



universität
wien

DIPLOMARBEIT

Titel der Diplomarbeit

The United States and the Opening of China and Japan
in the 19th century

Verfasser

Andreas Eichleter

angestrebter akademischer Grad

Magister der Philosophie (Mag. phil.)

Wien, 2012

Studienkennzahl lt. Studienblatt:

A 312

Studienrichtung lt. Studienblatt:

Diplomstudium Geschichte

Betreuerin / Betreuer:

Univ. Prof. Dr. Peer Vries

1 Preface

The idea for this thesis arose out of my interest in East Asia, which has always been a main focus in my studies. During my Erasmus year in Ireland I took the seminar “US Foreign Policy and Empire?” which led me to write a paper about the United States and the Opening of Japan. When the time came to select a subject for my diploma thesis, I choose to continue working in this field, which was already familiar to me,

A focus solely on Japan would probably be too limited and I decided to include both Japan and China in my work. Both countries share many similarities from geographical closeness to their restricted foreign interaction with the Western world before the nineteenth century. In addition, an approach from the point of view of the United States provides an interesting outlook, as its relations with the two countries differed considerably yet shared also many similarities. In this work, these differences and similarities shall be looked at and analyzed through the first treaties signed between the United States and both China and Japan.

As for the fact that the work will be in English, it came about for three reasons. First, the fact that most of the literature about the subject is in English and only relatively little has been published in German. The second reason ties closely to this, as any work in this field is more likely to be used if it is written in English too. And thirdly, the seminar paper on the United States and the Opening of Japan was written in English and this experience showed that my English might be well enough to take on another academic paper. On the same note, I would like to apologize for any grammatical mistakes or foreign sounding phrases that might show up and ask for the reader’s indulgence, as I am not a native speaker.

2 Acknowledgments

I would like to thank my family and my friends for their support and patience during the writing of my thesis. They were a great help in not losing sight of my goals and push me when I felt that the thesis was not moving along. I especially want to thank Francesca, Birgit, Erin, Martin and Lisa for their help in correcting and improving the text.

I would like to thank my supervisor Univ. Prof. Dr. Peer Vries for his patience and support, for without him I would not have been able to write this thesis.

3 Contents

1	Preface.....	2
2	Acknowledgments.....	2
3	Contents.....	3
4	Introduction.....	6
4.1	Methodology.....	8
4.2	Bibliography.....	9
4.3	Analysis of the terms “opening”, “West” and “unequal treaties”.....	12
5	Part 1 The Opening of China.....	14
5.1	History of the U.S.-Chinese Relations.....	14
5.2	The United States and Caleb Cushing.....	21
5.3	Treaty of Wanghia, 1844.....	23
5.4	Terms of the Treaty of Wanghia, 1844.....	25
5.4.1	Free Trade.....	25
5.4.2	Treaty Ports.....	26
5.4.3	Residence & Inland Travel.....	26
5.4.4	Extraterritoriality.....	27
5.4.5	Special Protection.....	31
5.4.6	Shipping Regulations.....	32
5.4.7	Tariff and Tariff Autonomy.....	32
5.4.8	Opium.....	34
5.4.9	Peace & Amity.....	35
5.4.10	Communication & Language.....	36
5.4.11	The most-favored-nation clause.....	38
5.4.12	Other Terms.....	40
5.5	Concluding Remarks.....	41
6	Part 2 The Opening of Japan.....	43
6.1	History of the U.S.-Japanese Relations.....	43
6.2	The United States and the Perry Expedition.....	49
6.3	The Convention of Kanagawa, 1854.....	55
6.4	Terms of the Convention of Kanagawa, 1854.....	55
6.4.1	Ports for Supplies.....	55
6.4.2	The Treatment of Shipwrecked Sailors and Extraterritoriality.....	56
6.4.3	Peace & Amity.....	57

6.4.4	The most-favored-nation clause	58
6.4.5	Appointment of a Consul	59
6.5	Townsend Harris and His Negotiations	59
6.6	The Harris Treaty of 1858	61
6.7	Terms of the Harris Treaty, 1858	62
6.7.1	Free Trade	62
6.7.2	Treaty Ports	63
6.7.3	Residence, Inland Travel and Buildings	63
6.7.4	Religious Tolerance.....	64
6.7.5	Extraterritoriality	65
6.7.6	Shipping Regulations	67
6.7.7	Tariff and Tariff Autonomy	68
6.7.8	Opium.....	69
6.7.9	Buying from the United States	70
6.7.10	Peace & Amity	70
6.7.11	The United States as Mediator	70
6.7.12	Diplomatic Representative at the Capital and Consuls	71
6.7.13	The Convention of Kanagawa and the Convention of Shimoda.....	72
6.7.14	Renegotiation	72
6.7.15	Other Terms.....	73
6.8	Concluding Remarks	74
7	Part 3 Comparison of the Opening of China and Japan	75
7.1	Overview	75
7.2	Approach	75
7.3	Similar Treaty terms	78
7.3.1	Free Trade	78
7.3.2	Treaty Ports	79
7.3.3	Residence and Inland Travel.....	79
7.3.4	Extraterritoriality	80
7.3.5	Shipping Regulations	81
7.3.6	Tariff and Tariff Autonomy	82
7.3.7	Opium.....	83
7.3.8	The most-favored-nation clause	83
7.3.9	Renegotiation	84

7.3.10	Other Terms.....	84
7.4	Treaty terms exclusive to China	85
7.4.1	Standards & Measures.....	85
7.4.2	Irregular Fees.....	85
7.4.3	Communication	85
7.4.4	Language	87
7.4.5	Special Protection.....	87
7.4.6	Neutrality.....	88
7.4.7	United States vs. Federated States.....	88
7.5	Treaty terms exclusive to Japan.....	89
7.5.1	Internal Tariffs.....	89
7.5.2	Fortifications & Armament Trade.....	90
7.5.3	Religious Tolerance.....	91
7.5.4	Diplomatic Representative in Edo and his Right to Travel.....	92
7.5.5	Mediator	94
7.5.6	Dutch	95
7.5.7	The Convention of Kanagawa and the Convention of Shimoda.....	95
7.6	Concluding Remarks	96
8	Conclusion.....	97
8.1	Outlook	98
9	Bibliography.....	100
10	Supplement.....	105
10.1	Abstract German	105
10.2	Abstract English.....	107
10.3	Curriculum Vitae	109

4 Introduction

The Opening of China and of Japan in the nineteenth century were two important events because they were a turning point in the history of East Asia. Previously both Asian states had only having restricted outside contact with the West on their own terms. This changed, when they were forced to sign of the treaties with Western nations and to open themselves to foreign trade at the dictates of the latter. The United States, as an emerging Western power in the middle of the nineteenth century, played an important role in the efforts to open both countries to Western commerce. This already indicates that trade was the main point of interest of the United States and played a major role in the actions the nation undertook in respect to both, China and Japan.

In this thesis now, the United States and the Opening of China and Japan will be examined and compared. The U.S. is especially interesting to look at in this regard, because its actions in the opening of each country were quite different. In the case of China, the Americans only had a peripheral role with Great Britain leading the Western efforts. But in the case of the Opening of Japan the United States was the leading power. It was the expedition under Commodore Matthew Perry in 1853-54 that forced Japan to sign the first “unequal treaty” and it was Townsend Harris who was the leading diplomat in completely opening the country to foreign trade in 1858. Despite the fact that the role of the United States differed widely in each case, there are also many similarities between the two events such as in the treaty terms gained. Therefore, the main focus will lie on the comparison of the treaty terms the United States acquired in each case. In order to keep the subject into a manageable framework, the analysis will be limited to the first treaties signed by the United States with China and Japan.

The main questions, which should be answered through this analysis and comparison of the first treaties will be: “What were the treaty terms the United States negotiated with China and Japan?” and “Did the treaty terms differ between China and Japan?” In addition a number of other questions will be looked at throughout the thesis, as for example: “What was the role of the United States in each Opening?”, “How did specific events or circumstances shape the treaty terms with each empire?” and “How were the treaty negotiations approached by the United States?”. These questions will be answered in the scope of this work.

The first major part will deal with the Opening of China as it is chronologically the first of the two events. It will start first with a brief sketch of the history of the relationship between the two countries and continue into a detailed analysis of the first treaty, the Treaty

of Wanghia in 1844. It followed the British Treaty of Nanjing and was modeled on it.¹ The analysis will include an overview of how and why the treaty came into being and an examination of the treaty terms gained by the United States, including their historical background. The second major part will be of the same structure, but concerning Japan and treating the Convention of Kanagawa of 1854 and the Harris Treaty of 1858. The former, however, was more a treaty of friendship between the United States and Japan with no real mention of commerce.² This is the reason for the inclusion of the latter, because the Harris Treaty was the first fully formulated and negotiated commercial treaty with Japan.³ And while a number of interesting conclusions could be drawn from the Convention and a comparison with the Treaty of Wanghia, it is important to incorporate a more full-fledged treaty with Japan to get a complete overview.

The treaties were chosen, because they provide valuable sources than can be analyzed and compared, as they are the same type of document and were created in a similar context. It anchors the work on a set of original and comparable sources, which then can serve as the basic foundation for this paper. In addition, treaties, “usually created during times of change and conflict, and, [...] often forced upon vanquished nations [...], provide a valuable evidence of the thinking of opposing parties and the political processes that were involved [in formulating them].”⁴ They are also especially important for the nineteenth century, because “for Europeans diplomats [...] treaty signing was the apex of international relations.”⁵ The emphasis on just the first treaties will also give the work a certain temporal proximity with just over a decade between the respective treaties, allowing a pertinent historical comparison.

With regards to the treaties, it is important to note that a comparison between the Openings of China and Japan cannot be drawn in every regard. For example, there is a time difference between the two openings. This might seem to limit the validity of a comparison but actually makes it in some ways more interesting, as it is a good example of how the United States policy in East Asia changed within a decade. From the small, disputed mission of Caleb Cushing to negotiate with China in 1843-44 to the impressive show of force of the Perry expedition 1853-54, it becomes clear that the situation of the United States and its government had changed, as had its approach to East Asia. At the same time, similarities in the treaty terms, despite over a decade of time in between, would show that certain demands

¹ See Spence, Jonathan, *The Search for Modern China* (New York 1990), 161.

² See Sansom, George, *A History of Japan, 1615-1867* (Stanford 1963), 237.

³ See Gordon, Andrew, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford 2003), 49-50.

⁴ Dillon, Michael, *China: A Modern History* (London 2010), 9.

⁵ See Auslin, Michael R., *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (London 2004), 12.

or treaty clauses were just as sought after as before, proving a solid continuation in U.S. foreign policy. In addition, the unique nature of the historical contacts must also be taken into account. The United States had already been trading in China in the early nineteenth century, whereas Japan only allowed the Dutch to trade in Nagasaki, but no other Western nation. This had an impact on the negotiations and the treaty terms.

The two detailed parts about the respective states and their treaties, will also contain a short overview of the United States in the time before and around the signing of the treaties. Domestic developments and politics have always had a strong impact on the foreign policy of a nation and the United States are no exception. It is important to know how the U.S. developed in the 1840s and 1850s to understand some of the actions it took in regard to the openings of both Asian countries.

In the third part there will be a comparison of the Openings of China and Japan and the role the United States in each, because neither can be looked at without the other. As early as “1845 the United States representative in China was instructed to send a mission to Japan”⁶, which resulted in the first official mission to try and open Japan. This shows that only after the establishment of an official position in China and subsequent creation of the U.S. East India Squadron to support it, could steps be taken to ensure that Japan would also be opened to American trade. In addition, simple geographical proximity made the two states into one region for U.S. interest, so that the fate of neither Asian empire, nor their importance to the United States can ever be looked at in isolation. The focus here will only be partially on the U.S. approach, but mainly on the actual treaty terms. They are best comparable and it will be shown which treaty clauses were similar and which were unique to each state.

Finally, the last part, will contain the conclusion which will summarize the most pertinent points of the thesis and provide an outlook for potential expansions based on this work.

4.1 Methodology

The main method of this work will be a comparative history. The treaties the United States signed with China on the one hand and with Japan on the other will be compared.

On a macro-level, the comparison will be on the United States dealing with two different, but similar Asian empires. At the time, China and Japan, although different, were still similar political entities, especially in foreign policy in the mid-nineteenth century, which was largely managed from its center of power. Therefore it is possible to compare the United

⁶ Jansen, Marius B., *The Making of Modern Japan* (Cambridge 2002), 275.

States approaches and negotiations with each of them and look at potential similarities and differences. Consequently the context in which the treaty terms arose in will be compared.

On a micro-level the comparison will be between, the first treaties the United States signed with China and Japan and their terms. These similar documents and treaty provisions are easy to compare, as they are all commercial agreements between nation-states and were, as already mentioned, signed within the span of just over a decade.

This comparative approach was chosen because the “unequal treaties” have often been discussed in general and even to some extent compared, a thorough analysis and comparison of a few treaties can add valuable details which might have been overlooked in more general works. This is further enhanced by the qualitative analysis of the individual treaties, which together with an overview over the states’ historical relations to the United States will provide a comprehensive understanding of how and why the various treaty terms were negotiated. Most other works on this subject focus either on a general evaluation of the events without going into detail or on one treaty term such as extraterritoriality and seek its historical background. The aim of this thesis however is to give a comparison of most if not all the treaty terms and their origin in one work.

It is important to look at documents such as the first “unequal treaties”, whose name even suggests that they can be considered as one category, individually as well as collectively. They all arose out of unique historical circumstances and even though many of their treaty terms may have been the same, others were specific to one state or the other, showing a rich discrepancy that demands examination. Here it might be easy to argue, as it is often done, that comparative history always seeks to find both similarities and differences⁷, but this does not invalidate such an approach. It is important to understand both, not just to contextualize the treaties but to show the historic diversity, especially in areas that are as commonly lumped together as China and Japan.

4.2 Bibliography

The literature on the subject is vast and a lot of research has been done already. The focus of most works is however different from the present study, where the treaties are only mentioned in a general overview of the relations. Only in some cases is research focused entirely on the treaties. Books selected for this work were written in German and English, with the latter providing the bulk of the literature. German literature about Asian history and its contact with the West is generally limited for the simple reason that it was never as

⁷ Berger, Stefan, *Comparative History*, In: Berger, Stefan and Feldner, Heiko (ed.), *Writing History: Theory & Practice* (London 2003), 163.

important for the German speaking nations as for the English speaking ones. Chinese and Japanese sources and literature could not be used due to language barriers and availability, but they would certainly have proved useful in a deeper study of the subject.

As mentioned, the main basis of this work will be the first treaties between the United States and China and Japan. They are also the most important sources and most important part of the bibliography. This way the work can be based on original sources whose transcriptions are relatively easily available. Due to language only the English versions of the treaties will be looked at. At the same time, it takes away some of the potential interest as there is, although unavailable to the author, a Chinese, a Dutch and a Japanese version. In another work it might be interesting to analyze the differences within the various translations of the treaty and the terms used, but this is not possible in this work.

The Treaty of Wanghia of 1844 and other treaties with China which are mentioned are taken from the 1973 reprint of the *Treaties, conventions, etc., between China and foreign states Volume I* published by the Inspectorate General of Customs in 1917. The Imperial Maritime Customs was a Chinese organization, created in 1854 to oversee the collection of customs derived from its overseas trade, and headed mainly by Westerners.⁸ It was the organization that controlled foreign trade and implemented the treaties for nearly a century until its end in 1949 and is a great source for the original versions of the treaties.

The Japanese treaties were found in two works. The Convention of Kanagawa of 1854 was taken from the Francis Hawks' *Commodore Perry and the Opening of Japan*, the official narrative of the Perry expedition, and the Harris Treaty of 1858 from Mario Cosenza's *The Complete Journal of Townsend Harris*. These two also provide a large amount of background material for the negotiations and signing of the treaties. In both cases, the potential bias of the American authors and their editors, as well as the intention of presenting themselves in a positive way, was of course taken into account. This makes the sources somewhat problematic, yet does not take away anything of their value for researchers.

In addition to these works, there were loosely three groups of books used for this thesis. First was a number of general history books about the three involved nations to provide an overview of the history of their interactions and relations. Second, a group of books more focused on the treaties or their content. Third, books which cover more specific parts or clauses of the treaties.

⁸ See Spence, *The Search*, 203.

In the first group of books, Michael Dillon's *China: A Modern History* was the newest work for a background history of China. For Japan, Marius B. Jansen's *The Making of Modern Japan* is perhaps the best known. For an overview of U.S. history, Alan Brinkley's *The Unfinished Nation: A Concise History of the American People* was useful. There are others, such as the somewhat dated but still great books about China by John K. Fairbank, the various works of Akira Iriye or Walter LaFeber about U.S.-Japanese history or the first volume of *The Cambridge History of American Foreign Relations* edited by Bradford Perkins. Besides these standard works there are also a number of older publications which have proven useful, especially Hosea Ballou Morse's *The International Relations of the Chinese Empire: The Period of Conflict 1834-1860*. Although it was written over a century ago, it was very well researched and provides a lot of detail about the Sino-Western relations. In fact it is very often cited in many newer works and seems a basic work for any book written about the time period.

Among the second group about the treaties, there is another very old work which has proven valuable in the research for this thesis: Rodney Gilbert's *The Unequal Treaties: China and the Foreigner*. Despite its bias for the Western terms forced onto China, arguing that they were necessary and in part even good for China, it is valuable and certainly provides a contrast to the modern views which criticize the imperialistic behavior of the West. Other works of interest are *Unequal Treaties in international law* by Nozari Fariborz or *China's Entrance into the Family of Nations: The Diplomatic Phase 1858-1860* by Immanuel Hsü. In the case of Japan, Michael Auslin's *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* is an authoritative and very recent work that should not be missed. In addition, Oliver Statler's *Shimoda Story* is a good supplement to the journals of Townsend Harris, as it covers the historical background of Harris' negotiations.

As for the works focusing more on certain parts of the treaties, there is for example *Extraterritoriality and tariff autonomy in China* by Raymond Rich which covers three of the most important treaty clauses, extraterritoriality and tariff autonomy and in an appendix the most-favored-nation clause. Others are *Ch'ing Legal Jurisdiction over Foreigners* by Randle R. Edwards, *Opium Regimes: China, Britain and Japan, 1839-1952* by Timothy Brook or *China and the most-favored-nation clause* by Sze, Tsung-Yu. They, and others, all provide a more detailed background of the treaties, their clauses and how they came into being.

To round up the thesis and cover some detailed parts of the background several other works were used too, put together under a third group. They were not necessarily useful for large parts of the thesis, but covered certain aspects which might otherwise not have been

seen. There is for example the *Tsiang documents: Elipoo, Ke-ying, Pottinger and Kearny and the most favored nation and open door policy in China in 1842 – 1844: An American viewpoint* by Thomas Kearny, which presents a synthesis of research about original sources involving the mission of Commodore Kearny in China in 1842. For another John Schroeder's work about Matthew Perry *Matthew Calbraith Perry: Antebellum Precursor of the Steam Navy* offers much detailed background information about the person who led the mission which opened Japan for the United States, as well as an insight into the U.S. Navy of the time.

Together all the groups fill in details which make the thesis more comprehensive and provide the background for the study.

4.3 Analysis of the terms “opening”, “West” and “unequal treaties”

Before going further into this study, it is necessary to define a number of questionable phrases or terms. The three phrases are: “opening”, “West” and “unequal treaties”.

The term “opening” may cause some debate as, although commonly used to describe the events, it contains underlying assumptions. The main assumption is that the countries were “closed” beforehand. This was untrue. Both countries were engaged in an active overseas trade, not just with Western countries like Britain or the Netherlands, but also with other realms in Asia. Overseas trade with the West existed from the sixteenth century on in both China and Japan. Nevertheless, it was limited in both cases, the trade had being restricted for long periods to a single port, Canton or Guangzhou and Nagasaki. In Japan, the limitations were even stricter as only one single Western nation, the Netherlands, was permitted to trade for most of the time from the seventeenth to the nineteenth century. So while there was foreign trade, it could have been more extensive from a Western perspective. That it did not develop more can be ascribed to domestic developments such as rebellions or even the absence of desire for foreign goods both in China and Japan, as well as the Western world. With the first treaties, however, an “opening” happened which led to the development of new, deeper and broader trade relations between the Western nations and their Asian counterparts. This is not by any means an endorsement of the questionable behavior of the Western nations in their dealings with both Asian realms. As for this work, the term “opening” will be used, insofar as is possible, as an objective term to describe the events.

The second term discussed will be “Western” or the “West”, which will refer to Europe and the United States, describing the main foreign actors in East Asia at the time. Western nations include Britain, France, Russia, the United States and although not a major power, the Netherlands. Other European powers like Sweden or Portugal, which were also

active in Asian trade, can for the purposes of this work, also be subsumed under this term. It does not intend to symbolize any form of superiority of the “West” over the “East”, but is simply applied to avoid listing all involved nations each time.

“Unequal Treaties” is a phrase generally used for treaties between Western nations and Asian empires starting in the mid-nineteenth and going up until the mid-twentieth century. According to nineteenth century international law, “*Unequal treaties* [sic] are those in which the contracting parties do not promise the same things or equivalent things.”⁹ Some historians regard them as “those which are concluded by the application of pressure.”¹⁰ Both definitions are true for all treaties analyzed in this thesis. For the sake of simplification the regular term “treaty” will be used most of the time, but “unequal treaties” might be included to emphasize the disputed nature of certain clauses. The term “treaty” will also cover any convention mentioned. “Convention” is essentially the same as “treaty” for that time, because both terms “were employed almost exclusively to designate instruments which are considered today as treaties in the generic sense.”¹¹

⁹ Vattel, Emer de and Fenwick, Charles, *The Law of Nations or the Principles of Natural Law: Applied to the Conduct and the Affairs of Nations and of Sovereigns* (Washington 1916), 166, § 175.

