁶⁵ 石鎮衡(석진형, SEOK Jin-Hyoung), 『平時國際公法』.

⁶⁶ 朴晶東(박정동, PARK Jung-Dong)(訳)・金雨均(김우균, KIM Woo-Kyun)(閱), 『國際公法志』 日韓圖書印刷株式会社(1907).

⁶⁷ 朱定均(주정균, JU Jung-Kyun), 『戰時國際公法』. There was also a rumour that JU (朱) published a book called 万国公法 which was now in the Yenqing Institute of Harvard University. However, it turned out to be wrong.

work. Nonetheless, it is generally agreed that they were published around 1907-1908, and they were used as textbooks in schools. It is quite interesting to see that all of them, except JU (朱)'s book, are on "the law of peace," when in fact more was published in Japan on "the law of war".

Scholars have made efforts to determine whether the authors really wrote the books themselves, because some have doubted that they were translated from Japanese or Chinese books. In spite of the efforts, the true origins of these books have remained a mystery. However, as a result of research into the issue, we can confirm the origins of these books as follows:

First, LEE(李)'s book was highly evaluated by some scholars in Korea because they thought that it was based on a full and solid understanding of the Western law of nations, even though the author was only about 20 years old when he wrote it. However, it turned out that this book was the translation of the book by NAKAMURA(中村), the distinguished Japanese scholar. NAKAMURA (中村) published many books, but it was the 1903 edition⁶⁸ that LEE(李) translated.

Presumably, SEOK(石)'s book was published as a textbook in 普成專門学校, the former Korea University(高麗大学). At the end of Chapter 1 (of Part I), SEOK(石) wrote that his book owed a lot to four Japanese books.⁶⁹ However, he did not provide details such as the year of publication, edition, or publishing company. Nevertheless, as each scholar has a particular style and uses his own patterns, structures and terms, we can make an educated guess about which of them influenced him the most. In my opinion, the greater part of SEOK(石)'s book was indebted to TAKAHASHI(高橋)'s book.⁷⁰ The introduction on the theories of the legal nature of IL (that is, whether international law is law or not), the enumerating order of IL sources, two terms of recognition (容認 and 承認), four rights of State (equality, independence, self-defence, intercourse) etc are exactly the same as those in TAKAHASHI(高橋)'s book. SEOK(石)'s book also generally follows TAKAHASHI(高橋)'s table of contents. However, for the main contents of each chapter, SEOK(石) borrowed quite a lot from the other three scholars, especially, from AKIYAMA(秋山)'s book⁷¹ and NAKAMURA(中村)'s book.⁷²

⁶⁸ 中村進午(NAKAMURA Shingo)(講述)『平時国際公法 完』早稲田大学出版部蔵版(1903).

⁶⁹ The four books are: 高橋作衛(TAKAHASHI Sakue)『平時国際法論』, 寺尾亨 (TERAO Toru)『日本帝国大学筆記国際公法平時部』, 中村進午(NAKAMURA Shingo)『国際公法』, 秋山雅之介(AKIYAMA Masanosuke)『平時国際公法』.

⁷⁰ 高橋作衛(TAKAHASHI Sakue)『平時国際法論』日本法律学校(1903).

⁷¹ 秋山雅之介(AKIYAMA Masanosuke)『国際公法』和佛法律学校(平時, 1902).

⁷² 中村進午(NAKAMURA Shingo)『国際公法』東華堂出版(1907). Another point to note is that SEOK(石)'s book contains a part on "neutrality," but this does not appear in the table of contents. However, there is one more small table of contents (本講義の 大目次) at the end of

JU (朱)'s 戰時國際公法 was not very well-known until quite recently. As far as I know, KIM (金) was the only scholar who mentioned this book.⁷³ According to KIM(金), JU (朱)'s book was published in 1908, and it is in the same series as SEOK(石)'s book, although while JU (朱)'s book is on the law of war, SEOK(石)'s book is on the law of peace. KIM(金) did not evaluate (朱)'s book very highly because, in his opinion, it involved a mechanical introduction of IL knowledge from foreign books without conveying full understanding of the contents. In fact, JU (朱)'s book is actually a sort of summary of AKIYAMA(秋山)'s 國際公法(戰時) which was published in 1903.⁷⁴ AKIYAMA(秋山)'s book has 1,000 pages in Japanese, and JU (朱) condensed it into 301 pages in Korean.