¹⁰ Nozari, Fariborz, *Unequal Treaties in international law* (Stockholm 1971), 163.

¹¹ Nozari, *Unequal Treaties*, 24.

5 Part 1 The Opening of China

The United States was interested in China from the moment of its independence in 1783 and even before then during its time as a British colony. “China was the major objective of the European approaches to Asia, commercial and missionary, from the sixteenth century onwards”¹², which included the British colonies in North America. The two states therefore had a long history of contact by the time the Treaty of Wanghia was signed and this lasting relation had a strong impact on the treaty.

5.1 History of the U.S.-Chinese Relations

The trade between China and the United States started in the seventeenth century and although at first only of modest size, it was a beginning.¹³ As the U.S. developed, so grew the trade and “by the mid-eighteenth century teas and other goods from the Far East were pouring into Britain’s 13 colonies.”¹⁴ The steady rise of the trade can be seen in a famous example: the Boston Tea Party in December 1773, when a group of Americans dressed up as Native Americans threw several loads of Chinese tea into the city’s harbor.¹⁵ This alone indicates the presence of significant quantities of Chinese goods in America by the end of the eighteenth century, which would serve as a basis for the rapid development of the trade with China following the colonies’ independence. The interest to acquire Chinese goods was already present in the newly independent United States.

This preliminary and often indirect commercial contact between the two states was superseded in 1784, when “the *Empress of China* became the first vessel to sail from the United States to China, arriving in Guangzhou (Canton) in August.”¹⁶ The voyage was an immediate success and brought great profit, providing a great impetus for further American ventures, which successfully integrated into the ongoing Western China trade. The newly independent country experienced no difficulties trading with China. As early as 1769, they had already come to be regarded as “the second chop Englishmen”¹⁷ and upon their independence they were treated like the other Western nations. As long as they adhered to the

¹² Tarling, Nicholas, *Imperialism in Asia: an essay* (Aukland 2005), 33.

¹³ See Office of the Historian, U.S. Department of State, *Chronology of U.S.-China relations, 1784-2000*, <<http://history.state.gov/countries/issues/china-us-relations>> (14th March 2012).

¹⁴ Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004), xvi.

¹⁵ See Cohen, Warren I., *East Asia At the Center: Four Thousand Years of Engagement with the World* (New York 2000), 258.

¹⁶ Office of the Historian, U.S. Department of State, *Chronology of U.S.-China relations*.

¹⁷ Fu, Lo-Shu (ed.), *A Documentary Chronicle of Sino-Western Relations (1644-1820)* (Taipei 1966), 574, Note 414.

restrictions set up by the Chinese, the “Canton System”, they were allowed to trade on the same terms as the other Western countries.

The “Canton System” was an effort of the Qing¹⁸ government to control and in certain ways limit the foreign trade with the Western countries. It had been established gradually in the seventeenth and eighteenth century, but truly came into being when foreign trade was restricted to the port of Canton in 1760. There, foreign trade could only be conducted over a group of licensed merchants called the *Cohong*. They operated under the supervision of an Imperial Superintendant for Maritime Customs known as *Hoppo* to Western merchants. Western merchants could not stay except during the trading season from October to March and there was no direct contact between the Imperial officials and the Westerners. Any communication was done over the *Cohong*, who passed it on to the *Hoppo*, who in turn could decide to refuse it or pass it on to the provincial governor or the Imperial court.¹⁹

Through this practice, a clear “hierarchic subordination”²⁰ of the Western traders to the Chinese merchants and of them to the Imperial officials was established. It allowed the Imperial government to put a layer between them and a mere commercial enterprise, as “they formally denied any profit motive of their own.”²¹ Commerce did not match with the Confucian values espoused by the Imperial officials, even though many officials involved used the Canton System to amass large amounts of money.²² Despite the Imperial anti-commercial stance, it is important to note that the system was not created purely out of an intent to limit foreign trade. In fact, it was an extension of the tribute system, which governed all contact between the Middle Kingdom²³ and foreigners.

The tribute system was part of the belief that the Emperor of China ruled “all-under-heaven” *tian xia*, which was usually understood as the entire world.²⁴ The subordination of other realms under this all-encompassing umbrella was shown in the form of tributary missions, which were partly diplomatic and partly trade missions. They ritually demonstrated the superiority of the Central Kingdom over other states. In theory, foreign realms, which were *de facto* not under China’s direct control, such as the European states, were regarded as

¹⁸ The ruling dynasty of China at the time, usually dated from 1644-1912.

¹⁹ See Spence, *The Search*, 120-121.

²⁰ Fairbank, John K. (ed.), *The Cambridge History of China: Volume 10 Late Ch’ing, 1800-1911, Part I* (Cambridge 1978), 163.

²¹ Fairbank, *The Cambridge History of China: Part I*, 164.

²² See Fairbank, *The Cambridge History of China: Part I*, 164.

²³ Chung-kuo meaning Middle or Central Kingdom is a term for China that is still widely used among scholars to describe China and denotes its symbolic place at the center of the world.

²⁴ The term is also spelled *t’ien-hsia*, but the more common version is *tian xia*. Here see Fairbank, John K. and Liu, Kwang-ching (ed.), *The Cambridge History of China: Volume 11 Late Ch’ing, 1800-1911, Part II* (Cambridge 1980), 143.

tributaries to the Chinese empire. In return for their submission, foreign nations were allowed to trade with China: this permission was seen as a benevolent gesture of the Emperor towards the less civilized states. In reality, the system was very flexible with only a few genuine tributaries like Korea, Liu-ch'iu²⁵ and Siam, who regularly sent tributary missions. Most other nations farther away were allowed to trade as long as they accepted the Chinese trade stipulations.²⁶

This Chinese world order stood in sharp contrast to the European belief in the equality of nations. From a European viewpoint, "all sovereign States are equal in the eye of international law, whatever may be their relative power."²⁷ "In consequence, no one of them may justly claim to be superior to the others"²⁸, which was exactly what the Chinese empire did. Due to the different worldviews, a confrontation of "two mutually exclusive systems"²⁹ of international relations arose. In principal, "Western nations could not accept the Chinese tributary system without sacrificing valued principles of state sovereignty and diplomatic intercourse based on international law."³⁰ However, Western merchants were not governments and they could accept conditions which no sovereign government ever would have done. So despite the differences in world views and principles, conflicts were infrequent because, from a Western side, mostly private individuals dealt with China and even government officials balanced expediency with national pride. "Of the seventeen [European] missions sent between 1655 and 1795 – six from Russia, four from Portugal, three from Holland, three from the Papacy, and one from Britain – all but the last, under Lord Macartney, performed the *kowtow*³¹."³² It was a seeming acknowledgment of the Chinese world view. Most likely because they desired trade more than diplomatic contact and in the eighteenth century, they lacked the ability to project enough power abroad to force their own world view upon the Chinese. As subsequent events would show, the Chinese world view was accepted only as long as it was feasible; this, changed as soon as one Western power managed to gather enough forces to press the issue.

²⁵ Liu-ch'iu are the modern day Ryukyu Islands of Japan. Their name is spelled in various ways, incl. Lew-Chew in the Narrative of the Perry Expedition.

²⁶ For a more detailed view of China's relation with other countries throughout history, See Fairbank, John K. (ed.), *World Order: China's Foreign Relations* (Cambridge 1970) 1-14.

²⁷ Wheaton, Henry and Wilson, George Grafton, *Elements of International Law* (Oxford 1936), 44, §33.

²⁸ Vattel, *The Law*, 126, § 36.

²⁹ Hsü, Immanuel, *China's Entrance into the Family of Nations: The Diplomatic Phase 1858-1860* (Cambridge 1968), 3.

³⁰ Hsü, *China's Entrance*, 5.

³¹ *Kowtow* is an act of respect by kneeling and bowing until the head touches the ground, sometimes repeated several times before especially revered persons such as the Emperor.

³² Hsü, *China's Entrance*, 5.

Before the 1840s, the Qing government never acknowledged the Western states as independent political entities and only allowed commercial ties with them. Still Western nations made some unilateral decisions to appoint political representatives to China. The United States first appointed Samuel Shaw, the supercargo³³ of the *Empress of China*, as consul to Canton in 1786.³⁴ “But he did not make contact with Chinese officials or gain diplomatic recognition for the United States.”³⁵ Nor was this a real goal at the time.

At this point of history, the United States had just established itself as an independent nation and had yet to work out a proper system of foreign affairs and personnel. In fact the first consuls abroad did not receive pay nor were they diplomats in any real sense.³⁶ They were simply merchants abroad who could be used to create at least a pretense of diplomatic representation in far away stations that, at the time, had little actual importance for the government of the United States. In the private enterprises of the American merchants, the China trade was certainly important even as early as 1786, but for the government it was not. It was probably one of the reasons for the United States to smoothly slide into the Canton trade, the government not wanting to push for anything it could not achieve and the merchants adhered to the Chinese regulations. “The American merchants were [in general] content with the trading system and had no serious complaints.”³⁷ Their greatest fear of was upsetting the established system, which although in certain ways was not ideal, worked and allowed both sides to make profit. This was an attitude shared by many other foreign traders.³⁸

The U.S.-China trade thus started as a mutually beneficial exchange with China able to control the trade and reap the benefits in the form of custom dues, while the United States now had direct access to East Asia and was no longer dependent on the British East India Company. As a consequence “American trade [...] rapidly gained ground, leaping in the early nineteenth century to a position second only to Britain.”³⁹ Here, the United States benefited from its neutrality during the Napoleonic Wars. These wars kept the European nations

³³ A merchant ship’s highest ranking commercial officer in charge of supervising the cargo and thus most often came into contact with foreigners, mostly merchants, making him the best choice for consul in a ship’s company. See Dillon, *China*, 33.

³⁴ See Tong, Te-kong, *United States Diplomacy in China, 1844-60* (Seattle 1964), 57.

³⁵ See Office of the Historian, U.S. Department of State, *Chronology of U.S.-China relations*.

³⁶ See Tong, *United States Diplomacy*, 57.

³⁷ Jiang, Arnold Xiangze, *The United States and China* (Chicago 1988), 1.

³⁸ See Morse, Hosea Ballou, *The international relations of the Chinese empire: The period of conflict 1834-1860* (London 1910), 85.

³⁹ Jiang, *The United States*, 1.

occupied and interrupted their maritime trade, while the decline in European shipping in Asia was readily compensated for by the expanding American merchant navy.⁴⁰

The most important goods imported by the U.S. were rhubarb, tea, silk and porcelain,⁴¹ while the exports to China consisted mostly of clothes, cotton, fur and sandalwoods.⁴² However, the imports from China were far more valuable and in greater volume, leading to an unwelcome trade imbalance and the flow of silver into the empire. The reason for this lay not only in the Western desire for Chinese products, but also in the fact that the Middle Kingdom, or at least its ruling elite, saw foreign merchandise as something, which could be gotten along without.⁴³ China was already highly commercialized and largely self-sufficient,⁴⁴ making foreign trade a luxury which was not deemed important. The most famous example of this reasoning and most often cited is the reply sent by the Qianglong⁴⁵ Emperor to King George III of Great Britain in 1793 in response to a letter demanding more commercial and diplomatic contact. The edict famously states that “there is nothing we lack [...] nor do we need any more of your country’s manufacture.”⁴⁶ This was the official position, but in reality Chinese merchants were probably eager to trade for foreign money and a few select goods. The example shows the view of the Imperial government on the matter of foreign trade, which did not change when the Westerners came looking for more open trade in the middle of the nineteenth century.

Until that time the European and American merchants could either trade within the Canton System or outside of it. In the latter case, it was mainly the smuggling of opium. This substance had been imported to China since the seventeenth century and, despite a ban in 1729,⁴⁷ started to become a major commodity in the late eighteenth and early nineteenth century. The British originally exported it from India to China to counter the trade imbalance and to finance the continued trade, but after it had proven to be a lucrative merchandise, they

⁴⁰ Perkins, Bradford, *The Cambridge History of American Foreign Relations Volume I: The Creation of a Republican Empire, 1776-1865* (Cambridge 1993), 201.

⁴¹ See Ng, Chin-keong, *Maritime Frontiers, Territorial Expansion and Hai-fang during the Late Ming and High Ch'ing*, In: Dabringhaus, Sabine and Ptak, Roderich (ed.), *China and her neighbours: Borders, Visions of the Other, Foreign Policy 10th to 19th Century* (Wiesbaden 1997), 247.

⁴² See Nester, William R., *Power across the Pacific: A Diplomatic History of American Relations with Japan* (Basingstoke 1996), 16.

⁴³ See Fu, *A Documentary Chronicle*, 395.

⁴⁴ See Fairbank, John K., *The United States and China* (Cambridge 1979), 170-171.

⁴⁵ Qianglong, in older works often also spelled Ch'ien-lung, ruled China from 1736 to 1796.

⁴⁶ Teng, Ssu-yü and Fairbank, John K., *China's response to the west: a documentary survey 1839-1923* (Cambridge 1974), 19.

⁴⁷ See Fairbank, *The Cambridge History of China: Part I*, 171.

exported ever greater amounts.⁴⁸ The Americans readily joined this growing trade and “were soon second only to the British.”⁴⁹ Although they were excluded from the Indian opium market controlled by the British East India Company, they brought in opium from Smyrna in the Ottoman Empire.⁵⁰

In the first half of the nineteenth century, the opium trade continued to grow alongside the regular China trade, which caused great concern in the ruling circles of the Qing dynasty. After long debates, it was eventually decided to severely repress the illegal import of opium with the famous Commissioner Lin coming to Canton and confiscating 20,000 chests of British opium and destroying them. This, combined with the British desire to gain a more equal footing in China, diplomatic as well as commercial, led to the Opium War from 1839 to 1842.⁵¹ When the British threatened to take Nanjing, the Qing government was forced to accept defeat and negotiate a peace settlement. In the Treaty of Nanjing in August 29th, 1842, they had to give in to the British demands for a trade on Western terms.⁵²

The United States remained neutral throughout the conflict and managed to profit from the cancellation of British trade, both legal and illegal. In the short term, the Americans started carrying British goods from Hong Kong, which was occupied by the British, to Canton, since British merchants were nominally excluded from the trade during the conflict.⁵³ And in the long term, the U.S. gained the advantages from the settlements appearing out of the British victory, the Treaty of Nanjing and the supplementary treaty in 1843. Especially the latter who laid out the future of the commercial intercourse with Britain in detail and would serve as a basis for the American treaty signed a year later, the Treaty of Wanghia.

But even before this happened the trade relations had already changed. Commodore Thomas Kearny, specially sent by the United States to protect their interests and merchants during the Opium War, had demanded equal consideration for all other Western nations in October 1842.⁵⁴ Although the Emperor initially rejected the demands from Kearny⁵⁵, he was

⁴⁸ For a good overview of opium in East Asia see Brook, Timothy and Wakabayashi, Bob Tadashi, *Opium Regimes: China, Britain and Japan, 1839-1952* (Berkeley 2000). Here see Fairbank, *The Cambridge History of China: Part I*, 172.

⁴⁹ Jiang, *The United States*, 2.

⁵⁰ See Brook, Timothy and Wakabayashi, Bob Tadashi, *Opium Regimes: China, Britain and Japan, 1839-1952* (Berkeley 2000), 33.

⁵¹ Because of the framework of this thesis, it is not feasible to go into detail about the war here, but any book about the modern history of China can give a good overview of the entire subject. For example Spence, *The Search*, 143-158.

⁵² For the complete treaty see Zhungguo, *Treaties, conventions, etc., between China and foreign states Volume I* (New York 1917), 351-356.

⁵³ See Morse, *The international relations*, 236-237.

⁵⁴ See Kearny, Thomas, *Tsiang documents. Elipoo, Ke-ying, Pottinger and Kearny and the most favored nation and open door policy in China in 1842 – 1844: An American viewpoint* (Peking 1932), 79.

eventually persuaded by his advisors and “on July 22nd [1843] [...] [the] Imperial Commissioners [in charge of handling foreign affairs in Canton] declared the commercial regulations [won by the British] applicable to all nations in the five ports.”⁵⁶

They had realized that the other Western nations, which until then had traded under the same regulations, would soon come to demand the same terms as the British. To forestall another conflict and to avoid the other foreigners from feeling indebted to the British, they decided to give them freely what Britain had won by force of arms, in order to make them feel indebted to the Imperial dynasty.⁵⁷ This strategy was also in line with the traditional Chinese world view. First, the idea existed that trade was a benevolent act towards foreigners coming to take part in the riches of the Middle Kingdom. Second, that they treated all foreigners the same. Third, to pacify belligerent barbarians by giving them access to Chinese goods. In reality, this gesture was probably perceived as Chinese weakness by the other Western nations and no gratitude was ever expressed.

In a way, this development might have made an American treaty unnecessary, as the United States merchants were given everything the British had achieved without upsetting the trade relations. The Chinese in fact stated that a formal treaty was “an unnecessary and superfluous act.”⁵⁸ Yet for the U.S., the benefits were only reaped at the generosity of the Imperial court and could always be withdrawn unilaterally. Combined with the general belief that the Chinese were “cunning cheats and thieves”⁵⁹, the privileges granted by no means reassured the U.S. government. So while making the Imperial allowance immediately beneficial, it did not foreclose a formal Sino-American treaty. For the United States, these informal privileges were merely an extension of a somewhat improved Canton System. But by the 1840s, the U.S. government was not as easily prepared to let things go on as it had been in the late eighteenth century. It was prepared to take action and sign a formal treaty with China.

Before going into further detail, however, a closer look at the domestic situation in the United States will be necessary to fully understand the developments which led to the U.S. mission to China and the subsequent treaty.

⁵⁵ See Kearny, *Tsiang*, 89.

⁵⁶ Kearny, *Tsiang*, 88.

⁵⁷ See Hsü, *China's Entrance*, 140.

⁵⁸ Kearny, *Tsiang*, 88.

⁵⁹ For a more detailed view of the generally negative Western views on China and the Chinese in the nineteenth century see Mackerras, Colin, *Western Images of China* (Hong Kong 1989) pages 43-65. Here 46.

5.2 The United States and Caleb Cushing

The United States had developed considerably from the time of its independence to the Treaty of Wanghia, but in 1844 its borders had not yet reached the Pacific. This is important to note, as the change in these circumstances would later have an important impact on the further developments in U.S.-Asian relations, especially with regards to Japan. And even in general, there was “a rough coincidence of the westward movement across the continent with the rising activity of American interest in the Pacific Ocean and trade in China.”⁶⁰

During the first decades of the nineteenth century, the nation had continually expanded westward. The Louisiana Purchase of 1803 gave them the lands to the west of the original thirteen colonies to expand onto, against the resistance of the Native Americans, who were pushed further and further west, as the white settlers moved in further.⁶¹

At the same time as the nation moved westward, there arose “a struggle for power between interest groups, agrarians in the South and financiers and industrialists in the North.”⁶² This included problems such as tariff questions, westward settlement, immigration, nativism and temperance which were of importance.⁶³ The issue of slavery was perhaps the main point of contention and would become more and more divisive.⁶⁴ By 1844, it was not yet as crucial as later, as the question of slavery in the later western territories and the subsequent upset balance of power in the U.S. congress was not yet a threat. However, all these troubles contributed to a focus on domestic politics, while foreign policy depended mainly on the current President and the Secretary of State.⁶⁵

For example, Andrew Jackson, President from 1829 to 1837, “aggressively advanced American commerce around the globe”⁶⁶ and it was during his time in office that a deeper involvement in Asia was pursued. Captain Edmund Roberts was sent to Asia in 1832 and secured a treaty with Siam. He had instructions for a mission to Japan, but it was never started due to his untimely death in Macao in 1836.⁶⁷ During this search for new markets, there were

⁶⁰ Vevier, Charles, *American Continentalism: An Idea of Expansion, 1845-1910*, In: Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004), 92.

⁶¹ For an overview of the Westward movement and the Native Americans, see Zinn, Howard, *A People's History of the United States, 1492 - Present* (New York 2005), 125-148.

⁶² Ashworth, John, *The Sectionalization in Politics, 1845-1860*, In: Barney, William (ed.), *A Companion to 19th-Century America* (Malden 2001), 36.

⁶³ See Ashworth, *The Sectionalization*, 39.

⁶⁴ See Zinn, *A People's History*, 171-192.

⁶⁵ See Tong, *United States Diplomacy*, 30-31.

⁶⁶ Belohlavek, John M., *American Expansion, 1800-1867*, In: Barney, William (ed.), *A Companion to 19th-Century America* (Malden 2001), 93.

⁶⁷ See Cohen, *East*, 259.

no particular plans for China, as trade was already ongoing. Nevertheless, interest in Asia continued to rise, as American trade expanded all over the globe.

In the 1830s, the United States was content to push its advances as far as possible within its ability to project power abroad. In addition, tensions with Mexico over the subject of Texas caused a preoccupation with foreign issues closer to home. While Asia remained a secondary concern for any administration, interest groups like the overseas merchants from the Northeast ensured that their interests were heard in Washington. Despite the fact that “international trade was becoming relatively less important in these years than manufacturing”⁶⁸, it had powerful proponents among the ruling elite of the nation and remained of significance.

Foreign policy never went unquestioned. There was resistance to “foreign adventures” or federal involvement in the political sphere, where some regarded the involvement into foreign affairs a waste of time and money. After the Opium War, a potential mission to China to sign a treaty was heavily debated in the Congress. And even though Congress decided in favor of the mission it was by no means undisputed.⁶⁹

Selected for the mission was Caleb Cushing, a member of Congress from Massachusetts.⁷⁰ His family was heavily involved in the China trade⁷¹ and his cousin John P. Cushing had been head of Russell & Co.⁷², the biggest American trading company in Canton in the late 1820s.⁷³ Cushing was a strong proponent of establishing a treaty with China, because of his family’s connections and his mandate. The New England merchants, whose interests he represented in Washington, were the main advocates for “an aggressive commercial policy in [...] Asia.”⁷⁴ As early as March 1840 he had urged in a speech to the Congress “that these circumstances [arising out of the Opium War] afford a favorable opportunity to endeavor to put American trade with China on a just and stable footing for the future.”⁷⁵ At the same time, he had also condemned British actions before and during the war

⁶⁸ Brinkley, Alan, *The Unfinished Nation: A Concise History of the American People* (New York 1993), 272.

⁶⁹ See Kelliher, McCabe, *Trade, Anglo American Rivalry and the Origins of U.S. China Policy*, In: Merrill, Dennis and Paterson, Thomas G. (ed.), *Major Problems in American Foreign Relations Volume I: To 1920* (Boston 2010), 253.

⁷⁰ See Spence, *The Search*, 160.

⁷¹ See Downs, Jacques M., *American Merchants and the China Opium Trade, 1800-1840*, *The Business History Review*, Vol. 42, No. 4 (Winter 1968), pp. 418-442, In: JSTOR <<http://www.jstor.org/stable/3112527>> (27th December 2011), 429-430.

⁷² See Hao, Yen-p’ing, *The Commercial Revolution in Nineteenth-Century China: The Rise of Sino-Western Mercantile Capitalism* (Berkeley 1986), 316.

⁷³ See Hao, *The Commercial Revolution*, 27.

⁷⁴ Iriye, Akira, *From nationalism to Internationalism: US Foreign Policy to 1914* (London 1977), 35.

⁷⁵ Merrill, Dennis and Paterson, Thomas G. (ed.), *Major Problems in American Foreign Relations Volume I: To 1920* (Boston 2010), 238.

and wanted to disassociate the United States from rumors of American support for them. He was also a close friend of President Tyler and Secretary of State Daniel Webster. His arguments for opening trade with China, communicated to them in private letters, could later be found in official speeches or documents presented by these politicians in favor of the mission.⁷⁶ Therefore, he was the ideal candidate for the mission to China.

Cushing's instructions by Secretary of State Webster stated that "a leading objective of the Mission [sic] [...] is to ensure the entry of American ships and cargoes into these ports [Canton, as well as the four new ports opened by Britain], on terms as favorable as those which are enjoyed by English merchants."⁷⁷ Since the time of the British East India Company's monopoly over the Asian trade, American merchants had loathed the exclusion from other markets. They favored an open trade for all participants, without any governmental restrictions or favoritism, especially those against which they had fought for independence just over half a century ago. In many ways, these instructions already contained the crucial elements of the future "Open Door" policy for China at the end of the century and illustrate a long history of such policies by the U.S. government.

Envoy Extraordinary and Minister Plenipotentiary of the United States Caleb Cushing was escorted by two warships and arrived at Canton on February 24th, 1843.⁷⁸ Negotiations stalled for a while, when he insisted to go to Peking to present a letter from the President to the Emperor, something which the Qing officials would not assent to. They feared this more than any other treaty term because even in defeat they could not accept another nation as a diplomatic equal. In the end, they granted him every term he coveted in return for dropping his plans of going to Peking.⁷⁹ His demands, later seen as a great infringement on Chinese sovereignty, were at the time granted rather easily by the Chinese negotiators. "Within the historical context, these concessions were made as temporary and expedient variations of old established practices without any sense of serious loss of Chinese national rights."⁸⁰

5.3 Treaty of Wanghia, 1844

The Treaty of Wanghia was signed on July 3rd, 1844, "to establish firm, lasting, and sincere friendship between the two nations" and "to fix, in a manner clear and positive [...] the rules which shall in [the] future be mutually observed in the intercourse of their respective

⁷⁶ See Kelliher, *Trade*, 252.

⁷⁷ Merrill, *Major Problems*, 240.

⁷⁸ See Morse, *The international relations*, 324.

⁷⁹ See Franke, Otto, *Zur Geschichte der Extraterritorialität in China* (Berlin 1935), 58.

⁸⁰ Hsü, *China's Entrance*, 141.

countries.”⁸¹ It can be assumed that both signatories were committed to these ideas: the United States because it gained free commerce, that is, the same rights and privileges as other Western nations, while the Qing empire secured a peaceful relationship with the foreigners.

The United States, unlike Britain, had not been at war with China. Nonetheless, the possibility of such a war must have existed in the mind of the Qing government and its negotiators, because they knew little about the distant nation. They could not have known that the United States in the early 1840s did not have the means or desire to fight an overseas war. Nor did Caleb Cushing intend to inform the Chinese about these facts. On the contrary, he was instructed by the Secretary of State, Daniel Webster, to “speak of the extent of [...] [the United States] territory, their great commerce spread over all seas, their powerful navy, every where [sic] giving protection to that commerce”⁸², in case the Chinese pressed him for information. He was also instructed to state “that the Government of the United States would find it impossible to remain on terms of friendship and regard with the Emperor, if greater privileges, or commercial facilities should be allowed to the subject of any other Government [sic].”⁸³ It is hard to say to what extent Cushing used these instructions and threatened with American military actions, despite the unlikelihood of an actual U.S. military intervention. But it shows that the thoughts for such actions existed in the mind of both governments and this was certainly an important reason for the Chinese acceptance of the treaty terms.

In many ways, the signing of the first treaties was seen as a great break with the Canton System, heralding the beginning of the Treaty System for the Western nations. They now dictated the terms under which commerce and to some extent diplomatic contact would be handled. Yet for the Qing government not much had changed. Many of the later despised treaty clauses were not yet seen as the infringement on sovereignty, they would be viewed as in the early twentieth century. It was true that the peace had cost China, including the implied notion that the other states existed independently, something which was unthinkable beforehand. However, for the moment the implications of the treaty seemed more innocuous than they turned out to be. For under another light, the treaties were simply a written extension of the previously accepted treatment of the “barbarians”, appeasing them with commerce and binding them to the borders, thus securing their non-interference into Chinese interior.

⁸¹ Zhongguo, *Treaties*, 677.

⁸² Merrill, *Major Problems*, 241.

⁸³ Merrill, *Major Problems*, 241.

5.4 Terms of the Treaty of Wanghia, 1844

The Treaty of Wanghia had 34 articles with an additional listing of the tariffs and duties on the various goods. The focus of the treaty was of course on commerce, which was the main reason for American interest in China, with most articles detailing how trade was to be conducted. Despite this, the main points of interest of many studies on the treaties rested on three terms, which were seen as particularly intrusive in the sovereignty of the Qing empire: a fixed tariff, the most-favored-nation clause and extraterritoriality.⁸⁴ They were seen as the most important parts of the treaty, as they did not only infringe upon the rule of the Qing Empire, but also laid the foundation for the semi-colonial control of the later Treaty Ports in the late nineteenth and early twentieth century.

There are, however, other treaty terms which are, if not as important for the future development of the Treaty System, notable because they show the different matters which concerned the Americans at the time. Treaty clauses only arose when there was a need for them or when people thought there might be a need for them.

From the phrasing and the content of the articles one can also see that most of them were put forth by the American party such as Article XIX stating that all American citizens “shall receive and enjoy [...] the special protection of the local authorities of Government [sic].”⁸⁵ It is unlikely that the Qing government would have spontaneously added such a provision.

5.4.1 Free Trade

The most important treaty term the United States gained in 1844 was free trade. Prior to the Treaty of Wanghia, the United States had been allowed to trade with China but only under the constraints of the Canton System. With the treaty, the previous trade monopoly was abolished and U.S. merchants were permitted “to trade with any and all subjects of China without distinction.”⁸⁶

This was a significant departure with the previous system and a much coveted privilege by the United States. While the U.S. had grudgingly acceded to the Canton System, it had never been satisfied with the restrictions imposed. The moment the opportunity presented itself, they changed the system to a model that suited them more: free trade without governmental monopolies. To further secure this, they added the stipulation that merchants

⁸⁴ As example see the book Rich, Raymond T., *Extraterritoriality and tariff autonomy in China* (Shanghai 1925) is dedicated to all three clauses, the most-favored-nation part, which is not in the title, being in Appendix A.

⁸⁵ Zhongguo, *Treaties*, 684, Article XIX.

⁸⁶ Zhongguo, *Treaties*, 682, Article XV.

“shall not be subject to any new limitations nor impeded in their business by monopolies or other injurious restrictions.”⁸⁷ The use of the term “injurious” within a legal document shows just how much the Americans rejected the previous Chinese restrictions and even have the Imperial government formally recognize the “injurious” nature of these restrictions. Despite the fact that such restrictions were acceptable under Western international law of the time.⁸⁸

5.4.2 Treaty Ports

The only limitation to the practice of free trade was the number of ports, in which the Americans were allowed to go. The treaty limited them to the five so-called Treaty Ports of “Quangchow, Amoy, Fuchow, Ningpo, and Shanghai.”⁸⁹ It was a deliberate effort of the Chinese to contain the Americans on their periphery and restrict the points of intrusion to a handful of port cities. For the foreigners of course, the expansion from one to five ports already meant a huge difference even though the trade in the new ports was slow to develop.⁹⁰ Canton remained the principal trading port, while Shanghai grew in the 1850s, after which it developed into the most important overseas port in China in the later nineteenth century.⁹¹

5.4.3 Residence & Inland Travel

Within the Treaty Ports, Americans were allowed relatively free residence. They could trade with anyone they wanted,⁹² hire and employ any Chinese⁹³ and build their own houses, churches, hospitals and cemeteries.⁹⁴ As an added stipulation established, “the local authorities of both Governments [sic] shall select in concert the sites for the foregoing objects, having due regard for to the feelings of the people in the location thereof.”⁹⁵ This limited the freedom of Americans to settle wherever they wanted somewhat but was no major restriction. It shows also a regard for the feelings of the local population and the realization by both sides that, although officially peace and amity between both states were called for, local hostilities could not be controlled. In order to avoid unnecessary incidents and to antagonize the locals, foreigners usually were settled in their own quarters apart from the established Chinese cities. In time, this led to the establishment of the semi-independent foreign settlements in the Treaty Ports.

⁸⁷ Zhongguo, *Treaties*, 682, Article XV.

⁸⁸ See Vattel, *The Law*, 41, § 92.

⁸⁹ Zhongguo, *Treaties*, 678, Article III.

⁹⁰ See Tong, *United States Diplomacy*, 68.

⁹¹ See Dillon, *China*, 110.

⁹² See Zhongguo, *Treaties*, 682, Article XV.

⁹³ See Zhongguo, *Treaties*, 680, Article VIII.

⁹⁴ See Zhongguo, *Treaties*, 683, Article XVII.

⁹⁵ Zhongguo, *Treaties*, 683, Article XVII.

Furthermore, Americans were only allowed to travel in the immediate neighborhood of the Treaty Ports, but they were not to travel into the interior.⁹⁶ This was again done under the pretense to avoid potential incidents between foreigners and locals, but in reality to keep foreign influence away from the majority of Chinese territory.

5.4.4 Extraterritoriality

With the permanent residence of U.S. citizens in the Treaty Ports, also came the problem about jurisdiction. In the treaty, this was solved with the introduction of extraterritoriality. It is a concept “under which foreigners are exempt from local jurisdiction and are subject to their national authorities”⁹⁷. Article XXI of the Treaty of Wanghia stated that “citizens of the United States who may commit any crime in China shall be subjected to be tried and punished only by the Consul or other public functionary of the United States.”⁹⁸ In Article XXV, it was specified that any conflicts arising between Americans or between Americans and other foreigners should also be dealt with by the consul.⁹⁹ Over the years these provisions would turn into the most serious intrusion into Chinese sovereignty, yet at the time of ratification they seemed to have been widely accepted. To explain the complexities around extraterritoriality and the insistence Caleb Cushing put on it, one must examine its history in the West and China, as well as the differences in the judicial system of both civilizations.

In Europe, extraterritoriality had a long history going back to ancient times. For instance, Greek merchants would benefit from this privilege in Ancient Egypt by the benevolence of the ruler.¹⁰⁰ Over the centuries, the practice continued, especially in places where different religious, cultural or ethnic groups met. “Both Byzantine emperors and Ottoman sultans followed such practices to avoid administrative and legal burdens”¹⁰¹ and possibly diplomatic incidents as well. Over the centuries, however, extraterritoriality became outdated between European nations. The general idea emerged that a sovereign had absolute jurisdiction within his own territory,¹⁰² which by the early modern period could also be enforced upon residing aliens. With Oriental countries, this system persisted, but it was no longer seen as a benevolent gesture granted by the local authorities, but rather as a right the West had as members of a more advanced civilization.¹⁰³

⁹⁶ See Zhungguo, *Treaties*, 683, Article XVII.

⁹⁷ Liu, Shih Shun, *Extraterritoriality: Its Rise and Its Decline* (New York 1925), 19.

⁹⁸ Zhungguo, *Treaties*, 685, Article XXI.

⁹⁹ See Zhungguo, *Treaties*, 687, Article XXV.

¹⁰⁰ See Liu, *Extraterritoriality*, 23-24.

¹⁰¹ Wang, Dong, *China's Unequal Treaties: Narrating National History* (Lanham 1967), 121.

¹⁰² See Liu, *Extraterritoriality*, 37.

¹⁰³ See Franke, *Zur Geschichte*, 59-60.

In China, the legal concept was also well known, most famously for the Muslim trading communities which appeared in southern China during the Tang dynasty. Local Muslim communities in China were given a limited extraterritorial right, with the Chinese reserving themselves the right to judge the cases involving Chinese subjects.¹⁰⁴ In addition, “it was a mere unilateral grant, and could have been revoked at the pleasure of the grantor”¹⁰⁵, therefore it did not undermine Chinese sovereignty in any way. Instead it was seen as an extension of the benevolence of the Chinese Emperor, just like foreign trade. Later examples include the Portuguese at Macao, but they “exercised jurisdiction over Portuguese defendants only intermittently and against strenuous Chinese objections if the complainant was a Chinese subject.”¹⁰⁶ The limited extraterritoriality granted to Russia in the Treaty of Nerchinsk in 1689 and later at Kaikhta in 1727 was to avoid diplomatic incidents on the distant frontiers by handing over criminals to their own local authority.¹⁰⁷ In all, the practice was never widespread before the middle of the nineteenth century and was limited to permanent residents in coastal China or on the distant frontiers in Central Asia, where it was reciprocal.

This was not the case with the other European and American residents in Canton. Until the treaties of the 1840s, they were not allowed to reside in Canton full time, having to leave to Macao or other ports as soon as the trading season was over.¹⁰⁸ Even during the trading season, the foreign community was relatively small numbering only 213 in 1837.¹⁰⁹ The situation was different from the earlier Muslims and the Portuguese and for the Chinese, a need to grant the foreigners in Canton any special privileges concerning extraterritoriality never really developed, because they were so few in number and not in permanent residence. In addition, the Qing state seemed to have been a bit more vigorous than some previous dynasties in exerting its right of jurisdiction within its own territory. In the Qing penal code of 1646, it disposed that “all aliens who come to submit themselves to the government of the empire shall, when they commit offenses [on Chinese soil] be sentenced according to the Chinese Penal Code.”¹¹⁰ The law, as written down, was followed in most cases and there are a number of incidents in which it was enforced.¹¹¹ In one case in 1780 during which a French sailor killed a Portuguese, the Chinese intervened and executed the perpetrator, despite the

¹⁰⁴ See Franke, *Zur Geschichte*, 25.

¹⁰⁵ Liu, *Extraterritoriality*, 80.

¹⁰⁶ Edwards, R. Randle, *Ch'ing Legal Jurisdiction over Foreigners*, In: Cohen, Jerome and Chen, Fu-mei Chang (ed.), *Essays on China's Legal Tradition* (Princeton 1980), 226.

¹⁰⁷ See Liu, *Extraterritoriality*, 80-81.

¹⁰⁸ See Dillon, *China*, 35.

¹⁰⁹ Hao, *The Commercial Revolution*, 33, Table 2.

¹¹⁰ Edwards, *Ch'ing*, 224.

¹¹¹ For the best overview over known criminal cases in China see Morse, *The international relations*, 101-108.

fact that both people involved were foreigners.¹¹² This is just one example of how jurisdiction over foreigners during the Qing dynasty was much more tightly observed than under previous dynasties. However, it must be noted that most cases, if not all, in which foreigners were executed by the Chinese, were cases of murder involving Chinese and, in rare cases, other foreigners. Other crimes are more difficult to find in historical sources and seem to have been dealt with by local officials, sometimes in concert with senior foreigners. They were sentenced according to Chinese and/or foreign laws, usually with the addition of the criminal's deportation after the sentencing.¹¹³

From the sixteenth to the mid nineteenth century, most Western merchants submitted to Chinese law, despite occasional protests and refusals to do so. In case of the Americans, they were mostly submissive, although reluctantly.¹¹⁴ It was the British strained, who most against Chinese rule.¹¹⁵ Yet, none had the power or desire to fight the Chinese on their territory. The Qing government, however, was not shy of using hostages or the threat of ceasing trade and or even temporarily doing so to force foreigners to hand over presumed criminals.¹¹⁶ In at least one case, the entire foreign community in Canton was put under siege to get one suspect.¹¹⁷

One of the main factors why the West resented Chinese jurisdiction was their view that Chinese justice was cruel and barbaric. This view arose out of events such as the Terranova incident, which can also be seen as a typical example of how homicide cases involving foreigners were solved. Francis Terranova, an Italian sailor serving on the American ship *Emily*, accidentally killed a Chinese woman who had tried to sell fruit to the ship by dropping a object on her head. Upon Chinese demands for his extradition, the Americans refused to hand him over. After local officials imprisoned the ship's Chinese security merchant¹¹⁸, the Americans agreed to let Terranova stand trial on the ship. During the trial "according to American reports, the accused was not given an opportunity to defend himself or to rebut any of the patently false testimony of the Chinese witnesses."¹¹⁹ Again, the Americans tried to prevent Terranova from being handed over, but the Chinese eventually succeeded by promising a fair trial on land. In the end, the sailor was sentenced to death and

¹¹² See Franke, *Zur Geschichte*, 42.

¹¹³ See Edwards, *Ch'ing*, 229.

¹¹⁴ See Franke, *Zur Geschichte*, 44.

¹¹⁵ See Edwards, *Ch'ing*, 232.

¹¹⁶ See Edwards, *Ch'ing*, 235.

¹¹⁷ For more details of the case of the Lady Hughes see Morse, *The international relations*, 102-103 and Spence, *The Search*, 127.

¹¹⁸ A security merchant was a mandatory partner for each foreign ship, usually a Cohong merchant, who was held responsible for the ship's compliance with fees and, in cases such as this, the Chinese law.

¹¹⁹ Edwards, *Ch'ing*, 249.

executed after a trial where no foreigner was present.¹²⁰ The fact that the merchants of the *Emily* smuggled opium and that the sailor was handed over to avoid any closer official scrutiny is often sidelined and was probably ignored at the time. However, incidents like this, especially when presented in a pro-Western way, shaped the foreign view of Chinese justice.¹²¹

In fact, the Western perception about the unfairness of Chinese law was in some ways correct. In the eighteenth century, the Qing government had tried to simplify jurisdiction over foreigners by eliminating “numerous automatic and appellate reviews, [...] which gave Chinese subjects sentenced to death real opportunities for reversal of convictions or mitigation of punishment.”¹²² This was mainly done to streamline the processing of criminal cases and avoid foreign irritation about lengthy delays, while higher ranking officials were informed and reviewed each case. In the end, it made trials more straightforward, but also resulted in a greater likelihood of a death sentence and also made them appear unfair.

In addition, Western and Chinese views on certain legal principles with importance to homicide cases were very different. The Chinese believed in collective responsibility, “the notion that various social groupings, rather than the individual alone, should be held accountable for the acts of an individual.”¹²³ In cases of an accidental homicide, where the responsible could not be found in the ship’s crew, a random crew member was chosen and tried, because a ship’s crew was seen as the equivalent of a family.¹²⁴ They shared responsibility for crimes committed by a member. This was contrary to European practices and was seen as an unfair application of justice against an innocent.

During his stay for the treaty negotiations, Caleb Cushing was also personally involved in a violent clash between Americans and Chinese. A Chinese was killed by an American and the officials tried to claim jurisdiction, but Cushing who had a dim view of Chinese law intervened. Without authority or legal rights to do so, he convened a jury, whose investigation declared it an act of self-defense.¹²⁵ Cushing was an adherent of the belief that, although unnecessary between Christian states because of their common civilization, extraterritoriality should be a part of international law in the Muslim or pagan African and

¹²⁰ See Morse, *The international relations*, 105.

¹²¹ See Edwards, *Ch’ing*, 248-249.

¹²² Edwards, *Ch’ing*, 229.

¹²³ Edwards, *Ch’ing*, 245.

¹²⁴ See Edwards, *Ch’ing*, 258.

¹²⁵ See Franke, *Zur Geschichte*, 58-59.

Asian states.¹²⁶ It is therefore no wonder that he included an article containing such a provision into the treaty.