With respect to PARK(朴)'s 國際公法志, there is an interesting story concerning the *circulation* of IL books among East Asian countries. The first time I encountered the book 國際公法志 (1907) was at an international conference involving Japan and Korea, held in 2000. According to the presenter, this book was found in the Yenqing Institute of Harvard University. It was written in a mixture of both Korean and Chinese characters. The presenter explained that it must have been translated from some other, as yet unidentified, foreign IL book. The presenter also added that there was high possibility that this book and others like it would have been used by students preparing for the equivalent of bar or civil examinations at that time.

A while later, quite by accident, I found the same book referred in two of CHOI (崔)'s papers. In one paper, CHOI(崔) said that the book seemed to have been translated from a Japanese book, but that, unfortunately, he had been unable to find the original.⁷⁵ In the other paper, he said that, given the number of Chinese expressions used in the book, it would have been strange for the original to have been in Japanese.⁷⁶

Later, I found the same title again in the papers of two Chinese scholars, HE Qinhu(何勤华),⁷⁷ and TIAN Tao(田涛),⁷⁸ but with a different author and a different year. It was CAI(蔡鐸)'s 国际公法志, which was written in Chinese and published in 1902.⁷⁹ I presumed that PARK(石) had translated CAI(蔡)'s book, and that CAI(蔡)'s book contained Japanese terms because he had studied in Japan. Recently, I was fortunate

the introduction, which does indicate Part V on “neutrality”, though, somewhat oddly, this is in the part of the book relating to “peace.” Unfortunately, the last part of this book is missing.

⁷³ 金容九(김용구, KIM Yong-Koo), 『万国公法』, *supra* note 9 at 301.

⁷⁴ 秋山雅之介 (AKIYAMA Masanosuke) 『國際公法：戰時』和佛法律学校(1903).

⁷⁵ 崔鐘庫(최종고, CHOI Jong-Ko), 「韓國開化期の 國際法學」 『韓國國際法學의 諸問題』博英社(1986) at 258-259.

⁷⁶ 崔鐘庫(최종고, CHOI Jong-Ko), 「韓國開化期の 國際法用語受容」 『法學』 Vol.30, No.3-4(1989) at 87.

⁷⁷ 何勤华(HE Qinhu), *supra* note 58 at 50.

⁷⁸ 田涛(TIAN Tao), *supra* note 4 at 142.

⁷⁹ 蔡鐸(CAI'e) : 《国际公法志》(1902).

enough to find CAI(蔡)'s 国际公法志. I compared it with PARK(石)'s 国际公法志, and found that they are exactly same. In addition, I discovered that CAI(蔡) studied in Japan when he was writing the book. Hence, it seems clear that PARK(石)'s 国际公法志(1907) is the translation of CAI(蔡)'s 国际公法志(1902).

However, this is not the end of the story. While I was analyzing these two books, I found many sentences which seemed very familiar, although I had no idea where I had read them. I finally determined that it was HU(胡)'s 公法导源 (1899) which I mentioned above as a strong candidate for being the first Chinese IL book written in the 19th century. As the volume of HU(胡)'s 公法导源 is small (around 70 pages, including the *preface*), CAI(蔡)'s 国际公法志 is a sort of enlarged edition of the former. Most of the chapters in CAI(蔡)'s book begin with HU(胡)'s sentences,⁸⁰ and most of HU(胡)'s sentences were used in CAI(蔡)'s book, but CAI(蔡) added more contents to HU(胡)'s sentences. In my opinion, the parts added to CAI(蔡)'s book must have owed a lot to the Japanese books, but I have not yet been able to identify which.

As it is quite a complicated story, let me summarize it again. A local officer called HU Weiyuan(胡薇元) wrote an IL book 公法导源 in Chinese in 1899, which could be the first IL book ever written by a Chinese person in the 19th century. Another Chinese man called CAI(蔡) published his book 国际公法志. CAI(蔡) enlarged HU(胡)'s book by adding more contents from Japanese IL books which he had studied in Japan, and he published it in Shanghai in 1902. In 1907, a Korean man, PARK(石), translated CAI(蔡)'s book 国际公法志 into Korean, with the same title. This explains why both Chinese and Japanese terms are found in this book.