5.4.5 Special Protection

Related to the matter of Extraterritoriality was Article XIX, demanded by Caleb Cushing and stating that “all citizens of the United States in China [...] shall receive and enjoy [...] the special protection of the local authorities of Government [sic], who shall defend them from all insults or injury of any sort on the part of the Chinese.”¹²⁷ This additional part was probably meant as an insurance against xenophobic behavior targeting American residents. It must have been clear to Cushing that despite the extraterritoriality clause and the Chinese fear of another conflict, anti-foreign feelings were widespread amongst the local population.¹²⁸ Now, the Qing government was made responsible for American lives and property.

The result was extremely beneficial to the United States, as their citizens indeed were given more consideration by the Chinese, especially when it came to redressing perceived or real wrongs, in order to avoid a violent conflict with the USA. But for the Qing in the ensuing decade this would cause great problems, as they would have to protect foreigners, while discriminating against their own population. The locals, especially in Canton, who felt betrayed by the Qing officials during the Opium War,¹²⁹ reacted badly to this. These feelings might have helped invigorate the revolutionary movements which became active in southern China in the 1850s.

The relation between foreign intrusion and domestic disputes was present in any country, but the Manchu¹³⁰ Qing dynasty, already foreigners in the eyes of the ethnic Han majority, was especially conscious of potential internal revolts. This was partially a reason for the concluding the treaty, as the Qing did not want a prolonged war, which might cause unrest amongst the local population.¹³¹ As it turned out, the defeat in the Opium War and the resulting treaties were still a major blow to the prestige of the dynasty and ultimately fueled the various rebellions which erupted in China around the middle of the nineteenth century.¹³²

¹²⁶ See Franke, *Zur Geschichte*, 59-60.

¹²⁷ Zhungguo, *Treaties*, 684, Article XIX.

¹²⁸ For a more detailed view of the anti-foreign sentiment in and around Canton after the end of the first Opium War see Tong, *United States Diplomacy*, 82-86.

¹²⁹ See Tong, *United States Diplomacy*, 82.

¹³⁰ The Manchu were a tribal people from modern day northeastern China, which conquered Ming China in the seventeenth century, establishing the Qing dynasty.

¹³¹ See Dillon, *China*, 62.

¹³² See Kissinger, Henry, *On China* (New York 2011), 53.

5.4.6 Shipping Regulations

Besides the articles dealing with the presence of Americans in the Treaty Ports, there were also many of the articles which concerned the actual trade in the ports. For example, Article VI determined how and where to pay a ship's tonnage duty, while the prohibition of transshipping cargo to other vessel in the port without authorization was written down in Article XIV.¹³³ These regulations came from the long experiences of the old Canton System. For example, Article XIV was put down to help prevent opium smuggling. It had been a long established practice for Western ships to transship their illegal opium cargo to smaller Chinese boats offshore, which then landed it along the coast and sold it inland. This was the most common method of smuggling the Lintin era, named for the island near Canton, from 1821 to 1839. During that time opium was sold on store ships that anchored near the island.¹³⁴

Other provisions are more general, such as the introduction of a standardized measuring system for balances, weights and measures in order to simplify the exchange of goods.¹³⁵ Beforehand, the exchange had largely been left to the agreements of private merchants under a loose government control. The formal treaty aimed at preventing unnecessary disputes between merchants as well as governments. The merchants benefited from this standardization as it allowed a more transparent trade and to plan future transactions.

5.4.7 Tariff and Tariff Autonomy

Part of the trade provisions was also the matter of the tariffs for the various merchandise. They were written down in a supplementary part of the treaty and were "based on a moderate and uniform rate of about 5 per cent. [sic] on the value of both imports and exports."¹³⁶ The only exception was tea on which "an export duty of about 10 per cent. [sic] was allowed"¹³⁷ and a few other products such as rice, grain, gold and silver¹³⁸ which were duty free. The tariff was low, but this did not constitute a big change from the tariffs which had existed before. On this background, the question arises: Why then did the United States insist on these fixed tariffs, if the official duties had been even lower earlier? The reason is very simple: extra legal fees.

¹³³ See Zhungguo, *Treaties*, 679, Article VI and 682, Article XIV.

¹³⁴ See Brook, *Opium*, 34.

¹³⁵ See Zhungguo, *Treaties*, 681, Article XII.

¹³⁶ Morse, *The international relations*, 308.

¹³⁷ Morse, *The international relations*, 308.

¹³⁸ See Zhungguo, *Treaties*, 693 and 697.

During the Canton System, the Imperial court had been satisfied as long as peace was maintained and a sufficient amount of revenue from the foreign trade was passed on to the court.¹³⁹ Beyond this, the *Hoppo* and local officials, on whom he relied to fulfill his duties, had their hands free to exploit the profitable trade, which inevitably led to corruption. As a result, everything was much more expensive due to various fees and charges being added to the official duties. For a long time the system worked and as long as the foreign merchants still made a profit, they accepted paying a bit more. In fact, the rampant corruption could be used for the illegal opium trade, where bribes allowed the continued existence of the trade. Local officials were deeply involved and profited from it.¹⁴⁰ It was one of the reasons it took so long before official action was taken against the opium smuggling.

By the time the treaty was negotiated in the 1840s, however, official corruption, no matter how common and accepted, was seen as part of the hated old system and was to be purged. To show how common the practice must have been, the Treaty of Wanghia mentions the abolition of extra fees and charges no less than three times: in Articles II, V and IX.¹⁴¹ In addition, it was stipulated that “officers of the revenue [and other officials involved in foreign trade] who may be guilty of exactions shall be punished according to the laws of China.”¹⁴² If one goes by the truism that laws, or in this case, articles, are only written down if there is a need for them, one can be sure that irregular fees were a widespread problem.

The extralegal fees were the main reason for a fixed tariff. Governmental duties were never high and actually they were raised a bit with the new treaty.¹⁴³ In fact due to the slightly raised official duties and the closer control established by the Imperial court, the official revenue generated from foreign trade rose immediately after the conclusion of the treaty.¹⁴⁴ In the case of the American merchants, the new tariffs reduced the cost of trade with China significantly. Furthermore, they no longer had to bow to demands by local officials and pay unspecified additional duties.

In addition, Article II also stipulates that “if the Chinese Government desire [sic] to modify in any respect the said Tariff [sic], such modifications shall be made only in consultation with Consuls or other functionaries [...] of the United States, and with consent

¹³⁹ See Spence, *The Search*, 148.

¹⁴⁰ See Fairbank, John K., *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports 1842-1854* (Stanford 1953), 68 and 70-71.

¹⁴¹ See Zhunguo, *Treaties*, 77, 679 and 680, Articles II, V and IX.

¹⁴² Zhunguo, *Treaties*, 678, Article II.

¹⁴³ See the table, Morse, *The international relations*, 308.

¹⁴⁴ See Hsü, *China's Entrance*, 140.

thereof.”¹⁴⁵ This of course could be a serious concern, as it took away the state’s tariff autonomy and made it dependent on the United States. For the 1840s though, the relative benefits for both sides were enough to set aside the potential disadvantages of the article. At the time, a fixed tariff and a future renegotiation was not regarded as an infringement of national sovereignty, because it actually amounted to a rise in governmental official revenue.

5.4.8 Opium

Among the many goods, whose tariffs were written down in a supplementary part of the treaty, only one was listed as contraband, opium.¹⁴⁶ Opium had long been a problem in the China trade and was the main reason for the wars which brought about the treaties. The Americans had been deeply involved in the opium trade before 1844, even though U.S. official government position was against it. During the negotiations, the issue was mostly avoided and even Cushing, whose cousin had been involved in the trade, was probably not keen to push the issue to the front.

In the Treaty of Wanghia, opium was mentioned only twice, first in Article XXXIII and second in the added tariff list. In the latter, it was the only article listed as contraband, as already mentioned, showing the importance of this article in contrast to any other merchandise. In Article XXXIII, the penalty for opium smuggling or trying to trade anywhere else but in the Treaty Ports was to “be subjected to be dealt with by the Chinese government, without being entitled to any countenance or protection from that of the United States.”¹⁴⁷ These are the only exceptions to extraterritoriality in the entire treaty and in reality this article only dealt with opium smugglers. Five open ports gave the U.S. merchants sufficient opportunities to trade legally.

In theory, this provision seems to be a step towards China and against the opium trade, but in reality it was just an empty clause. The United States did not take any steps to stop the trade, other than promise that it would “take measures to prevent their flag from being abused by the subjects of other nations as a cover for the violation of the laws of the Empire.”¹⁴⁸ This was unlikely, as the British Treaties gave the British far more leniencies with opium smuggling, for which the Chinese could only confiscate the smuggled goods and ban the ship from returning.¹⁴⁹ This made it attractive for other nations to use the British flag. In addition,

¹⁴⁵ Zhungguo, *Treaties*, 678, Article II.

¹⁴⁶ See Zhungguo, *Treaties*, 697.

¹⁴⁷ Zhungguo, *Treaties*, 689, Article XXXIII.

¹⁴⁸ Zhungguo, *Treaties*, 689, Article XXXIII.

¹⁴⁹ See Zhungguo, *Treaties*, 395, Article XII.

it is unclear if the most-favored-nation-clause was applicable in this case, reducing the penalties for American merchants to the same as the British.

This point was rendered moot because the punishment, as stipulated in the Treaty of Wanghia, was never really applied or at least could not be found to be applied in any of the literature or sources. It seems that the local Chinese officials automatically, and without prompting, extended the British version to Americans or simply slipped back into cooperating or being bribed by the smugglers. The latter certainly applied often, both for profit and to avoid any new scrutiny from the Imperial court.

5.4.9 Peace & Amity

Next to the trade regulations, another matter of importance in the treaty was the equal relationship between both signatories. Although not specifically spelled out, it is peripherally touched in the first article of the treaty. Therein both nations agree on “a perfect, permanent, and universal peace and a sincere and cordial amity.”¹⁵⁰ It might not seem of great importance, but from a Western point of view, it acknowledges the equality of both nations in respect towards each other, as only sovereign nations could sign treaties.¹⁵¹ For the United States, who until then had no direct diplomatic contact with China nor was really acknowledged as an independent nation, it can be seen as a big step. Of course from a Chinese point of view the simple acknowledgement of peace and amity did not change the traditional thinking of the other as a tributary vassal. Throughout its history, China had often been at war or in conflict with its alleged tributaries, for example during attacks of Japanese pirates all along the Chinese coast in the sixteenth century. And while this had caused interruptions of commerce and even the breaking of diplomatic contact,¹⁵² it had not necessarily changed the status of the other state.

It was thus entirely acceptable to agree to such an article because the wording did not specify equality between states, although it might be interpreted as such by others. The importance here lay in the interpretation of the treaty, which the United States and China each did according to its own traditions and world views. The two views, although mutually exclusive, could coexist next to each other. Especially as neither seemed keen to press the issue and force the other to accept their world view. Nonetheless, the United States did make a move towards the end of the tributary system in Article XXX, in which it is stipulated “that no presents under any pretext or form whatever shall ever be demanded of the United States

¹⁵⁰ Zhungguo, *Treaties*, 677, Article I.

¹⁵¹ See Wheaton, *Elements*, 274-275, §252 and Vattel, *The Law*, 160, § 154 and 155.

¹⁵² See Jansen, *The Making of Modern Japan*, 4-6.

by China or of China by the United States.”¹⁵³ The submission of a tributary was usually accompanied by gifts. Even an innocent gift demanded by a local official could be understood by the Chinese as a sign of American submission. The Americans wanted to avoid such a misunderstanding, therefore they demanded this provision. It also separated the U.S. from the real tributary states, and can be seen as another step towards introducing a Western view of the equality of nations upon Qing China.

5.4.10 Communication & Language

A part of trying to establish more equal relations between the two nations was introduction of equal communications. Before the Treaty of Wanghia, American merchants communicated with the Superintendent of Customs only indirectly through the *Cohong* merchants. This removed them from official recognition and also meant that they had to address him and other Chinese officials in the form of petitions, reinforcing their status as subordinates of the Middle Kingdom. The intended degradation and humiliation of this practice was soon realized by Westerners, but they lacked the power to change it. When the balance of power shifted towards the West after the Opium War, the situation changed and the issue of communication was addressed in no less than three Articles of the Treaty of Wanghia.

In Article IV the United States set down that officials “shall hold official intercourse and correspondence, [...] either personal or in writing, [...] on terms of equality and reciprocal respect.”¹⁵⁴ Article XXIV concerns the way private individuals on both sides should address the officials of the other side “the language be proper and respectful.”¹⁵⁵ And in Article XXX the correct way of addressing superiors or equals of the other side was codified along the Chinese traditions. With mutual communication (*chau-hwui*) between equals, like the sovereigns of each signatory or consuls and local officials, memorials (*shin-chin*) from an inferior to a superior, and a petition (*pin-ching*) from a private individual to a government official.¹⁵⁶ In addition, it was laid down that “in no case shall any terms or style be suffered which shall be offensive or disrespectful to either party.”¹⁵⁷ Finally, in Article XXXI, it was stipulated that communication with the Imperial court would be done through

¹⁵³ Zhungguo, *Treaties*, 689, Article XXX.

¹⁵⁴ Zhungguo, *Treaties*, 678, Article IV.

¹⁵⁵ Zhungguo, *Treaties*, 686, Article XXIV.

¹⁵⁶ See Zhungguo, *Treaties*, 689, Article XXX.

¹⁵⁷ Zhungguo, *Treaties*, 689, Article XXX.

the Imperial Commissioner in charge of the concerns of foreign nations or one of three Governor-Generals, whose provinces bordered the ocean.¹⁵⁸

The reasons for this somewhat elaborate way of codifying the communication lay in the past terms forced by the Chinese upon Americans and foreigners in general. Just like they had were never acknowledged them as diplomatic equals, the form of address for Westerners was usually derogatory. This is best shown in the terms for foreigners, which were written with the Chinese characters for insect, dog or sheep, associating foreigners with animals.¹⁵⁹ Even in official communication, foreigners were usually degraded by the use of the Chinese term for barbarians, “*i*”.¹⁶⁰ And while private merchants had endured such humiliation in order to continue to trade, government officials could not allow this practice to continue without losing face. In correspondence with the believe in the equality of nations, communication was to be on an equal level, with due consideration of the status of the persons communicating with each other as seen in Article XXX. It was an additional way of trying to impose Western diplomacy on China.

Reality was different, because even though the Chinese agreed to this provision, enforcing it was an entirely different matter. Especially as local officials intended to please the xenophobic elements of the Imperial court and to avoid appearing overly friendly towards the Americans, which could lead to the end of their careers. This explains why they often continued to demean foreigners in their memorials. Such behaviour would later result in the end of Ch’iying’s¹⁶¹ career, whose correspondence with the court in the 1840s contained degrading descriptions of foreigners. When he was captured by the British during the 1858 negotiations in Tientsin, this correspondence was used to humiliate him. The embarrassment he had caused to the Qing government and his subsequent failure as a negotiator, encouraged the Imperial court to command him to commit suicide.¹⁶² This shows that even though the treaty tried to impose a foreign way on China, in reality little changed in the following decade. Nevertheless, the treaty articles for communication were a first step towards forcing the Western system of nations upon China.

¹⁵⁸ See Zhungguo, *Treaties*, 689, Article XXXI.

¹⁵⁹ See Hsü, *China’s Entrance*, 7.

¹⁶⁰ See Fu, *A Documentary Chronicle*, 363-364, Yen-fang Speaks Favorably of the Russians.

¹⁶¹ Ch’iying, also write as Keying or Qiying, was a high ranking member of the Qing court and entrusted with negotiating with the Western powers in the 1840s. For all intents and purposes, he was the main contact between foreigners and the Imperial court for most of the decade.

¹⁶² For a more detailed description surrounding Ch’iying and the negotiations at Tientsin in 1858 see See Hsü, *China’s Entrance*, 31-45.

5.4.11 The most-favored-nation clause

An important treaty term, which cannot strictly be put with the commercial nor diplomatic clauses was the most-favored-nation clause. In Article II, the last paragraph states that:

*“if additional advantages or privileges of whatever description be conceded hereafter by China to any other nation, the United States and the citizens thereof shall be entitled thereupon to a complete, equal, and impartial participation in the same.”*¹⁶³

In essence meaning that “one treaty power thereby procures not only the privileges and immunities which China specifically grants to it, but also all those [...] granted to other powers.”¹⁶⁴ It was a clause which was included in most Western treaties with China after the 1840s. The provision was very important for the United States, which, as already mentioned, wanted a free and equal trade among all participating nations. This treaty term, which had a long history in Western relations was a way to ensure just that.

The most-favored-nation clause probably first appeared in Europe in the thirteenth century,¹⁶⁵ but only found a widespread use in the early modern period, when international trade expanded and commercial treaties became more important in the seventeenth and eighteenth centuries.¹⁶⁶ It was likely to be first used to avoid favoritism and possible conflicts over commercial issues within Europe, but in Asia it soon became a way to gain as many advantages as fast as possible for the U.S.. There was little active inter-Western conflict over China in the nineteenth century, despite a commercial rivalry as no nation was really interested in colonies there. No Western nation seemed to begrudge the others of any advantages, as long as they received the same advantage through the most-favored-nation clause. In this view, the most-favored-nation clause might have been included in Sino-Western treaties not solely for the benefit of one nation, but also to appease the other nations and avoid points of contention.

The clause was used in all Western treaties with China and “always appeared in the unilateral form in favor of the Treaty Powers.”¹⁶⁷ This is by no means common, as there are

¹⁶³ Zhungguo, *Treaties*, 678, Article II.

¹⁶⁴ Rich, Raymond T., *Extraterritoriality and tariff autonomy in China* (Shanghai 1925), 62.

¹⁶⁵ Hornbeck, Stanley, *The Most-Favored-Nation Clause: History*, *The American Journal of International Law*, Vol. 3, No. 2 (April 1909), pp. 395-422, In: JSTOR <<http://www.jstor.org/stable/2186129>> (24th November 2012), 398-399.

¹⁶⁶ See Sze, Tsung-Yu, *China and the most-favored-nation clause* (Taipei 1971), 12.

¹⁶⁷ Sze, *China*, 31.

different forms of the clause with very different implications.¹⁶⁸ For example unlike the “unilateral and unconditional”¹⁶⁹ form used in treaties with Asian states, it could have been reciprocal and limited, allowing a nation to still grant special favors to another without immediately going to spread them to all others.¹⁷⁰

It was never fully established to what extent the clause could be applied, and various nations interpreted it differently. The British view was “that any commercial and non-political privilege granted by one state to another, may be claimed under the most-favored-nation clause.”¹⁷¹ The United States had a more moderate and flexible view, interpreting it depending upon the circumstances of each treaty and with which state it was signed. In Asia, however, the U.S. mostly followed the British interpretation claiming far ranging privileges of all kinds.¹⁷² This was in all likelihood in part due to the Chinese failure to argue against them along the lines of the common international law of the West.

This flexibility shows that the different types of most-favored-nation clauses and their interpretations did heavily depend on the relative strength and the desires of both signatories. In the case of China, there was no desire for reciprocity, which was usually granted among Western nations, as it did not have any desires to trade in U.S. ports. Only with the Burlingame Treaty of 1868 should reciprocity between China and the United States come into existence. But even then it was soon restricted by limitations on Chinese immigration into the U.S.¹⁷³ In the twenty years between, however, there was no need for reciprocity, because China did not demand it and the United States saw no reason to offer it.

During the negotiations between Cushing and Ch’iyang, there seems to have been little trouble for the Chinese in granting the United States this clause. It had always treated all Western foreigners alike and had felt little need to discriminate against any of them. Thus it was easy for the Qing government to concede the most-favored-nation clause, because it simply codified a policy which it had pursued for a long time. It was only later that it would become “the tool of foreign imperialism in China.”¹⁷⁴ Especially because it united all foreign interests against Chinese attempts to modify or cancel the treaties in the later nineteenth century and early twentieth century. With the clause in place, all Western nations would

¹⁶⁸ See Sze, *China*, 22 and Hornbeck, *The Most-Favored-Nation*, 403-405.

¹⁶⁹ Sze, *China*, 14.

¹⁷⁰ See Sze, *China*, 24.

¹⁷¹ Sze, *China*, 19.

¹⁷² See Sze, *China*, 19.

¹⁷³ See Sze, *China*, 41-42.

¹⁷⁴ Sze, *China*, 29.

benefit from any little advantage each one of them won, whereas without it, China might have played them off against each other.

The united interests of the West became obvious in the 1850s, when it came to renegotiate the treaties. Article XXXIV of the Treaty of Wanghia contained a provision for a change in the treaty after twelve years,¹⁷⁵ that the British claimed for themselves through the most-favored-nation clause, having failed to provide for a revision clause in their treaty. This would eventually lead to a new conflict and another round of Unequal Treaties between 1858 and 1860.¹⁷⁶

In 1844, the clause proved of little immediate benefit to the United States, which only gained some advantages through the French Treaty of Whampoa, signed on October 24th.¹⁷⁷ For example, the permanent stationing of warships in all the Treaty Ports was granted,¹⁷⁸ but this was of little use, as the U.S. Navy did not have enough ships to set up these stations.

5.4.12 Other Terms

Besides, the above analyzed terms, there are a number of other clauses and provisions in the Treaty of Wanghia which cannot be fully analyzed here, but should be mentioned briefly. For instance, American ships were allowed refuge in any Chinese harbor in case of emergencies¹⁷⁹ and warships of the US Navy could hail at any port at any time and expect a friendly reception.¹⁸⁰ Americans were allowed to buy books and learn any language of the Chinese empire.¹⁸¹ It had previously been a capital offence to teach foreigners their language,¹⁸² forcing Western translators like Peter Parker, who had worked for Caleb Cushing, to learn from Chinese expatriates in other parts of Asia like Singapore.¹⁸³

In addition, the United States also established its neutrality in any possible future conflict between China and a third party.¹⁸⁴ This was included not only because of the desire of the U.S. to underline their neutrality in contrast to the powers struggles in Europe, but also to avoid potential trade boycotts by the Chinese government. The local officials had been known in the past to have broken off trade with all Western foreigners in order to press their

¹⁷⁵ See Zhungguo, *Treaties*, 690, Article XXXIV.

¹⁷⁶ See Spence, *The Search*, 179.

¹⁷⁷ Zhungguo, *Treaties*, 790.

¹⁷⁸ See Zhungguo, *Treaties*, 773, Article V.

¹⁷⁹ See Zhungguo, *Treaties*, 687-688, Article XXVII.

¹⁸⁰ See Zhungguo, *Treaties*, 689, Article XXXII.

¹⁸¹ See Zhungguo, *Treaties*, 684, Article XVIII.

¹⁸² See Van Dyke, Paul A., *The Canton Trade: Life and Enterprise on the China Coast, 1700-1845* (Hong Kong 2005), 92.

¹⁸³ See Tong, *United States Diplomacy*, 7.

¹⁸⁴ See Zhungguo, *Treaties*, 685-686, Article XXII.

demands on one nation.¹⁸⁵ For China all foreigners might have seemed the same, but for the United States which had only gained its independence over fifty years before, this was not acceptable. Nevertheless, it must be said that for the most part the Chinese trade boycotts only dealt with whichever nation was at conflict with China.

The neutrality of the United States in regards to China's future wars did in fact become one of the most secure parts of the treaty. During the Second Opium War, from 1856 to 1860, America remained neutral. Although there were a number of minor armed conflicts involving Americans early on, these were due to belligerent local officials or officers in China and not due to the will of the U.S. government.¹⁸⁶ However, the most famous clash involving Americans came in June 1859, when Commodore Tatnall of the U.S. Navy rendered aid to the British during their attack on the Taku forts, allegedly coining the phrase "blood is thicker than water" to justify his intervention.¹⁸⁷ Despite all this, neutrality was mostly accepted by both sides.

5.5 Concluding Remarks

The United States already had a longstanding trade relation with China by the time the Treaty of Wanghia was signed in 1844. Many treaty terms originated out of the experiences gained during the half a century between the U.S. independence and the treaty. However, it did not come about not due to special efforts by the U.S. government, but rather in the wake of the British victory of the Opium War, which forced China for the first time in its history to accept trade on Western terms.

Among those, the most prominent were free trade, the most-favored-nation clause, extraterritoriality and a low fixed tariff, even though at the time they were not considered as such. Other provisions deals with opium, the neutrality of the United States, the language used in the communication between both sides and others. For the United States, they were acceptable terms, because they were the same as those of the British and that was all the U.S. government wanted: a China trade based on equal opportunity for all Westerners and no longer on Chinese terms. For the Qing Empire the treaties were not such important issues, as foreign trade was still seen as a peripheral matter. The treaty terms were little more than a continuation of the traditional practice to control barbarians with trade concessions, and although they were forced upon China by the British, at least they brought peace to the

¹⁸⁵ See Edwards, *Ch'ing*, 235.

¹⁸⁶ For more detail see Tong, *United States Diplomacy*, 184-188.

¹⁸⁷ See Tong, *United States Diplomacy*, 262-263.

Middle Kingdom. In this way, both sides seemed to have been relatively satisfied with the arrangement for the moment.

The subsequent rise in trade brought about in part by the treaty, as well as some domestic developments in the United States, made not only China, but all of East Asia and especially Japan more important. In the next part, the U.S.-Japanese relations shall be discussed.

6 Part 2 The Opening of Japan

The history of the relations between the United States and Japan was relatively unimportant for a long time due to its seclusion: “Japan existed on the edge of the nation’s consciousness, in the shadow of China, as a way station to the riches of the mainland of Asia.”¹⁸⁸ Japan’s geographic proximity to China made it an area of interest and it was never really seen independently from its neighbour. This is important to remember, when one discusses the relations of the United States and Japan in their early period.

6.1 History of the U.S.-Japanese Relations

The relations of the United States and Japan did not develop while the thirteen colonies were still under English rule. When the first European settlers arrived in the future United States in the early seventeenth century, the English were trading with Japan. It was the time of the famous William Adams, the English navigator of a Dutch ship, who landed in Japan in 1600 and rose to become an advisor of the *shogun*^{189, 190}. After settling in Japan, he tried to encourage English trade, but the commerce continued only for a short time before it ended in 1623.¹⁹¹ This had no impact on the later United States, except maybe making certain people in America aware of the possibility of trade with Japan.

Western contact with Japan had started in 1542, when “storm-tossed Portuguese landed in southern Kyushu.”¹⁹² They were soon followed by the Spanish, the Dutch and the English and the relations between them and the Japanese were mostly peaceful. In the sixteenth century, Japan was divided among rival *daimyo*¹⁹³, fighting for control of the Japanese islands. The Emperor and the *shogun*, the nominal central government, were little more than figureheads. The *daimyo* made good use of the foreigners in their struggle for power, through the financial gain from foreign trade and by the acquisition of Western weapons. An example of their lasting influence, was the fact that up until the nineteenth century the matchlock rifle introduced by the Westerners was known in Japanese as “*Tanegashima*” after the island on which the Portuguese had first landed and showcased this weapon.¹⁹⁴ Then in the late sixteenth century, Japan was unified by a succession of three

¹⁸⁸ Neu, Charles, *The Troubled Encounter: The United States and Japan* (Huntington 1979), 3.

¹⁸⁹ *Shogun* was the title of the de facto ruler of Japan from the 12th century onwards, although nominally appointed by the Emperor.

¹⁹⁰ See Pohl, Manfred, *Japan* (München 2002), 107.

¹⁹¹ See Gordon, *A Modern History*, 17.

¹⁹² LaFeber, Walter, *The Clash: U.S.-Japanese Relations throughout history* (New York 1997), 7.

¹⁹³ *Daimyo* is a term for a feudal lord, who was nominally the vassal of the Emperor and ruling *shogun*, but then an independent ruler of his own realm. Later brought under the control of the Tokugawa Shogunate as semi-independent vassals.

¹⁹⁴ See Pohl, *Japan*, 107.

powerful *daimyo*. The last, Tokugawa Ieyasu established the Tokugawa Shogunate in 1603.¹⁹⁵ This dynasty would rule Japan for over two hundred years and later negotiate treaties with Matthew Perry and Townsend Harris.

In the early seventeenth century, however, the *bakufu*¹⁹⁶ had to consolidate its power and this meant encouraging foreign trade to gain revenue and access to foreign technology.¹⁹⁷ Within a few decades the beneficial view on foreign contact switched to a negative one, as the government sought to destroy any potential source of conflict within Japan. One source of conflict turned out to be the Christian community, which had grown considerably due to Western missionaries, especially Jesuits. Even before the Christians became involved in a failed rebellion in the 1637-38,¹⁹⁸ they had been deemed a threat to the national unity. What was more, all states propagating Christian faith became suspicious to the Japanese authorities and as a result, “from 1633 to 1639, [...] [the *shogun*] Iemitsu issued a series of edicts that restricted the interaction of people in Japan with those outside.”¹⁹⁹

Of the Westerners “only the longstanding Dutch colony at Nagasaki was allowed a foothold.”²⁰⁰ They were contained on the small artificial island of Deshima, which was carefully segregated to avoid anything but government controlled interaction between the Dutch and the Japanese. Until the mid-nineteenth century, they were the only Westerners allowed in Japan, but had to live under severe conditions,²⁰¹ which were the cause of great indignation in later times. The trade declined over time, but was maintained for reason of prestige as much as profit on the Dutch side, while the Japanese saw the Dutch as a tributary nation and a source of information from the outside world.²⁰² The Dutch monopoly in the West also gave rise to the myth that Japan was closed to foreign trade, expressed in the term *sakoku* which in Japanese means closed country.²⁰³

In reality, Japan was not closed off, but followed a foreign trade system similar to that of China, limiting it to a few spots on its periphery and using it to enhance the prestige of the ruling elite by having foreigners styled as tributary missions come to Edo. The four points of

¹⁹⁵ See Gordon, *A Modern History*, 17.

¹⁹⁶ Bakufu, Japanese for tent-government, was a term for the government of the *shogun*.

¹⁹⁷ See Jansen, *The Making of Modern Japan*, 68.

¹⁹⁸ See Jansen, *The Making of Modern Japan*, 77.

¹⁹⁹ Gordon, *A Modern History*, 17.

²⁰⁰ Harvey, Robert, *The Undefeated: the Rise, Fall and Rise of Greater Japan* (London 1994), 64.

²⁰¹ See Van Zandt, Howard F., *Pioneer American Merchants in Japan* (Tokyo 1980), 9-10. Jansen, *The Making of Modern Japan*, 82-84 for an overview over the regular Dutch trips to Tokyo, which were in reality little more than tribute missions.

²⁰² See Jansen, *The Making of Modern Japan*, 80-85.

²⁰³ See Kirsch, Peter, *Die Barbaren aus dem Süden: Europäer im alten Japan 1543 bis 1854* (Wien 2004), 393.

contact for foreign trade were: in Hokkaido with the Ainu²⁰⁴, in Tsushima with Korea, in Nagasaki with China and the Netherlands and the modern day Ryukyu Islands. The latter were claimed as a fief by the Satsuma *daimyo*, but comprised in reality a semi-independent vassal of both China and Japan.²⁰⁵ Nevertheless, much like China overseas trade was only of minor importance to the *bakufu*.²⁰⁶

Regarding Japanese trade with China, it is important to note that the Chinese were also restricted in their trade with Japan and lived in the *tōjin yashiki*, the Chinese quarter, in Nagasaki. But in contrast to the Dutch, they were much more numerous and their part in foreign trade much larger, although it too declined over time.²⁰⁷ More importantly, there was no official diplomatic contact between both countries, as by the seventeenth century the Japanese refused to submit to the Chinese tributary system. Japan claimed that China was under barbarian control since the successful Manchu invasion and therefore no longer the Middle Kingdom.²⁰⁸ Instead of a Sino-centric world view, there was a slow shift towards a Japan-centric world view, with Japan replacing China as the centre of the world and therefore as being superior to all other nations.²⁰⁹ Despite these diplomatic disagreements, private trade was maintained. In fact, “most bakufu trade policies were designed [to gain] access to Chinese goods”.²¹⁰ Trade ran directly via Nagasaki and indirectly via the Ryukyu Islands, the Dutch and even Korea.

Aside from this officially approved relations, any foreign trade was disregarded and this Japanese policy effectively made sure that for any new states or former trading partners like England, the country was closed. This included the United States after 1783. American merchants did not immediately send ships to Japan after their independence, like they did to China. Only in 1791 did the first American ship, which diverted from China in search of more favorable trading opportunities, arrive in Japan,²¹¹ despite the known fact that Japan was closed to anybody but the Dutch. The Western powers considered the right to trade almost a universal rights of nations²¹² and a closed nation like Japan was anathema to them. The attempt to trade with Japan in 1791 was unsuccessful, as were several subsequent attempts,

²⁰⁴ The Ainu are an indigenous people who lived in northern islands of Japan and were independent from the central government.

²⁰⁵ See Jansen, *The Making of Modern Japan*, 86.

²⁰⁶ See Gordon, *A Modern History*, 33.

²⁰⁷ See Jansen, *The Making of Modern Japan*, 87-88.

²⁰⁸ See Cohen, *East*, 230.

²⁰⁹ For a more detailed description of the Japanese views on China see Iriye, Akira, *The Chinese and the Japanese: Essays in Political and Cultural Interaction* (Princeton 1980), 9-36.

²¹⁰ Jansen, *The Making of Modern Japan*, 87.

²¹¹ See Van Zandt, *Pioneer*, 1-5.

²¹² Pollard, Robert T., *Dynamics of Japanese Imperialism*, *The Pacific Historical Review*, Vol. 8, No. 1 (Mar., 1939), pp. 5-35, In: JSTOR <<http://www.jstor.org/stable/3633608>> (21st August 2012), 6.

including one by a ship named *Emperor of Japan* in 1800. The ship was possibly christened this way in remembrance of the above mentioned *Empress of China*, the first successful American ship to China. The mission in Japan, however, was a failure.²¹³

The only real opportunity for legitimate trade arose during the Napoleonic War. The Dutch, conquered by Napoleon and blockaded by the British, had no other solution but to hire neutral ships to carry their cargoes to and from Japan. Between 1797 and 1817, they chartered a total of eight²¹⁴ American ships to go to Nagasaki, where they often stayed up to four months.²¹⁵ This was the first time Americans gained first hand information on Japan and its trade. These private merchants saw an opportunity to open a new market, but could not do anything in the face of continued Japanese resistance to open trade with the U.S.. At the same time, Japan gained first information about the United States and its War of Independence, as well as the figure of George Washington,²¹⁶ knowledge that would later surprise the members of the Perry expedition.²¹⁷

Unlike these private endeavors, the United States government was at this point not even a little interested in trying to open Japan. There was not even an consul appointed to one of the early ships, as it had been the case for China. Official interest in Japan grew slowly, parallel to the westward expansion of the United States.

The main impulse to finally approach Japan came from whaling. “Until the discovery of oil in Pennsylvania in 1858 the country was illuminated by whale oil lamps; Pacific waters were busy with fleets of whalers, some of whom inevitably ended up on the shores of Japan.”²¹⁸ The number of whalers rose from a handful around 1820 to nearly thirty by 1822, as word of the rich hunting grounds in waters near Japan spread.²¹⁹ The mariners, whose nearest base of operations was Hawaii, sometimes tried to obtain supplies in Japan, which worried the Tokugawa Shogunate. Numerous whalers, as well as the ships from other nations, especially from Russia, off the coast of Japan gave rise to even tighter restrictions on foreigners in 1825. Any foreign ship coming near Japanese shores could be fired at without warning to drive it away from Japanese shores.²²⁰

²¹³ See Van Zandt, *Pioneer*, 8.

²¹⁴ See Jansen, *The Making of Modern Japan*, 264.

²¹⁵ See Van Zandt, *Pioneer*, 6-7.

²¹⁶ See Jansen, *The Making of Modern Japan*, 265.

²¹⁷ See Hawks, Francis L. (comp.), *Commodore Perry and the Opening of Japan: Narrative of the Expedition of an American Squadron to the China Seas and Japan, 1852-1854* (Stroud 2005), 321-322.

²¹⁸ Jansen, *The Making of Modern Japan*, 274-275.

²¹⁹ See Van Zandt, *Pioneer*, 11.

²²⁰ See Duus, Peter, *The Japanese Discovery of America: A Brief History with Documents* (Boston 1997), 57-58.

In 1832, the first plan to send an official U.S. mission was made, but the intended envoy Edmund Roberts died before reaching Japan. Thereafter, only private efforts to open the country continued. “In 1838 an American-owned merchant ship, the *Morrison*, arrived with seven shipwrecked Japanese to Japan on board in the hope of winning trade privileges in return for this demonstration of compassion.”²²¹ This tactic would be used several more times as well, but was never successful. As it was the *Morrison* was fired upon and driven off, in accordance with the edict of 1825.²²²

The Opium War in China soon drew Western attention away from Japan and for a time diverted foreign interest. However, in the long run, the growing trade with China had a strong impact on Japan. The country’s continued seclusion became more and more a matter of international debate. Yet the Opium War had “brought home to many Japanese the danger they faced from the West.”²²³ In 1842 “the bakufu relaxed the 1825 policy of shoot first, ask questions later”²²⁴, to avoid any potential volatile incidents which would result in a war. At the same time, the war also made Western powers aware of the vulnerable nature of the Asian states and the possibility of ending their trade restrictions. It also underscored the fact that in Asia “the allegedly peaceful policy of trade required force for implementation.”²²⁵

In this climate, “Commodore James Biddle, head of the newly created U.S. East Asia squadron”²²⁶, arrived in 1846 near Edo to try to persuade Japan to open itself to trade with the United States. But despite the lowered hostility since 1842, the Japanese did not intend to change their basic policy. And unlike his successor Perry, Commodore Biddle did not appear as determined and impressive as he could have appeared. An incident where a Japanese sailor bumped into him without drawing retaliation made him lose face in front of his hosts, undermining his entire mission. In addition, his heavily armed sailing ships had to be towed out to sea by Japanese boats during unfavorable winds, which made them seem impotent.²²⁷ However, the reason for his restraint was that “he had no authorization to use force.”²²⁸ Biddle was followed in 1849 by Commodore Glynn, who came to Nagasaki to negotiate the release of stranded American sailors. He demanded that “they must immediately give up the men, or means would be found to compel them [the Japanese] to do so.”²²⁹ The sailors, who

²²¹ Jansen, *The Making of Modern Japan*, 267.

²²² See Gordon, *A Modern History*, 48.

²²³ Hoare, J.E., *Japan’s Treaty Ports and Foreign Settlements: The Uninvited Guests 1858-1899* (Folkestone 1994), 3.

²²⁴ Gordon, *A Modern History*, 48.

²²⁵ Iriye, Akira, *Across the Pacific: An Inner History of American-East Asian Relations* (New York 1967), 16.

²²⁶ LaFeber, *The Clash*, 10.

²²⁷ See Kirsch, *Die Barbaren*, 347-348.

²²⁸ Jansen, *The Making of Modern Japan*, 275.

²²⁹ Hawks, *Commodore*, 59.

actually had been deserters,²³⁰ were thereupon freed by the Japanese and handed over to the U.S. Navy. These two official expeditions gave the American government valuable experience in dealing with Japan, even though no a trade agreement was reached.

From 1790 to 1853 a total of 27 American ships, including three warships, visited Japan.²³¹ This is not a particularly large number, but it shows that the United States took an interest in Japan. From the private and official failures they learned that a forceful approach was needed. The result was the Perry Expedition from 1853-1854, which led to the conclusion of the first treaty between the United States and Japan.

An important point which should not be missed in connection to Perry's mission was the simultaneous efforts of other Western powers in opening Japan. "British [...] and Russian ships frequently appeared in Japanese waters, were given supplies and then were sent on their way."²³² Especially interested in Japan were the Russians, whose interest stemmed from its expansion into Siberia and further across the northern Pacific.²³³ Russia sent a mission to Japan as early as 1804, but the Japanese rejection of these advances only led to armed clashes along the northern islands until the dispute was settled peacefully without the opening of any official relations. After these incidents European matters gradually replaced Russian interest in Japan. However "the news that the United States was planning a mission to Japan [...] prompted a revival of the Russian plans."²³⁴ During the same time as the Perry Expedition, Russian ships under Admiral Putiatin operated in and near Japan to achieve similar goals. Its failure, in contrast to Perry's success, was the result of a less forceful approach than Perry's and the Russian need to avoid British ships, due to the ongoing Crimean War.²³⁵ It was only after the first U.S.-Japanese treaty was signed that the Russians gained a similar convention in February 1855.

This shows that America never acted completely alone in its dealings with Japan. And even Perry grudgingly acknowledged later that "indirectly [...] [Russia] may have furthered the object [of the mission]."²³⁶ American efforts were always influenced either by actions or inactions of the other Western powers, who often pursued the same goals. And very often, the United States managed to use others to their own benefit.

²³⁰ See Duus, *The Japanese Discovery*, 12.

²³¹ See Emmerson, John K. and Holland, Harrison M., *Eagle and the Rising Sun: America and Japan in the Twentieth Century* (Stanford 1987), 41.

²³² Harvey, *The Undefeated*, 64.

²³³ See Beasley, W.G., *The foreign threat and the opening of the ports*, In: Jansen, Marius B., *The Cambridge History of Japan Volume 5: The Nineteenth Century* (Cambridge 1989), 265.

²³⁴ Beasley, *The foreign threat*, 267.

²³⁵ See Beasley, *The foreign threat*, 271.

²³⁶ Hawks, *Commodore*, 72.

6.2 The United States and the Perry Expedition

Before the Perry Expedition can be fully analyzed, one must first take a look at the domestic development in the United States, which had changed from the 1840s to the 1850s. Not in small part due to the huge territorial gains made in the time between 1845 and 1848.²³⁷

In the early 1840s the western part of the North American continent was not yet claimed by the United States. The north-western area was disputed between British and Americans and the south-west and west belonged to Mexico. In the first case, the Americans reached an agreement with Britain on the Oregon Territory in 1846 “fixing the boundary at the 49th parallel.”²³⁸ It was a compromise both nations could accept, offering large territories for exploration and settlement to each. With Mexico the situation developed differently. For years the two nations had been battling for Texas. It had been part of Mexico, but was populated mostly by white settlers from the southern United States, who never developed any real attachment to the Mexican state and seceded in 1836.²³⁹ “The new republic of Texas [...] immediately requested annexation by the United States”²⁴⁰, but was rejected due to the ongoing debate about slavery in the U.S., as well as the desire to avoid a war with Mexico. This position changed gradually until James Polk became president in 1845. He wanted control of the West Coast in order to dominate the growing Pacific trade and gain access to new markets.²⁴¹ To provoke a war with Mexico in order to get the Western territories, he decided to annex Texas in 1845. Disputes over the new boundary of Texas, as well as belligerent military maneuvers on part of the United States led to war.²⁴² The U.S.-Mexican War (1846-1848) was a string of successes for the United States, both on land and on water. In the peace treaty, the United States gained much territory in the West, and most importantly, California.