In Korea, IL books were imported from both China and Japan. However, as the IL terms from China were already greatly influenced by Japanese terms, it could be said that the Japanese IL terms were imported into Korea *via* China, and they replaced Martin's IL terms in Korea. And, as was the case with China, many of the terms in above-mentioned books were already identical, although some of the terms were still competing with each other even after they were imported into Korea. For example, for *subject*, SEOK(石) used the term “当事者” but LEE(李) used the term “主体”, and for *territory*, SEOK(石) used the term “版图”, but LEE(李) used the term “領地”. Why did they use different terms? They did so because different terms had been used by TAKAHASHI(高橋) and NAKAMURA(中村) from the beginning. In 1968, QIU(丘) said that the IL terms used in Korea were more than 95% the same as those used in Japan.⁸¹ Many people think that this was due to the annexation of Korea by Japan for 36 years from 1910. However, in reality many of the Japanese IL terms were imported into Korea long before annexation.

⁸⁰ HU(胡)'s book does not contain any divisions in terms of Parts, Chapters or Sections.

⁸¹ 丘宏达《中国国际法问题论集：兼论最近国际法问题》台湾商务印书馆(1968) at 33.

IX. THE REST OF THE STORY

As shown above, most of the IL terms in East Asia became identical through the intensive importation of Japanese IL terms into China and Korea in the early 20th century, even though some terms were still used in more than one way. What, then, happened to these IL terms after that? Did they survive two World Wars and the Cold War, and are they still in use?

Japan successfully joined *the family of nations* and became one of the Imperial Powers in the early 20th century. However, after the Manchurian Incident and the establishment of Manchuguo(満州国), Japan retired from the League of Nations, and finally waged the Pacific War(太平洋戦争) or the Greater East Asian War(大東亜戦争). Under these dramatic circumstances, IL research in Japan continued. With research by the scholars such as 立作太郎(TACHI Sakutarō), 大澤彰(OSAWA Akira), 横田喜三郎(YOKOTA Kisaburo), 田岡良一(TAOKA Ryoichi) during the 1920s and 1930s, the study of IL in Japan became even stronger. TACHI(立), in particular, is regarded as the first Japanese scholar to carry out a systemic analysis based on his own IL perspective or theory.⁸² He published many works, including more than 500 articles. However, his two books, one on the law of peace in 1930,⁸³ and the other on the law of war in 1931,⁸⁴ are regarded as his principal works. YOKOTA(横田) and TAOKA(田岡), who would go on to contribute a lot to the Japanese IL academy in the period following WW II, also began their research and published their IL textbooks during this period.⁸⁵ In the 1940s, some scholars, such as MATSUSHITA(松下), made efforts to establish their own IL theory to provide legal justification for the Greater East Asia Co-prosperity Sphere.⁸⁶

Analyzing these books, it is not difficult to see that most of the IL terms used were the ones established in the late 19th and early 20th centuries, even though several different terms were still used for some concepts. For example, 淵源 and 法源 were both used until WW II, and the latter finally prevailed, and is now generally used now Japan. And, some IL terms were created for the Greater East Asia Co-prosperity Sphere, such as the term 指導国(Leader State), but they were used only among scholars at the time, and have since fallen into disuse.

⁸² 筒井若水(TSUTSUI Wakamizu)・広部和也(HIROBE Kazuya)「学説100年史：国際法」『ジュリスト』No. 400(1968) at 220.

⁸³ 立作太郎(TACHI Sakutarō)『平時国際法論』日本評論社(1930).

⁸⁴ 立作太郎(TACHI Sakutarō)『戦時国際法論』日本評論社(1931).

⁸⁵ 横田喜三郎(YOKOTA Kisaburo)『国際法(上巻)(下巻)』有斐閣(1933,1934). 田岡良一(TAOKA Ryoichi)『国際法学大綱(上巻)(下巻)』巖松堂書店(1934,1939).

⁸⁶ 松下正壽(MATSUSHITA Masatoshi)『大東亜国際法の諸問題』日本法理研究会(1942).

After the end of WW II, the Japanese attitude towards IL dramatically turned to internationalist and peace-oriented approaches.⁸⁷ Besides YOKOTA(横田) and TAOKA(田岡), many scholars such as TABATA Shigejiro(田畑茂二郎), TAKANO Yuichi(高野雄一), YAMAMOTO Soji(山本草二), ONUMA Yasuaki(大沼保昭) also actively carried out research after WW II. Even though they took different perspectives in their IL research, they shared the same IL terms. And if you compare some recent authoritative books by YAMAMOTO(山本),⁸⁸ KOTERA(小寺) et al,⁸⁹ and YANAGIHARA(柳原) et al,⁹⁰ you can easily see that most of the IL terms in these books were already being used in the early 20th century.