The territorial acquisition of the western territories shifted the focus of national interest. “With the opening up of California and the Gold Rush of 1849, [the United States] had become a Pacific-oriented nation.”²⁴³ California brought the nation harbors from which its ships could sail across the Pacific and the gold rush the population needed to exploit the new area, as well as to develop its commerce. The result was a rapid rise of the cities along the West Coast in the late 1840s and early 1850s.

²³⁷ See Perkins, *The Cambridge History*, 175.

²³⁸ Brinkley, *The Unfinished Nation*, 333.

²³⁹ See Brinkley, *The Unfinished Nation*, 326-327.

²⁴⁰ Brinkley, *The Unfinished Nation*, 327.

²⁴¹ See Duus, *The Japanese Discovery*, 11.

²⁴² See Perkins, *The Cambridge History*, 189-190 and Zinn, *A People's History*, 149-153.

²⁴³ Harvey, *The Undefeated*, 66.

This change especially affected U.S. relations with East Asian states, as they suddenly came closer to American territory. America now “gazed across the Pacific”²⁴⁴ and especially to its newest neighbor, Japan. The islands lay directly on the newly established route from San Francisco to Shanghai.²⁴⁵ Earlier, American trade with China was mostly operated from Atlantic ports and via the Indian Ocean.²⁴⁶ Since the eastern U.S. states were still the richest and most developed areas of the United States, this old trading pattern continued for some time, but California rapidly gained importance. This development was later enhanced by “the advent of the steam ship [which] brought with it the need for a Pacific source of coal, and hopes of a coaling station en route to China.”²⁴⁷ A steam ship could reach Japan from the West Coast in about twenty days, but going further on to China would demand such a huge amount of coal that there would be almost no cargo space left.²⁴⁸

The territorial expansion of the United States did not only bring good fortune but also caused internal troubles. It reignited old debates on slavery in the new territories, especially when California became eligible for statehood in 1850. “In the Union at this time there were 15 free and 15 slave states, and the admission of California would upset the balance.”²⁴⁹ At the end of the debate, California was admitted as a state and the Compromise of 1850 enacted, but at the cost of sharpening the divide between northern and southern states. The continued tension would dominate domestic politics for the rest of the decade and eventually lead to the U.S. civil war in the 1860s. It also drew attention away from matters of foreign policy, the exception being the Perry Expedition. At other times, however, American diplomats abroad, such as Townsend Harris in Japan in the late 1850s, were left to their own devices. This shows that domestic matters, which took precedence over foreign issues, could have a positive or negative impact on the development of foreign relations.

In relation to Japan, the new territorial acquisition generated a new interest and put a certain urgency on the matter of opening the country. President Millard Fillmore, who “saw the end of Japanese isolation as a way to enlarge peacefully both American prestige and commerce in East Asia”²⁵⁰, started planning the Perry Expedition as early as 1851. Another main initiator was his Secretary of State Daniel Webster, who had also been Secretary of State from 1841 to 1843 and “had written the instructions that led to the first U.S. trade treaty with

²⁴⁴ Neu, *The Troubled Encounter*, 5.

²⁴⁵ See Pohl, *Japan*, 127.

²⁴⁶ For the importance of the so-called Cape route from 1650 to 1973 see Adshead, Samuel A. M., *China in World History* (Basingstoke 2000), 271-274 and 344-345. Here see 271-274.

²⁴⁷ Jansen, *The Making of Modern Japan*, 275.

²⁴⁸ See Kirsch, *Die Barbaren*, 344.

²⁴⁹ Morris, Richard B. (ed.), *Encyclopedia of American History: Bicentennial Edition* (New York 1953), 250.

²⁵⁰ Neu, *The Troubled Encounter*, 7.

China in 1844.”²⁵¹ As previous Senator of Massachusetts, he was also closely linked to the Northeastern merchants who still dominated the international trade,²⁵² and it was no coincidence that, during his terms in office, missions to obtain treaties with China and Japan were launched. Due to internal troubles, his foreign policy in the 1850s also intended to “take American minds off internal dangers and put them on less divisive foreign problems.”²⁵³ The Japanese efforts to keep foreigners out gave Webster an excuse to initiate a mission to Japan, as “accounts of the mistreatment of shipwrecked sailors and the failure to help ships in need fired public indignation.”²⁵⁴

The Perry Expedition was an unprecedented show of strength by the U.S. government and was very carefully planned. The United State had learned the lessons from previous mission to Japan, as it is shown in Perry’s instructions, shaped by the accounts of his preceding officers Biddle and Glynn. Perry was told that:

*“If, after having exhausted every argument and every means of persuasion, the commodore [...] will then change his tone, and inform them in the most unequivocal terms [...] that if any acts of cruelty should hereafter be practiced by the inhabitants of Japan, they would be severely chastised.”*²⁵⁵

This sentence, phrased in the diplomatic tone of the time, was nothing less than an allowance to use force in last resort to get the Japanese to sign a treaty. From the previous experience it had been clear “that arguments or persuasion addressed to this people, unless they be seconded by some imposing manifestation of power will be utterly unavailing.”²⁵⁶

For this reason the mission was commanded by a naval officer and not a diplomat. Commodore²⁵⁷ Matthew Calbraith Perry was one of the most famous and highest ranking officers in the U.S. Navy. His older brother Oliver Hazard Perry had gained fame in the War of 1812²⁵⁸ and Perry had distinguished himself recently in the Mexican War.²⁵⁹ For the U.S. Navy, he was also one of the most important figures of his time, nicknamed “the father of the

²⁵¹ LaFeber, *The Clash*, 11.

²⁵² See LaFeber, *The Clash*, 11.

²⁵³ LaFeber, *The Clash*, 11.

²⁵⁴ For an example see Duus, *The Japanese Discovery*, 71-72, Report of Japanese Cruelty to American Sailors. Here Jansen, *The Making of Modern Japan*, 275.

²⁵⁵ Merrill, *Major Problems*, 244.

²⁵⁶ Merrill, *Major Problems*, 243.

²⁵⁷ Until 1862 the rank of Commodore did not formally exist, but was a honorary title for a Captain commanding several ships or on an important assignment. See Naval History and Heritage Command, U.S. Navy, *Naval traditions: name of ranks*, <http://www.history.navy.mil/trivia/triv4-5k.htm> (22nd April 2012).

²⁵⁸ See Schroeder, John H., *Matthew Calbraith Perry: Antebellum Precursor of the Steam Navy*, In: Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004), 5.

²⁵⁹ See Kirsch, *Die Barbaren*, 350.

steam navy”²⁶⁰ for his efforts to modernize the navy. Interestingly, Perry only reluctantly accepted the assignment to Japan, “for he feared that it would bring him little honor”²⁶¹ and would have preferred “commanding the U.S. Mediterranean squadron.”²⁶² But once he had accepted his posting, the commodore “prepared himself with great care, insisting on enough strength to guarantee the success of his mission, arming himself with what was known of Japan and taking counsel with others who had traveled in Japanese waters.”²⁶³

His deployment was backed by a large naval force of several ships, including some of the few modern steam frigates of the U.S. Navy. For the first time, the U.S. government showed itself willing to send a large force to another nation to demand a treaty. It was all the more significant as at the time the U.S. Navy only possessed between forty and fifty ships.²⁶⁴ In comparison, Caleb Cushing merely led two ships to China.²⁶⁵ “Eventually, Perry would command ten ships, an American squadron of unprecedented size in Asian waters.”²⁶⁶

Matthew Perry’s mission was launched in 1853. After traveling over the Indian Ocean and China, the traditional trading route from the United States to East Asia, he reached his area of operation. There he first visited the Japanese-claimed Ryukyu Islands, where he rehearsed his policy of polite, but firm insistence on his terms during the negotiations. It was a success and the local officials were forced to accept Western diplomatic standards.²⁶⁷

From the Ryukyu Islands Perry’s squadron sailed to Japan reaching the Bay of Edo²⁶⁸ and anchoring near Uraga on July 8, 1853.²⁶⁹ This movement was carefully calculated, ignoring Nagasaki, the Dutch and therefore assumed Western port of entrance, where some previous Western missions had failed to negotiate a treaty. Now near the *shogun*’s residence, he “made it known that he had been ordered to present a letter from the president of the United States to the Emperor of Japan and that he would not deviate from those orders.”²⁷⁰ Allegedly, Perry sent two white flags to the Japanese, along with a harsh personal letter in which he warned them that a “failure to meet his demands [...] would bring on a war that Japan would most assuredly lose, and in that case the white flags of surrender would be

²⁶⁰ Schroeder, *Matthew*, 8.

²⁶¹ Jansen, *The Making of Modern Japan*, 275.

²⁶² LaFeber, *The Clash*, 12.

²⁶³ Jansen, *The Making of Modern Japan*, 275.

²⁶⁴ See Schroeder, *Matthew*, 3.

²⁶⁵ See Morse, *The international relations*, 324.

²⁶⁶ Schroeder, *Matthew*, 15.

²⁶⁷ See Kirsch, *Die Barbaren*, 352-353.

²⁶⁸ Edo, also known as Yedo, was the name of Tokyo until 1868.

²⁶⁹ See Hawks, *Commodore*, 229.

²⁷⁰ Jansen, *The Making of Modern Japan*, 277.

useful.”²⁷¹ In the official narrative of the expedition, there is no mention of this, and it is difficult to ascertain if events played out like this, but most historians agree that Perry did act more forcefully than he reported in his narrative. Either way, his firm and forceful approach was successful and led the Japanese to accept the letter of the American President. He sailed off after announcing “that he would return in April or May to receive the Japanese response to the letter he had delivered.”²⁷²

President Fillmore’s letter stated that “the only objects for which I have sent Commodore Perry, with a powerful squadron, [...] [are]: friendship, commerce, a supply of coal and provisions, and protection for our shipwrecked people.”²⁷³ These objectives were and would be the main reasons for the U.S. interest in Japan for some time. Some of them were fulfilled during this mission, but others would only be gained later.

In the meantime, Perry returned to China, where the Taiping Rebellion was causing major problems, as it was his duty to protect American interests there.²⁷⁴ At the same time, he gathered more ships up to the ultimate number of ten to make an even bigger impression on his return. His plans were changed when he heard about the actions of other Western powers. “The suspicion of the movement of the French and Russians induced him to alter his plans”²⁷⁵ and he returned to Japan earlier than expected in February 1854. Having been the first Western power to actually force the Japanese to accept his terms, Perry could not let another nation take advantage of his successes and returned early to secure his desired treaty. The surprise arrival further intimidated the Japanese and Perry used the opportunity to repeat his forceful approach to negotiations. “He warned the Japanese of the fate of Mexico, threatened to assemble an even larger force, and made it clear that he intended to achieve his aims at whatever cost.”²⁷⁶

“His black ships were unanswerable arguments, and on March 31, 1854, Perry signed with the Japanese the Treaty of Kanagawa.”²⁷⁷ Signed almost ten years after the first treaty with China, it was not as groundbreaking as the Treaty of Wanghia. But it was the first official agreement signed between the two nations and the first unequal treaty for Japan. The convention also brought the United States the prestige of being the first Western nation to have opened Japan, and for a time at least established them as a leading force in the future

²⁷¹ Jansen, *The Making of Modern Japan*, 277.

²⁷² Jansen, *The Making of Modern Japan*, 278.

²⁷³ Hawks, *Commodore*, 252.

²⁷⁴ See Hawks, *Commodore*, 267.

²⁷⁵ Hawks, *Commodore*, 294.

²⁷⁶ Neu, *The Troubled Encounter*, 7.

²⁷⁷ Reischauer, Edwin, *The United States and Japan* (Cambridge 1970), 9.

negotiations with Japan. For Japan, the signing of the treaty marked the beginning of the end of its seclusion. The country eventually had to admit that resistance to Western powers was useless.

Nonetheless, not all American demands were fulfilled. The official narrative claimed that “all, and indeed, more than all, that, under the circumstances, could reasonably have been expected, has been accomplished.”²⁷⁸ Japan had been closed off from new foreign contacts for over two centuries and was not ready to break with its traditional foreign policy. Perry must have realized this and although forceful in his demands, he did not choose to push issues that would have alienated the Japanese completely. Open trade was only mentioned in a roundabout way. Japanese resistance on the matter had been stated early in the negotiations, after having the Treaty of Wanghia laid out for them as an example of what the United States hoped to accomplish.²⁷⁹ To accept such a wide departure from their traditional policy was impossible for the Japanese and the Americans realized this and settled for the best they could achieve. In addition, they understood that trade with Japan did not have the same potential as with China and was therefore not as important in the immediate future. For example, Lieutenant George Preble, a member of the Perry expedition noted that “it will be years before a profitable & extended commerce can grow up.”²⁸⁰

Despite certain limitations, the Convention of Kanagawa was essential in “prying open the closed doors of Japan a crack”²⁸¹ and laid the foundation of the future U.S.-Japanese relations, including the way negotiations were handled and successfully completed. The United States had established itself as the superior military power and made clear that it would be willing to use its superiority to push through its own demands if the Japanese refused them. Nonetheless, the U.S. had also shown that up to a certain point it would factor the Japanese reluctance into consideration and allow delays for a complete opening to secure other more immediate benefits. This cannot be seen as a refusal to use force, but merely as a compromise as not to completely derail negotiations. At the same time, it was always clear that in the end, the U.S.’s demands would be eventually be fulfilled because the United States continued to occupy its position of superior military power, which would have a decisive influence on future negotiations. For the moment, however, “both sides had reason to be

²⁷⁸ Hawks, *Commodore*, 385.

²⁷⁹ See Hawks, *Commodore*, 380-381.

²⁸⁰ Macleod, Julia H., Matthew Perry, George Henry Preble, James Rodgers Goldsborough, *Three Letters Relating to the Perry Expedition to Japan*, The Huntington Library Quarterly, Vol. 6, No. 2 (Feb., 1943), pp. 228-237, In: JSTOR <<http://www.jstor.org/stable/3815667>> (21st August 2012), 236.

²⁸¹ Reischauer, *The United States*, 9.

pleased; Perry had achieved his minimum objectives, and the Japanese had so far managed to avoid the fate that China had encountered in its subjection to the unequal treaty system.”²⁸²

6.3 The Convention of Kanagawa, 1854

The Convention of Kanagawa consists of twelve articles concerning the relation between the United States and Japan. In essence, it was “simply [a] treaty of friendship”²⁸³ and “pointedly – nothing was stated explicitly about trade.”²⁸⁴ It provided a starting point for the U.S.-Japanese relations and included a number of terms which were useful to the United States.

6.4 Terms of the Convention of Kanagawa, 1854

Concerning the treaty terms, the convention cannot be considered a full-fledged treaty; and indeed, of the three most often criticized articles of the unequal treaties – tariff autonomy, extraterritoriality and the most-favored-nation clause – only the last is included in this agreement. Despite this, a number of other important provisions were part of the convention and need to be analyzed.

6.4.1 Ports for Supplies

One of the most important results of the Convention of Kanagawa, was the opening of the two ports of Simoda (Shimoda) and Hakodadi (Hakodate), where American ships especially whalers could take on supplies.²⁸⁵ However, they were not allowed to trade freely with the inhabitants, but could only be obtained them through Japanese officials.²⁸⁶ This way, both Japanese and American desires were partially fulfilled. The foreigners were limited to a two ports, could not reside there and were not permitted to travel inland.²⁸⁷ In return, Article X allowed U.S. ships to seek refuge in any Japanese port if in distress or forced to by the weather.²⁸⁸

The articles concerning supplies and refuge make up the majority of the terms in the convention and clearly show that these demands were important to Commodore Perry. It also illustrates the reluctance of the Japanese to trade and in general to have any interaction with foreigners. They restricted not only the number of ports, but also the contact with natives besides government officials.

²⁸² Jansen, *The Making of Modern Japan*, 278-279.

²⁸³ Sansom, *A History*, 237.

²⁸⁴ LaFeber, *The Clash*, 15.

²⁸⁵ See Hawks, *Commodore*, 376, Article II and VII.

²⁸⁶ See Hawks, *Commodore*, 376, Article VIII.

²⁸⁷ See Hawks, *Commodore*, 376, Article V.

²⁸⁸ See Hawks, *Commodore*, 377, Article X.

6.4.2 The Treatment of Shipwrecked Sailors and Extraterritoriality

Another matter which was important to Perry was the treatment of shipwrecked sailors on Japanese shores, also espoused in President Fillmore's letter. In the convention, this was resolved in Article IV, which stated that "shipwrecked persons and other citizens of the United States [presumably temporarily residing in Japan] shall be free as in other countries, and not subjected to confinement, but shall be amenable to just laws."²⁸⁹

The phrasing of the sentence is interesting and touched upon a very important subject besides shipwrecked sailors, extraterritoriality. While not explicitly stated, the ambiguous phrasing can be seen as a limited version of extraterritoriality, because while it does not put U.S. citizens under American jurisdiction, it does put them under "just laws".

At the time, Americans had no real knowledge regarding Japanese laws other than from the observations of the Dutch in Nagasaki. The limited and biased knowledge they possessed was summarized in Perry's narrative: "The severity of the Japanese laws is excessive. [...] Death is the prescribed punishment for most offences."²⁹⁰ What was especially worrisome to an equalitarian American society was that "distinctions were made between the various social classes."²⁹¹ Therefore, it can be safely assumed that to the Americans the Japanese laws were seen as "unjust" as the Chinese.

Yet the phrasing in Article IV does not clearly define "just laws" and makes the matter of actual jurisdiction debatable. At the same time, the ambiguous phrasing might have helped the Japanese accept such a clause, because it did not deny them jurisdiction over foreigners. It merely made them more aware of the special status temporarily residing foreigners had, whether merchants or shipwrecked sailors, and more cautious with them, for mistreatment or perceived mistreatment would cause the intervention of their foreign government. Perry had already made clear that mistreatment of United States citizens would no longer be tolerated and had threatened to "chastise" Japan for any further incident.

In Articles III and V, the subject was further elaborated and it was made clear that shipwrecked sailors on Japanese shores were expected to be treated kindly, their property, if possible, restored and their persons in no way confined like the Dutch at Nagasaki during their stay.²⁹² These articles were especially important to the United States, because American foreign policy always put great stock in the protection of its citizens abroad.²⁹³ Therefore,

²⁸⁹ Hawks, *Commodore*, 376, Article IV.

²⁹⁰ Hawks, *Commodore*, 29.

²⁹¹ Hoare, *Japan's Treaty Ports*, 62.

²⁹² See Hawks, *Commodore*, 363, Article III and V.

²⁹³ See Iriye, *From nationalism*, 23.

Perry regarded the correct treatment of stranded people as one of the major goals of his expedition. “They should not be treated as prisoners, confined in cages, or subjected to inhuman treatment.”²⁹⁴

There can be little doubt that the Japanese treated these people in an unfriendly way, yet it is also important to understand their position. For the Japanese, any foreign intrusion, no matter if accidental or purposeful, was deemed a threat. Foreign sailors had to be confined and also kept away from the general population, because even their presence might cause unrest.

In addition, a number of misunderstandings between the Japanese and foreigners, caused unintended strife. For example, the “confinement in cages” might not have been as bad as it sounds. In the Narrative of the Perry Expedition, there is a picture of a so-called Japanese cage,²⁹⁵ which in reality seemed to have been a Japanese palanquin. Named either “*norimono*” or “*kago*”, it was used to transport people.²⁹⁶ It is conceivable that they might have been used to transport stranded foreigners, as more elaborate versions of these palanquins shielded the transported from the public view. This way, the Japanese could transport them and avoid interactions between them and the local population. To foreigners unaccustomed to these transportation devices and constantly confined, transportation for great distances must have been a rather uncomfortable experience.

6.4.3 Peace & Amity

Alongside ports for supply and the treatment of sailors, Perry managed to include another of President Fillmore’s demands in the Convention, friendship. Article I of the Convention was a precise copy of the first article in the Treaty of Wanghia securing “a perfect, permanent, and universal peace, and a sincere and cordial amity”²⁹⁷ between the United States and Japan. It seems to have been an article which was included into any treaty between the U.S. and an Asian country and was probably adopted straight out of the copy of the Treaty of Wanghia Perry had handed to the Japanese during the previous negotiations.²⁹⁸ It was also one of the least controversial clauses, as although not always friendly relations between the two were mostly peaceful. The record of this is only marred by the incident with the *Morrison* in 1838 and later clashes in the early 1860s.

²⁹⁴ Hawks, *Commodore*, 379.

²⁹⁵ See Hawks, *Commodore*, 363, picture 76.

²⁹⁶ See Kaempfer, Engelbert, and Bodart-Bailey, Beatrice (ed.), *Kaempfer’s Japan: Tokugawa culture observed* (Honolulu 1999), 245-246.

²⁹⁷ Hawks, *Commodore*, 375, Article I.

²⁹⁸ See Hawks, *Commodore*, 336.

6.4.4 The most-favored-nation clause

Besides the above mentioned treaty terms, there were a couple of other which were of great significance, despite not being directly included in the President's objectives. Among them was the most-favored-nation clause. It appeared in Article IX:

*"It is agreed, that if, at any future day, the government of Japan shall grant to any other nation or nations privileges and advantages which are not herein granted to the United States and the citizens thereof, that the same privileges and advantages shall be granted likewise to the United States and the citizens thereof without any consultation or delay."*²⁹⁹

Under the circumstances, it was the most important of the three most disputed clauses – tariffs, extraterritoriality and most-favored-nation – and provided the biggest advantage for the United States. Tariff questions were not yet necessary because no regular trade was allowed, nor was extraterritoriality, because there would be no Americans residing in Japan in the near future and a provision for temporarily stranded Americans was already included. Therefore the most-favored-nation clause was the most beneficial term, especially with the knowledge that the other Western powers were following closely in the American wake, eager to sign their own treaties with Japan. It seemed only a question of time before pressure by the U.S. or another power would force the *bakufu* to agree to more favorable terms.