What about China? During the 1920s and 1930s, China had to struggle with the Imperial Powers and, at the same time, with the civil war between Kuomintang and the Communist Party. According to our survey, only two books were published during the 10 years between 1916 and 1925. However, IL research restarted from 1926, and around 55 books were published between then and 1945. One of the characteristics during this period is that the importation of IL books from Japan suddenly stopped, and the scholars who studied in Western countries took the initiatives of carrying out IL research in China.⁹¹ Several very important books were published in the 1930s by IL scholars such as ZHOU Gengsheng(周鯁生),⁹² NING Xiewan(宁协万),⁹³ ZHOU Huan(周还),⁹⁴ and CUI Shuqin(崔书琴).⁹⁵ Even though they made an effort to construct their own IL perspective, they did not try to invent new IL terms or concepts. The terms used in these books were the ones which had already been used since the early 20th century.

However, right after the end of WW II, China once again intensively introduced IL works from abroad, this time from the Soviet Union. The number of IL works published in

⁸⁷ Regarding the dramatic turn to an internationalist and peace-oriented approach, see Onuma's paper: Yasuaki Onuma, "'Japanese International Law' in the Postwar Period: Perspectives on the Teaching and Research of International Law in Postwar Japan" (1990) 33 *Jap. Ann. Int. L.* 25 at 25-53.

⁸⁸ 山本草二(YAMAMOTO Soji)『国際法(新版)』有斐閣(1994).

⁸⁹ 小寺彰(KOTERA Akira)・岩沢雄司(IWASAWA Yuji)・森田章夫(MORITA Akio)(編)『講義国際法』有斐閣(2004).

⁹⁰ 柳原正治(YANAGIHARA Masaharu)・森川幸一(MORIKAWA Koichi)・兼原敦子(KANEHARA Atsuko)(編)『国際法講義』信山社(2010).

⁹¹ With regard to IL research during this period, see the following books and papers: 何勤华(HE Qinhu), *supra* note 58 at 49-60. 何勤华:《略论民国时期中国移植国际法的理论与实践》《法商研究》2001年第4期 at 136-144. 王贵勤(WANG Guiqin):《民国时期国际法研究考》《华东政法大学学报》2007年第4期 at 74-83.

⁹² 周鯁生(ZHOU Gengsheng):《国际法大纲》(1932), reprinted by 中国方正出版社 in 2004(华东政法学院珍藏民国法律名著丛书).

⁹³ 宁协万(NING Xiewan):《现行国际法》商务印书馆(1927).

⁹⁴ 周还(ZHOU Huan):《国际公法》世界书局(1932).

⁹⁵ 崔书琴(CUI Shuqin):《国际法》(上册,下册)商务印书馆(重庆1944,上海1947).

China during the 1950s was small, but of those which were published, most originated from the Soviet Union. In our survey, if I exclude a couple of Taiwanese books, I found 9 IL books published during the period 1950 to 1959, and 8 of them were translated from Soviet books. However, very interestingly, instead of creating new terms, these translations used the same terms that had been in use since the early 20th century. During the Cultural Revolution, China experienced a very dramatic phase once again, and the only IL work to be published during the period 1966 to 1980 was ZHOU Gengsheng(周鯁生)'s book, which was published in 1976. As far as I know, the greater part of this book had already been written by the author before the Cultural Revolution.

China reentered international society under the *Gaigekaiifang*(改革开放) policy adopted at the end of the 1970s. IL research in China also resumed. It was carried out by scholars such as WANG Tieya(王铁崖), CHEN T/iqiang(陈体强), ZHOU Ziya(周子亚), ZHAO Lihai(赵理海) and LEE Haopei(李浩培). If one compares some recent authoritative books of WANG Tieya(王铁崖) et al,⁹⁶ SHAO Jin(邵津) et al,⁹⁷ and JIA Bingbing(贾兵兵),⁹⁸ it is apparent that most of the IL terms used in their books were terms which had been used since the early 20th century. Of course, there are some exceptions such as 'contiguous zone', 'continental shelf', 'exclusive economic zone', and 'sea-bed' in the law of the sea, but these are terms which have only developed since the end of WW II.

Korea became independent at the end of WW II, after 36 years' as a colony of Japan. However, the Korean War (1950-1953) split the Korean peninsula into two. IL research in Korea also resumed after independence, with scholars such as PARK Guan-Sook(박관숙, 朴觀淑), LEE Han-Key(이한기, 李漢基), PARK Jae-Sup(박재섭, 朴在攝), KIM Jung-Kyun(김정균, 金正均), KIM Ki-Soo(김기수, 金基洙) and SHIN Dong-Wook(신동욱, 申東旭) taking the initiative. If you read books published after WW II, it is clear that many Korean IL terms were influenced by Japanese terms. For example, The terms used in PARK(朴)'s 國際法要論(1949)⁹⁹ were mostly identical to the terms in Japanese IL books at that time. As mentioned earlier, it should be emphasized that most of these terms had already been imported before annexation in 1910, and 36 years of colonization added to the similarities.

During the Cold War, the attitudes of IL scholars in Korea were greatly influenced by the conflicts with North Korea, the post-war disputes with Japan, and the country's identity as part of the Third World. Some scholars tried to construct their own IL perspectives, but they did not try to invent new terms. If one compares the authoritative IL

⁹⁶ 王铁崖(WANG Tieya)(主编)：《国际法》法律出版社(1995).

⁹⁷ 邵津(SHAO Jin)(主编)：《国际法(第二版)》北京大学出版社(2005).

⁹⁸ 贾兵兵(JIA Bingbing)：《国际公法：理论与实践》清华大学出版社(2009).

⁹⁹ 朴觀淑(박관숙, PARK Gwan-Sook), 『國際法要論』宣文社(1949). This book is on the law of peace. It does not address the law of war.

textbooks by LEE Han-Key(李漢基),¹⁰⁰ LYOU Byung-Hwa(柳炳華) et al,¹⁰¹ and KIM Dae-Soon(金大淳),¹⁰² it is apparent that most of the IL terms used in these books were also used before 1910, in the sense that these terms were already among the various terms used at that time. In addition, in contrast to the Chinese position, even the IL terms which have developed since the end of WW II, such as ‘contiguous zone’, ‘continental shelf’, ‘EEZ(exclusive economic zone)’, and ‘sea-bed’ in the law of the sea, are also identical with Japanese terms.

Finally, mention should be made of IL terms of North Korea. Perhaps somewhat surprisingly, several IL books have been published in North Korea. What is more important is the fact that international law is taught in schools, and North Korea justifies its behaviour while criticizing the behavior of other countries on the basis of international law. However, the North Korean conception of IL is fundamentally different from that of other countries. For example, the theories of Kim Il-Sung and Kim Jung-Il have a special status in the North Korean conception of IL.

Nonetheless, if one reads books published in North Korea,¹⁰³ it is clear that they use almost the same IL terms as those used by other East Asian countries such as China, Japan, and South Korea. They don’t use the Chinese characters, but instead use *Hangul*, traditional Korean characters. However, the meanings are the same. Of course, there are several terms that are rarely used or never found in the other countries. For example, the term 자주(自主) is used very frequently, and treated as one of the core IL principles in the IL textbooks of North Korea. In fact, this term was used in other countries until WW II, but is rarely used nowadays. The North Koreans also use the term 存在形式 for *sources* of IL, which is not generally used in the other countries. However, the vast majority of IL terms are the same as those used elsewhere in East Asia.

Based on the analysis above, it appears that the IL terms currently used in East Asia can be categorized in the following four groups:

¹⁰⁰ 李漢基(이한기, LEE Han-Key), 『國際法講義(新訂版)』博英社(1997).

¹⁰¹ 柳炳華(유병화, LYOU Byung-Hwa) · 朴魯馨(박노형, PARK No-Hyoung) · 朴基甲(박기갑, PARK Ki-Gab), 『國際法 I』法文社(1999), 『國際法 II』法文社(2000). Interestingly, these books have some terms which are not found in other Korean IL books. For example, they use the term 正当防衛 for ‘self-defence’, while the other Korean books use the term 自衛, which is also used in Japan and China.

¹⁰² 金大淳(김대순, KIM Dae-Soon), 『國際法論』三英社(第 13 版, 2008).

¹⁰³ For example, the paper compared the following three books: (1) 『現代國際法研究』科学百科辞典総合出版社(1988); (2) 『國際法学』金日成総合大学出版社(1992); (3) 『國際法辞典』社会科学出版社(2002). And recently LEE Gyu-Chang(이규창) edited the following book: 『北韓의 國際法觀』韓國科学技術情報(株)(2008). This book includes 67 papers written by North Koreans.

The first group is the IL terms in Martin's translations, which were created by the collaborations of Martin, Chinese officials, and his students. Some of them have already ceased to be used, but some of them survived and are still effectively used in China, Japan and Korea. 'Sovereignty'(主权 or 主權), 'right'(权利 and 權利), 'responsibility'(责任 or 責任) are among the most prominent examples.