There was truth in this assumption, but in the short term, the first treaties following the Convention of Kanagawa, signed between Japan and Britain in September 1854 and with Russia in February 1855 were similar to the U.S. convention.³⁰⁰ The Russian treaty contained a limited version of extraterritoriality, stipulating that criminals were to be judged according to the laws of their own nation, but not by their consul.³⁰¹ In general, however, all Western powers at this point were more interested in establishing some sort of relation than pushing for something which might have led to a conflict. In addition, China remained the main focus of Western efforts where ongoing renegotiations of the early treaties caused troubles. New advantages were only gained slowly, but through the most-favored-nation clause in each treaty they spread to the other nations as soon as knowledge of them reached the Western officials. Townsend Harris for example needed two years until Nagasaki, which had been opened to the Russians in February 1855, was also opened for the United States.³⁰² The

²⁹⁹ Hawks, *Commodore*, 376-377, Article IX.

³⁰⁰ See Hoare, *Japan's Treaty Ports*, 4.

³⁰¹ See Liu, *Extraterritoriality*, 93 and 93, Note 1.

³⁰² See Cosenza, Mario E., *The Complete Journal of Townsend Harris: First American Minister and Consul to Japan* (Tokyo 1959), 316.

Japanese obviously did not pass on news of a treaty to residence foreign diplomats, stalling foreign efforts to open the entire country by avoiding giving the foreigners any more information and privileges than they had to.

These early efforts by others were soon followed by more extended agreements, such as the Dutch Preliminary Convention on Commerce in November 1855³⁰³ and a similar Russian treaty concluded in February 1856³⁰⁴, in which more rights, including full extraterritoriality, were acquired. They were of course to the benefit of the United States, but they were short-lived because new U.S. treaties soon superseded them. First came the Convention of Shimoda in 1857 and then the Harris Treaty in 1858.

6.4.5 Appointment of a Consul

The last, and in some ways, most influential treaty term was in Article XI, which saw to the appointment of a consul to Shimoda “provided that either of the two governments deem such arrangement necessary.”³⁰⁵ The extract reveals the reluctance of the Japanese to agree to such a provision. They did not want any foreign diplomat to reside in Japan, yet did not have the power to stop his appointment. For the United States, this article proved to be of great importance, when they used it to send Townsend Harris to Japan, whose “instructions were to extend the scope of the existing agreement.”³⁰⁶ He succeeded in 1858, when he signed the famous treaty named after him and accomplished the final goal of open trade with Japan.

6.5 Townsend Harris and His Negotiations

Shortly after the Convention of Kanagawa was reported to Washington, Townsend Harris was selected as consul for Japan. He had been a merchant in New York, before spending several years trading unsuccessfully in Asia between 1849 and 1855.³⁰⁷ He did, however, have some influential friends in the United States who managed to persuade President Pierce to give him the appointment in August 1855.³⁰⁸ He was “instructed [...] to secure a commercial treaty that would open Japan to foreign trade on terms similar to China.”³⁰⁹ On his way to open Japan, he was also to conclude a treaty with Siam, which he signed on May 29th 1856 after about a month of negotiations.³¹⁰

³⁰³ See Auslin, *Negotiating with Imperialism*, 27.

³⁰⁴ The Russian treaty is the only one in which mutual extraterritoriality was granted, but in reality was not applied. See Hoare, *Japan's Treaty Ports*, 55.

³⁰⁵ Hawks, *Commodore*, 377, Article XI.

³⁰⁶ Sansom, *A History*, 237.

³⁰⁷ See Statler, Oliver, *Shimoda Story* (New York 1969), 26-27.

³⁰⁸ See Statler, *Shimoda*, 28 and Cosenza, *The Complete Journal*, 4.

³⁰⁹ Neu, *The Troubled Encounter*, 11.

³¹⁰ For details of the Siam negotiations see Cosenza, *The Complete Journal*, 79-163.

After this first successful act of diplomacy, Harris arrived in Japan in August 21st 1856 aboard the warship *San Jacinto*.³¹¹ He went ashore in Shimoda, but was not welcomed by the Japanese. They protested against his presence,³¹² but could not convince him to leave. Still they managed to contain him in Shimoda for a long time, having specially selected this town, although nearer to Edo than Hakodate or Nagasaki, for its remote location on the Izu peninsula.³¹³

His mere presence in Japan caused problems for the *bakufu*, which was already shaken after Perry's expedition.³¹⁴ The *bakufu*'s traditional unwillingness to deal with foreigners caused great delays in Townsend Harris negotiations with the Japanese officials. The lack of progress and the Japanese resistance to even small demands frustrated him, but he could not do anything except vaguely threaten them. Unlike Commodore Perry, he lacked the intimidating presence of a great naval force with no ships permanently assigned to his mission. The Perry Expedition had been the exception rather than the rule in terms of the presence of U.S. naval forces in Asia.³¹⁵ Harris entire mission in Japan consisted of himself, his interpreter and a few Chinese servants. Furthermore, he "was plagued by cholera, little medical help, no news from U.S. ships on the China coast, and no assistance from Washington."³¹⁶

These circumstances prolonged his negotiations considerably. Even Perry's attempt to gain a treaty of friendship in 1854 required several months, despite being backed by his squadron. It was no wonder that Harris took nearly a year before he managed to sign the preliminary Convention of Shimoda on June 17, 1857. It contained only nine articles and there were only a few that differed from the settlement of 1854: extraterritoriality was granted, Nagasaki opened for supplies, a vice-consul appointed at Hakodate and a few matters concerning the day-to-day affairs of Harris and his household settled, such as buying supplies without supervision of Japanese government officials settled.³¹⁷ This convention was, however, only a precursor to the Harris Treaty and was superseded in 1858.

Nevertheless, his relatively weak bargaining position later worked to his advantage in certain ways, because he "seemed much less of a threat than Perry"³¹⁸ or than the other Western powers. This made the Japanese more open to his suggestions. At the same time, the

³¹¹ See Cosenza, *The Complete Journal*, 199.

³¹² See Cosenza, *The Complete Journal*, 211.

³¹³ See Statler, *Shimoda*, 11.

³¹⁴ See LaFeber, *The Clash*, 17.

³¹⁵ See Iriye, *Across the Pacific*, 16.

³¹⁶ LaFeber, *The Clash*, 20.

³¹⁷ For the full Convention of Shimoda see Cosenza, *The Complete Journal*, 571-573.

³¹⁸ Auslin, *Negotiating with Imperialism*, 33.

Second Opium War began in 1856 and a potential threat from Britain was Harris's greatest support.³¹⁹ The new situation allowed him to play "on Japanese fears of the British – the major naval power in the Far East."³²⁰ With another war in China now looming in the background, he was finally able to proceed to Edo. On December 7th, 1857, he had an audience with the *shogun*, during which he handed over a letter from his President, which he had kept since his arrival.³²¹ Now directly negotiating with the *rōjū*, the central ruling council of the *bakufu*,³²² Harris took only a month from late January to late February to draft a full treaty.³²³ The signing of the treaty was however delayed by his health problems, which had afflicted him frequently since his arrival,³²⁴ as well as by difficulties for the *bakufu* to get the Emperor to ratify the treaty.³²⁵

The final agreement was only achieved after the news of a British fleet approaching Japan in July 1858 spread. The victories in China and the suppression of the Sepoy Mutiny in India had freed British forces to finally deal with Japan.³²⁶ Harris argued "that America was a more friendly nation than the rapacious imperialists of Europe"³²⁷ and that any treaty signed with him would satisfy the other Western powers. Eventually, his arguments convinced the *bakufu* under Ii Naosuke to sign the U.S. treaty before that of the European nations.³²⁸

6.6 The Harris Treaty of 1858

The Treaty of Amity and Commerce between the United States and Japan, also known as the Harris Treaty, was signed on July 29, 1858 in Edo.³²⁹ The other Western nations followed in August and October and Harris was proven right, as they mostly adopted his treaty. "It contained all they could have asked for and more."³³⁰

The treaty was hard to negotiate and it might seem strange that, after the stiff resistance against trade in 1854, the Japanese agreed to it only four years later, but during this time the pressure of the Western powers had steadily grown. Eventually it had become inevitable for Japan to concede to their demands. The question was no longer *if*, but *which* concessions would be granted without damaging Japan while avoiding war. "Negotiation [...]"

³¹⁹ Also known as Arrow War or Anglo-French War.

³²⁰ Harvey, *The Undeclared*, 66.

³²¹ For details of the audience with the *shogun* see Cosenza, *The Complete Journal*, 474-477.

³²² For more details about the *rōjū* see Jansen, *The Making of Modern Japan*, 48-49.

³²³ For details of the negotiations in Edo see Cosenza, *The Complete Journal*, 501-556.

³²⁴ See Cosenza, *The Complete Journal*, 577

³²⁵ See Statler, *Shimoda*, 548-549.

³²⁶ See Statler, *Shimoda*, 548.

³²⁷ Reischauer, *The United States*, 10.

³²⁸ See Statler, *Shimoda*, 551-552.

³²⁹ See Cosenza, *The Complete Journal*, 578

³³⁰ Statler, *Shimoda*, 552.

allowed them a voice in treaty relations”³³¹, while a settlement in defeat, as it was the case in China, would take even that away. In addition, “trade and economics were secondary to maintaining control over Japanese land and minimizing the physical intrusion of the West.”³³² And from a Japanese perspective, the Harris Treaty succeeded at least in this part by limiting the foreign presence to a few Treaty Ports.

An important side note was that the treaty was signed between the United States and “His Majesty the Ty-Coon [Tycoon]³³³ [sic] of Japan.”³³⁴ At the time, little was known of the Japanese governmental structure and it was assumed that “JAPAN [sic] represents the singular feature of having two Emperors at the same time, the one secular, the other ecclesiastical.”³³⁵ In all the negotiations, the United States had always negotiated with the *shogun*’s government, but never with the Emperor, even though they also ascribed this title to the *shogun*. The Japanese never cleared up the U.S. misconception and in fact encouraged them to go through the *bakufu*, because it legitimized its power. But despite this confusion it was clear that the *shogun* was “Emperor *de facto*”³³⁶ and all treaties had to be signed with him or his representatives in order to be enforced. By signing treaties with the *bakufu*, the Americans tacitly acknowledged it as the legal government of Japan.

6.7 Terms of the Harris Treaty, 1858

The Harris Treaty contained fourteen articles and seven additional regulations concerning trade. It was far more comprehensive than the previous agreements signed with Japan and can be considered the first full unequal treaty forced upon Japan.

6.7.1 Free Trade

The most important U.S. demand fulfilled in the treaty and found directly in the list of objectives from President Fillmore’s letter in 1852, was commerce.³³⁷ Article III finally allowed U.S. merchants to freely trade with any Japanese “without the intervention of any Japanese officers.”³³⁸ Open trade with Japan had been a goal of the United States and its merchants since the late eighteenth century and in 1858 it was finally achieved. In addition, by restricting the governmental interference, the “Americans, with deep suspicions about state

³³¹ Auslin, *Negotiating with Imperialism*, 2.

³³² Auslin, *Negotiating with Imperialism*, 10.

³³³ Ty-Coon or Tycoon here meaning *shogun*, being an English transliteration of the Japanese *taikun*.

³³⁴ See Cosenza, *The Complete Journal*, 578

³³⁵ Hawks, *Commodore*, 22.

³³⁶ Hawks, *Commodore*, 22.

³³⁷ See Hawks, *Commodore*, 251-253.

³³⁸ Cosenza, *The Complete Journal*, 580, Article III.

power”³³⁹ gained a much broader base of potential contacts than any previous Western power had previously enjoyed in Japan.

6.7.2 Treaty Ports

Free trade had been achieved, but it was still restricted to seven ports, which were to be opened over five years following the treaty: Hakodate, Kanagawa, Nagasaki, Niigata, Hyogo, Edo and Osaka.³⁴⁰ These ports were chosen for their geographical location or their commercial importance. For example Hakodate in the north was suitable for supplying the U.S. whaling fleets,³⁴¹ while Osaka on the east coast was an important trading town.³⁴² Shimoda on the other hand, which had been open to U.S. ships for supplies since 1854, was to be closed in 1859, because Harris had discovered that it was not a port suited for international trade.³⁴³ Also having no personal knowledge about Niigata, he stipulated that if it should prove unsuitable, another port on Japan’s west coast would replace it.³⁴⁴ In all, it seems that the locations of the ports were carefully chosen by Harris to provide Americans with access to trade with any part of Japan. These plans did not immediately come to fruition, as the Treaty Ports only grew slowly, while the openings of Niigata, Edo, Osaka and Hyogo were delayed until 1868-69 due to internal troubles.³⁴⁵

6.7.3 Residence, Inland Travel and Buildings

Together with trade and the Treaty Ports, came the necessity of letting foreigners reside in Japan, which was a difficult concession to make for the *bakufu*. It granted the Americans the right to reside in five Treaty Ports, while merchants were additionally allowed to trade in Osaka and Edo.³⁴⁶ The foreigners were however restricted to stay within a certain limit around the ports set forth in the treaty and not permitted to travel inland.³⁴⁷ The only exception to this was the minister or consul general who could reside in Edo and had “the right to travel freely in any part of the Empire of Japan.”³⁴⁸ With this measure, the Japanese tried to limit the contact between foreigners and locals to as few areas as possible, just like the limited number of ports was used to minimize foreign contact. Harris himself had wanted the right of free travel within Japan for all U.S. citizens who had resided in Japan for a year and

³³⁹ LaFeber, *The Clash*, 22.

³⁴⁰ See Cosenza, *The Complete Journal*, 579-580, Article III.

³⁴¹ See Hoare, *Japan’s Treaty Ports*, xiii-xiv.

³⁴² See Jansen, *The Making of Modern Japan*, 168-170.

³⁴³ See Statler, *Shimoda*, 132-133.

³⁴⁴ See Cosenza, *The Complete Journal*, 579, Article III.

³⁴⁵ See Hoare, *Japan’s Treaty Ports*, xiii-xiv.

³⁴⁶ See Cosenza, *The Complete Journal*, 579-580, Article III.

³⁴⁷ See Cosenza, *The Complete Journal*, 582, Article VII.

³⁴⁸ Cosenza, *The Complete Journal*, 579, Article I.

conducted themselves well. But the Japanese blocked this, according to Harris' journal, out of a fear of internal unrest and they even threatened to go to war rather than bowing to this demand.³⁴⁹ Harris realized the conviction lying behind this refusal and limited his demands accordingly.

Aside from the limitations on inland travel, the right of residence and to build whatever buildings necessary was limited by one other stipulation, the prohibition to build military fortifications under the pretense of building other structures.³⁵⁰ Such a provision might seem odd, but it was entirely coherent with the historical background of the *bakufu*. Even after over two centuries of relative internal peace, the *bakufu* still traced its origins back to a military government. It worried about the semi-independent domains within its purview and the possibility of them maintaining fortifications, which might be used to defy the *shogun's* demands. In the early seventeenth century, when the Tokugawa were still establishing their power, they had strictly controlled their vassal's number of fortifications, limiting them to only one castle per domain in 1615.³⁵¹ It is therefore no wonder that they also wanted to control the foreign communities in a way, by making them unable to build fortifications. Harris probably did not see much point opposing in this provision, presuming that his countrymen would come for trade, not conquest. In addition, there had never been any violent incidents like there had been in China, during which the foreign community had seen itself besieged within their factories, making fortifications seem unnecessary in Japan. On the other hand, the experience of the Dutch in Deshima, also made Harris insist that:

*"No wall, fence, or gate shall be erected by the Japanese around the place of residence of the Americans, or anything done which may prevent a free egress and ingress to the same."*³⁵²

This way, the treaty was composed so that both sides secured for themselves the terms that they thought necessary.

6.7.4 Religious Tolerance

Together with the residence of American citizens came the necessity of dealing with their religion, Christianity. The matter was especially important to Townsend Harris, but it was a touchy subject for the Japanese. Due to the problems with Christianity in the seventeenth century, they were wary of the people and states which practiced it. The *bakufu*

³⁴⁹ See Cosenza, *The Complete Journal*, 525-527.

³⁵⁰ See Cosenza, *The Complete Journal*, 579-580, Article III.

³⁵¹ Jansen, *The Making of Modern Japan*, 55.

³⁵² Cosenza, *The Complete Journal*, 580, Article III.

saw it as a tool of foreign invasion. According to Japanese scholars of the nineteenth century, Christianity was used to subvert other peoples, thereby allowing the Western nations to annex or conquer new territories.³⁵³ Having seemingly experienced such an attempt themselves with the rebellion in 1637-1638, the Japanese had put stringent measures in place to prevent a future recurrence. Most famous among those was the trampling of *fumie*, a term for a Christian image or item, to show one's rejection of the religion.³⁵⁴ Everyone was forced to participate in this ritual and even shipwrecked sailors had to trample on Christian images,³⁵⁵ although by the 1850s the practice slowly disappeared and in 1856 it was officially stopped.³⁵⁶

Townsend Harris thought the practice was still in use in 1857 and therefore boasted about holding a Christian service in Edo on Sunday, December 6th, 1857. He even claimed that he would demand religious toleration, the end of the *fumie* trampling and hopefully open Japan once more to Christianity.³⁵⁷ The Japanese realized that they could not resist his demands for the toleration of Christianity, acquiescing to them without much debate. In Article VIII of the treaty, religious freedom was secured, as well as the right to build churches. At the same time, both sides agreed to respect the other's religion and prevent the fostering of any kind of religious animosity. Finally, the *fumie* trampling was mentioned as having already been abolished.³⁵⁸ The only limitation on the religious tolerance was the fact that "the propagation of Christianity among the Japanese population was still prohibited."³⁵⁹ This would remain so until 1873, when the Tokugawa Shogunate had lost its power to the Emperor.³⁶⁰

6.7.5 Extraterritoriality

The presence of U.S. citizens in Japan also brought on the question of jurisdiction, which had peripherally been touched upon in the Convention of Kanagawa and already been granted in the Convention of Shimoda. In the Harris Treaty, extraterritoriality was written

³⁵³ See Duus, *The Japanese Discovery*, 53-54.

³⁵⁴ See Kirsch, *Die Barbaren*, 391, *fumie*.

³⁵⁵ See Duus, *The Japanese Discovery*, 72.

³⁵⁶ See Cosenza, *The Complete Journal*, 466-467, footnote 546.

³⁵⁷ See Cosenza, *The Complete Journal*, 465-468.

³⁵⁸ See Cosenza, *The Complete Journal*, 582-583, Article VIII.

³⁵⁹ Earns, Lane, *The Foreign Settlement in Nagasaki, 1859-1869*, *The Historian*, Vol. 56, Issue 3, (Spring 1994), pp. 483-500, In: Humanities International Complete <<http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=7302a817-655f-443d-9cb0-4ee6e0d2c443%40sessionmgr11&vid=3&hid=14>> (24th November 2012), 487.

³⁶⁰ See Kayaoglu, Turan, *The Extension of Westphalian Sovereignty: State Building and the Abolition of Extraterritoriality*, *International Studies Quarterly*, Vol. 51, Issue 3, (September 2007), pp. 649-675, In: Humanities International Complete <<http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=b3c83fb1-754a-426f-933b-f936fadaa98e%40sessionmgr11&vid=1&hid=14>> (24th November 2012), 663.

down in Article VI, putting Americans under the jurisdiction of their consuls and U.S. law. At the same time, Japanese committing crimes against Americans were always to be judged by Japanese courts.³⁶¹ In case of a conflict between a Japanese and an American, the type of court depended on the nationality of the defendant. Therefore, it was included that “the Consular courts would also be open to Japanese creditors, to enable them to recover their just claims against American citizens.”³⁶² The same way, Americans could go to Japanese courts for recovery of their claims. Whether this was included on Japanese insistence or by Harris, who might have seen troubles of this kind in China, is uncertain.

In addition to this, there are a number of other provisions which have an impact on extraterritoriality in the treaty. In Article IX, the Japanese promised to help the consul capture U.S. fugitives or deserters, as well as allow him the use of their jails to keep criminals.³⁶³ The latter was most certainly due to experiences in China, where underfunded American consuls could sometimes simply not enforce the sentences they passed on their own citizens due to lack of money or of a jail.³⁶⁴ By being allowed to rent a Japanese cell, the consuls could enforce their judgments. Another important part was that the Japanese retained for themselves the right to evict U.S. criminals.³⁶⁵ Although this agreement did not completely abolish extraterritoriality, it did allow the *bakufu* to keep some control over the foreign community or at least its criminal elements.

It seems that the Japanese government did not fight the inclusion of extraterritoriality into the treaty. They might not have realized the extent of the concession or simply seen as “an easy solution to the thorny problem of controlling the barbarians.”³⁶⁶ Indeed, Japan did have experience with foreign communities and the juridical troubles which accompanied these settlements in previous centuries: “For instance, in the early seventeenth century, the head of the English trading station was given the privilege of trying and punishing English offenders, but according to Japanese law.”³⁶⁷ The same went for the Spanish, the Portuguese and the Dutch. But this privilege was granted by the *shogun* and could be revoked at any time.³⁶⁸

³⁶¹ See Cosenza, *The Complete Journal*, 581, Article VI.

³⁶² Cosenza, *The Complete Journal*, 581, Article VI.

³⁶³ See Cosenza, *The Complete Journal*, 583, Article IX.

³⁶⁴ See Hoare, *Japan's Treaty Ports*, 58-59.

³⁶⁵ See Cosenza, *The Complete Journal*, 582, Article VII.

³⁶⁶ Statler, *Shimoda*, 553.