The second group is the terms that were created in Martin's translations and are still used in some countries but not in other countries. 争端('dispute') belongs to this group because it is still used in China, but not in other countries. The term 紛争 is used in Japan and Korea (and in North Korea too). For 'immunity' also, China uses 豁免, but Japan and Korea use the term 免除. And, for the 'source' of IL, China uses 淵源, Japan uses 法源 (even though it also used 淵源 before WW II), while Korea uses both.

The third group is the terms that were created in the new fields of IL, such as some concepts in law of the sea, environmental law, human rights law, criminal law, economic law, outer space law etc, which have developed since the end of WW II. For example, for 'contiguous zone', 'EEZ(Economic Exclusive Zone)', 'Continental Shelf', and 'Sea-bed', the terms 毗连区, 专属经济区, 大陆架, 国际海底区域 are used in China, while 接續水域, 排他的經濟水域, 大陸棚, 深海底 are used in Japan and Korea.

The fourth group is IL terms that were created by Japanese scholars on the basis of the Chinese terms in Martin's translations. These Japanese terms were extensively imported into China and Korea, and replaced the Chinese terms in these countries. In fact, most of the IL terms currently in use basically belong to this group.

X. CONCLUSION

In this paper I have attempted to trace the routes by which the East Asian countries which use forms of Chinese characters came to share identical IL terms. For that purpose, the paper surveyed and analyzed the way in which IL books were introduced, published, and circulated in and among the East Asian countries. The research in this paper forms part of a wider research into the history of international law in East Asia, and thus requires further analysis to reach concrete conclusions. However, the following tentative conclusions can be reached at this stage:

First, East Asian IL terms were not created by Martin alone, but by collaborations between Martin, Chinese officials of the Qing Government, and his Chinese students in Tongwen Guan(同文馆);

Secondly, many of these IL terms were inherently problematic from the beginning. For this reason, they slowly lost their influence and fell into abeyance, not only in China, but also in the other countries such as Japan and Korea;

Thirdly, Japanese IL terms were created on the *basis* of the Chinese terms which were imported into Japan, and the Japanese terms gradually replaced the Chinese ones in Japan in the late 19th century;

Fourthly, Japanese IL books (with Japanese IL terms) were intensively imported into China (during 1900-1915) and Korea (during 1900-1910), replacing Martin's Chinese terms in these countries;

Fifthly, due to this process, most of the IL terms in East Asia became effectively identical in the early 20th century. However, some IL terms were still expressed in different ways at this stage, which meant that alternative, and arguably competing, expressions were imported into China and Korea;

Sixthly, even though some IL terms were not fully established and still had to compete with rival terms, most of the modern IL terms were already included in these competing terms. In that sense, it can be said that most of the IL terms in East Asia became identical in the early 20th century.

Seventhly, the few differences which existed mainly disappeared during the 1930s-1940s, having survived two World Wars and the Cold War, and they are still used today in modern IL textbooks in the East Asian countries.

Eighthly, even the North Korea uses the same IL terms as the other East Asian countries, even though it has a few different terms as a result of its political history;

Finally, the real driving force behind the development of identical terms is the two waves of *inner circulation* of IL works among the East Asian countries. Martin provided the first draft of new IL terms, which was then revised by Chinese officials. These Chinese IL terms provided the *basis* for the Japanese to create their own IL terms. And then the Japanese IL terms provided *stepping stones* for the Chinese and the Koreans to develop and modernize their IL terms. These terms survived the dramatic ups and downs of the 20th century, and are still effectively used in East Asia in the 21st century.

Does the fact that most IL terms in East Asia are identical necessarily mean that all the countries in which they are used accord the same meanings and conceptions to those IL terms, including the term 'international law' itself? It seems that the answer to this is 'no'. It seems that, in accepting the European law of nations, each country has developed its own specific perspectives. The Chinese, Japanese and Korean perspectives of IL coexist in East Asia. In some respects, the different perspectives have led to conflict. However, these countries have also – whether consciously or subconsciously – developed common ground which enables them to communicate at a normative level with one another on many issues. What are the differences in their perspectives of IL, and what is their common ground? These questions are very important, because the answers could supply clues in tackling the

issue of constructing the 'East Asian Community', as well as the concept of 'Universal international law'. In my research on the history of international law in East Asia, I will continue to search for answers to these questions.