³⁶⁷ Cassel, Pär Kristoffer, *Grounds of judgement: extraterritoriality and imperial power in nineteenth-century China and Japan* (New York 2012), 86.

³⁶⁸ See Liu, *Extraterritoriality*, 77, footnote 1.

Nearly the same allowances were made to the Chinese community living in Nagasaki, throughout its existence.³⁶⁹

In all cases, however, this devolution of jurisdiction was only a partial privilege and by no means as far reaching as full extraterritoriality. It was simply a means of allowing foreign communities to judge their own population. Yet ultimately they remained under the control of local officials, who could still intervene if judgments were deemed unjust or wrong. The practice was similar to the national system, where the various domains were semi-autonomous, creating multiple local jurisdictions.³⁷⁰ Devolution of jurisdiction to smaller units was therefore already an accepted part of the Japanese judicial system. Concessions to extraterritoriality was little more than an extension of this system, especially as the provision in Article IX made it seem as if the *bakufu* still retained ultimate control over foreign criminals. Also, going by the wording of extraterritoriality in the Harris Treaty it could even be argued that “the treaty did not grant Americans immunity from Japanese laws but merely charged U.S. consuls with punishing American offenders according to U.S. laws.”³⁷¹ However, this would certainly go against an American interest and ultimately it was the American interpretation that was enforced.

In the end, “even though Japan had been spared the kind of extraterritorial incidents that frequently occurred in China”³⁷², a number of incidents caused major concern. In one incident in 1860 a British citizen wounded a government officer trying to apprehend him for breaking a Japanese law and was sentenced to a fine and imprisonment. The sentence was later overturned and the man released, showing the ways in which the laws were circumvented or not enforced.³⁷³ Although not involving Americans, this episode explains why the extraterritorial system was criticized. Successive Japanese governments, first the *bakufu* and later the Meiji rulers, tried to get rid of this clause, but it was only in 1899 that extraterritoriality and many other unequal parts of the treaties ended in Japan.³⁷⁴

6.7.6 Shipping Regulations

Among the treaty terms, these with commerce are the most numerous, dealing with the actual day-to-day affairs of the future commerce. A number of regulations were therefore

³⁶⁹ See Cassel, *Grounds of judgement*, 87.

³⁷⁰ See Cassel, *Grounds of judgement*, 30.

³⁷¹ Cassel, *Grounds of judgement*, 90.

³⁷² Cassel, *Grounds of judgement*, 93.

³⁷³ See Cassel, *Grounds of judgement*, 92.

³⁷⁴ See Auslin, *Negotiating with Imperialism*, 194-200.

appended to the treaty in Article XI.³⁷⁵ These clauses³⁷⁶ contain details about what ships had to do when they arrived or left, how custom inspections were to happen, and other similar concerns. For the most part, they seemed to have been modeled on the previous experience the United States had gained in China or the Japanese experience with the Dutch trade in Nagasaki. In his journal, Harris claimed that he himself was mostly responsible for the trade regulations and that the Japanese, who claimed no knowledge in such matters despite obvious experience with the Dutch, accepted his suggestions readily.³⁷⁷ Only the duties and tariffs were contested by the Japanese and they were negotiated separately at a later time.

6.7.7 Tariff and Tariff Autonomy

As mentioned, most matters of commerce were easily agreed on. Only the tariffs were contested during the negotiations. “The Japanese [had] expressed a preference for a flat twelve and a half per cent [sic] on both imports and exports.”³⁷⁸ It was a demand Harris could not agree upon, as such high duties would not have given any incentive to develop trade with Japan. In the end, they had to accede to Harris’s demands of a lower tariff.

The result were export duties of five percent and duties on imports of either five, twenty or thirty-five percent.³⁷⁹ The last part was concluded by Harris so as to favor U.S. needs over those of the European powers, who would also trade with Japan. Most products sold by Americans, and need by them such as supplies for whalers, would be subject only to five percent import duties, while the main trade products of other nations trade, like British manufactures, would incur twenty percent and French liquors thirty-five percent duties. However, the diplomats of the other nations immediately noticed these unfavorable duties and soon reversed them to the five percent, as had been placed on most other products.³⁸⁰ The United States partially profited from these new duties, as in Article IV, it was secured that they would pay no higher import duties than any other traders, including Japanese ones.³⁸¹

Besides this, there are two other provisions which affected tariffs. The first clause stipulated that there were to be no internal taxes within Japan for goods imported by the United States.³⁸² This was secured to avoid any tariffs from being raised just outside the Treaty Ports or between the various semi-independent domains in Japan, although it is unclear

³⁷⁵ See Cosenza, *The Complete Journal*, 583, Article XI.

³⁷⁶ For all regulations see Cosenza, *The Complete Journal*, 584-589.

³⁷⁷ See Cosenza, *The Complete Journal*, 533.

³⁷⁸ Statler, *Shimoda*, 553.

³⁷⁹ See Cosenza, *The Complete Journal*, 588, Regulation 7.

³⁸⁰ See Statler, *Shimoda*, 553.

³⁸¹ See Cosenza, *The Complete Journal*, 581, Article IV.

³⁸² See Cosenza, *The Complete Journal*, 581, Article IV.

if Harris or the United States government did have a clear picture of the internal makeup of Japan at the time. The second clause stipulated that a revision of the tariff duties was to be negotiated six years after the treaty was signed and to be done at the desire of the Japanese government.³⁸³ However, as it turned out, the revision was not done in 1864 and even then there was still the provision in place that Americans could not pay higher tariffs than any other nation. Ultimately, it was only in 1911 that Japan regained its tariff autonomy.³⁸⁴

6.7.8 Opium

As another part of the trading regulations, Townsend Harris agreed upon the prohibition of importing opium to Japan in anything but small amounts,³⁸⁵ most certainly for medical use. Any larger amounts would be seized and destroyed. However the penalty for smuggling was only a fine,³⁸⁶ making a potential trade not as risky as might be believed. Combined with the possibility of being expelled from Japan for criminal offences, the articles did however prevent a situation like the one in China, where opium traders could openly reside in a treaty port and even lead some of the biggest foreign trading companies in the country. In addition, the history of the drug was completely different in Japan. It was never in such prolific use, was limited to medical use³⁸⁷ and never a lucrative merchandise.

To avoid the fate of China, the government tried to keep the trouble out of their country, “by enacting and enforcing treaty provisions that banned opium imports.”³⁸⁸ It had already done so successfully in previous conventions with the Dutch and Russians.³⁸⁹ Townsend Harris agreed to a prohibition clause, probably for personal reasons. He did not support the use of opium as a recreational drug and used it himself only as medicine.³⁹⁰ In an incident during the negotiations, his Chinese servants sought out opium in Shimoda and through intimidation took it from Japanese people. Once, Harris was informed about the incident, he forced the Chinese to destroy or return it.³⁹¹

It shows that Harris was following the official American policy of disavowing the opium trade. It coincided with the Japanese desire to avoid this trade and led to an effective ban on opium. Though it must have helped that the opium trade was already saturated with the

³⁸³ See Cosenza, *The Complete Journal*, 589, Regulation. 7.

³⁸⁴ See Auslin, *Negotiating with Imperialism*, 200.

³⁸⁵ See Cosenza, *The Complete Journal*, 581, Article IV.

³⁸⁶ See Cosenza, *The Complete Journal*, 586, Regulation 2.

³⁸⁷ See Cosenza, *The Complete Journal*, 276.

³⁸⁸ Brook, *Opium*, 57.

³⁸⁹ See Brook, *Opium*, 64.

³⁹⁰ See Statler, *Shimoda*, 123.

³⁹¹ See Cosenza, *The Complete Journal*, 276-277 or Statler, *Shimoda*, 185-187.

demands of the market in China, where such a trade had long been established and was thus easier to continue.

6.7.9 Buying from the United States

Another commercial part of the treaty was not in for the United States, but rather included at the insistence of the *bakufu*. Two provisions were written down, which allowed the *bakufu* to exclusively purchase American armaments and modern technologies. In Article III, there is a short paragraph stipulating that munitions of war were only to be sold to the Japanese government,³⁹² which for both sides meant the *bakufu*. Article X allowed the government to buy steamers, arms and among other things hire American personnel and transport them from the United States to Japan.³⁹³ In both cases, it was undoubtedly the *bakufu* that demanded the inclusion of such terms and to prevent their vassal *daimyo*'s from getting modern armaments. For Harris, who only negotiated and came into contact with the *bakufu* or its representatives, this must have seemed like perfectly reasonable provisions and maybe even an initial step to an exclusive arms contract between both countries.

6.7.10 Peace & Amity

Aside from the commercial privileges granted, there were also a number of diplomatic clauses. First among them was a pledge for “perpetual peace and friendship between the United States of America and His Majesty the Ty-Coon [sic] of Japan and his successors.”³⁹⁴ It seems to have been a standard clause, having been previously included in the Convention of Kanagawa, although strangely enough not in the Convention of Shimoda.³⁹⁵

6.7.11 The United States as Mediator

Besides friendship, the United States also offered to act as a mediator between Japan and the other Western powers if requested by the *bakufu*. In Article II, the U.S. President offered to act as “a friendly mediator in such matters of difference as may arise between the Government of Japan and any European power.”³⁹⁶ This provision was quite unusual and probably devised to underline the special relationship that the United States thought to have with Japan. It saw itself as responsible for single handedly opening Japan to the world. First, through the mission of Commodore Perry which was and still is hailed as the most important venture for opening Japan, disregarding or at least playing down the efforts of the other

³⁹² See Cosenza, *The Complete Journal*, 580, Article III.

³⁹³ See Cosenza, *The Complete Journal*, 583, Article X.

³⁹⁴ Cosenza, *The Complete Journal*, 579, Article I.

³⁹⁵ See Cosenza, *The Complete Journal*, 571-573.

³⁹⁶ Cosenza, *The Complete Journal*, 579, Article II.

Western nations. Secondly through Townsend Harris' stay in Japan and his success in signing the first true commercial treaty with Japan, again downplaying at least some of the Russian and Dutch successes in getting certain privileges in between. Together, these successes made the United States appear as having a special relationship with Japan. Making the President a mediator between Japan and the European powers was merely a way to underline the special status of the U.S., as the practical applications of the clause were rather limited. And probably lost all meaning in the 1860s, when the United States was caught up in its civil war and Britain took over from them as the leading Western power in Japan.³⁹⁷

6.7.12 Diplomatic Representative at the Capital and Consuls

A more immediate diplomatic benefit from the Harris Treaty, was the allowance to station a diplomatic representative at the capital of Edo.³⁹⁸ This provision marked an extreme change in Japan's previous stance, which was to prevent foreigners from even approaching its capital, as was the case during the mission of Commodore Perry.³⁹⁹ Even Townsend Harris was only allowed to come to Edo after over a year in Shimoda. Besides this visit, the only other foreigners allowed in Edo since the closing of the country in the mid-seventeenth century had been temporary tributary missions that were by no means diplomatic missions in a Western sense.⁴⁰⁰

According to nineteenth century international law, "no state, strictly speaking, is obliged [...] to send or receive public ministers [like ambassadors or consuls and similar representatives]." ⁴⁰¹ However, for Western nations, it was such a common practice since the Treaty of Westphalia that they perceived this almost as an unquestionable right.⁴⁰² It was probably the same for Townsend Harris, who might not have known the exact words of international law but merely the commonly accepted interpretations of it. In addition, the experiences of Perry and Harris were probably very influential in insisting on such a term in the treaty, as negotiations with Japan had progressed much more smoothly and quickly when the U.S. representative was in or around the capital. Both Perry and Harris managed negotiate a treaty within one month. These developments convinced Harris of the importance of being close to the center of power to push through U.S. demands. After having allowed Harris to visit Edo, the Japanese also set an unfortunate precedent, thus losing some of their

³⁹⁷ See Auslin, *Negotiating with Imperialism*, 68.

³⁹⁸ See Cosenza, *The Complete Journal*, 579, Article I.

³⁹⁹ See Hawks, *Commodore*, 319.

⁴⁰⁰ See Jansen, *The Making of Modern Japan*, 69 and 82.

⁴⁰¹ Wheaton, *Elements*, 243, §207.

⁴⁰² See Wheaton, *Elements*, 243, §206.

argumentative power to avoid the stationing of a minister in Edo. But they might simply have realized that they would eventually have to bow to foreign pressure on the issue.

Two small additions to this provision included the possibility of appointing consuls to the other Treaty Ports and the reciprocity clause, which granted the same privileges to Japan.⁴⁰³ It is unclear whether this was included to create some feeling of equivalency in the treaty or whether the Japanese negotiators demanded it. Either way, it might have helped motivate the first Japanese mission to the United States in 1860 to ratify the Harris Treaty.⁴⁰⁴

6.7.13 The Convention of Kanagawa and the Convention of Shimoda

Another part, which must be analyzed were the two conventions signed before the Harris Treaty, as they were both mentioned in it. The Convention of Shimoda, whose provisions were incorporated into the new treaty, was completely revoked. For the Convention of Kanagawa only “such provisions [...] as in conflict with of this Treaty are hereby revoked.”⁴⁰⁵ Other articles were however to remain valid and part of the new treaty.⁴⁰⁶ The phrasing of this was very ambiguous and it remained unclear which articles were revoked and which retained. This has led some scholars to claim, that for example the most-favored-nation clause was not part of the Harris Treaty.⁴⁰⁷ However, as neither the most-favored-nation clause nor the article about helping shipwrecked sailors conflicted with the provisions of the Harris Treaty, we can assume that they remained valid, which was the main reason for Articles XII and XIII.

6.7.14 Renegotiation

The last important treaty term, concerned the future renegotiation of the treaty and was fittingly put into one of the last articles of the treaty, Article XIII. The time was set to fourteen years after the signing of the treaty, in 1872, at the desire of either the American or the Japanese government. A commission made up of officials from both nations would be appointed and would revise the treaty if and as necessary.⁴⁰⁸

The time for the renegotiation was probably set to this date to give the new trade relations a chance to develop in the meantime. Both negotiating parties had a chance to see how the trade regulations would work out. In fact, the gradual opening of the Treaty Ports

⁴⁰³ See Cosenza, *The Complete Journal*, 579, Article I.

⁴⁰⁴ For more details about the Japanese mission to ratify the Harris Treaty see LaFeber, *The Clash*, 23-24.

⁴⁰⁵ Cosenza, *The Complete Journal*, 583, Article XII.

⁴⁰⁶ See Cosenza, *The Complete Journal*, 583-584, Article XII and Article XIII.

⁴⁰⁷ See Beasley, *The foreign threat*, 285 and LaFeber, *The Clash*, 22.

⁴⁰⁸ See Cosenza, *The Complete Journal*, 583-584, Article XIII.

over a period of five years meant that it would just be under a decade before a potential revision would be made, which was, in fact, not such a long time.

At the same time, the Japanese were probably counting on this time to strengthen their own defenses and acquire modern arms, as seen above in Articles III and X, to reach military parity with the United States. For even the proponents of the treaties such as Ii Naosuke, the person who signed the Harris Treaty against the wishes of the Emperor,⁴⁰⁹ mainly argued from this position. They claimed that they needed to open up for a while, so that “the Bakufu will at some future time find opportunity to reimpose its ban and forbid foreigners to come to Japan.”⁴¹⁰ Therefore a clause agreeing to a renegotiation within fourteen years was also in Japanese interest and readily accepted.

6.7.15 Other Terms

Finally, there were several other treaty clause which were not as significant as the ones mentioned above, but will be summarized here briefly. For example, in Article III, it was stipulated that this article, which included the provisions for free trade, the Treaty Ports, residence and a number of other smaller issues, was to be made public by the Japanese government.⁴¹¹ This stipulation was most certainly added because Harris had earlier found that the Japanese did not keep him up to date on treaties signed with other nations and the potential benefits the United States could gain through the most-favored-nation clause, going as far as to deny they had signed any such treaties.⁴¹² Therefore he was concerned that they would pretend not to have signed this treaty when U.S. ships would arrive in the future.

Another clause , which was rather intriguing was in Article XIV:

*“This Treaty is executed in quadruplicate, each copy being written in the English, Japanese and Dutch languages, all the versions having the same meaning and intention, but the Dutch version shall be considered as being the original.”*⁴¹³

Since the Dutch had been the only Westerners in contact with Japan for nearly two centuries, their language was simply the one they knew best. Its importance was shown by the *rangaku*, the Netherland science, which was a field of learning amongst scholars that included Western knowledge, especially on medicine. To prevent any potential foreign influence on the

⁴⁰⁹ See LaFeber, *The Clash*, 23.

⁴¹⁰ Duus, *The Japanese Discovery*, 101.

⁴¹¹ See Cosenza, *The Complete Journal*, 580, Article III.

⁴¹² See Cosenza, *The Complete Journal*, 332-334.

⁴¹³ Cosenza, *The Complete Journal*, 584, Article XIV.

learned scholars, the *rangaku* were conducted under supervision of the *bakufu*.⁴¹⁴ The importance of Dutch in this country was the reason most early negotiations in the 1850s were done in this language⁴¹⁵ and most Western translators such as Harris's Henry Heusken⁴¹⁶ had been Dutch. So referring to the Dutch original prevented potential misunderstandings or conflicting interpretations that might arise in an English or a Japanese version of the treaties.

6.8 Concluding Remarks

The relation between the United States and Japan developed slowly over the course of the early nineteenth century. It was only after reaching the Pacific and an ever growing trade with China that the U.S. government truly became interested in Japan. Thereafter, the two states however quickly came closer and soon signed the first treaties. Of these, the Convention of Kanagawa of 1854 and the Harris Treaty of 1858, were of great importance for both the United States and Japan. The former represented the first modern treaty Japan signed with any Western nation, the latter the full opening of Japan on terms dictated by the U.S.. Together they were responsible for ending the Japanese "seclusion" and for showing the world that the United States was a great power in East Asia and no longer needed Britain to open a country for them gain a treaty.

In truth, the Convention of Kanagawa was more of a preliminary agreement and an opening of relations than a trade agreement, but it was the first step towards a commercial exchange. It was also Townsend Harris's stepping stone for negotiating and was partially integrated into his treaty.

The Harris Treaty was a treaty along the lines of the Treaty of Wanghia with far reaching privileges given to the United States. Several Treaty Ports were opened, free trade was allowed, a fixed low tariff was introduced, as well as residence for Americans and extraterritoriality being granted. In all, the Americans reached all they wanted, while the Japanese failed to prevent many of the terms. Despite having to sign such an unequal treaty, the Japanese did manage to have a voice in the negotiations and did include some terms which were to their advantage. They were of course not as significant as the American privileges, but they did succeed in limiting the foreign intrusion as much as possible under the circumstances.

⁴¹⁴ See Kirsch, *Die Barbaren*, 284-289.

⁴¹⁵ See Earns, *The Foreign Settlement*, 496.

⁴¹⁶ For more detail about Henry Heusken, see Statler, *Shimoda*, 30.

7 Part 3 Comparison of the Opening of China and Japan

The Opening of China and of Japan were unique events, yet by comparing the first treaties with each other, one can draw parallels and point out differences between the U.S. approaches and terms with each Empire. This is very useful in finding out how the two nations differed and to show that the “unequal treaties” although similar, differed at the same time because of unique national and historical developments.

7.1 Overview

In this part, a comparison between the Opening of China and Japan will be made. The main areas to be looked at are the approach the United States took in each case before providing a more detailed comparison of the treaty terms. Some might differ in small parts like exact formulation or additional paragraphs, while others are unique to only one treaty. By analyzing reasons of difference, one can gain insight into the objectives of the United States, China or Japan. This way not only a general picture emerges but also a more detailed view of the goals of the different negotiating powers.

The comparison will focus mainly on the Treaty of Wanghia of 1844 and the Harris Treaty of 1858. The Harris Treaty superseded or subsumed the two previous agreements between the United States and Japan and was the most comprehensive of the Japanese treaties. It is therefore the most equivalent Japanese treaty to the Treaty of Wanghia. However, some articles of the Convention of Kanagawa were still important and were taken into account.

When comparing the two openings, it is important to know that although East Asia was generally seen as a relatively homogenous region the U.S. government and its representatives realized that there were differences. For example, the commander of the U.S. Navy Asian Squadron oversaw the deployment of all warships in the area, but the American consuls for China and Japan each had similar but different objectives. In the late 1850s, they were ordered to push for better treaties than the first ones signed. Yet in China, the Americans had already gained most of their desired rights such as extraterritoriality and a beneficial tariff agreement, while in Japan these were still to be negotiated by Townsend Harris from 1856 to 1858.

7.2 Approach

The United States’ approach to gaining a treaty with each country was very different and reflects the events which led to the opening. The effort and personnel in each mission also

provide an interesting example of the importance the U.S. government assigned to each of them.

In the case of China, the U.S. mission to secure a treaty was sent in 1843-1844, a year after the British had decisively defeated the Celestial Kingdom. It had won considerable treaty rights, which had been granted to the United States and other Western nations in April 16th, 1843, by the Chinese.⁴¹⁷ Nonetheless, the U.S. government decided to send Senator Caleb Cushing to negotiate a full-fledged treaty. Contacts with the senior Chinese figures in foreign policy, like Ch'iyang, had already been established under Commodore Thomas Kearny and the avenues of communication to the local officials were open. In addition, Kearny's demands had warned the government of the Qing Empire that the U.S. sought a treaty, even though the Chinese considered such a thing unnecessary.⁴¹⁸ It was therefore understandable that they would send a senior member of the U.S. government, especially one as well connected and knowledgeable about the situation in China as Cushing. The appointment of a senator also shows that the United States wanted to approach China on a basis of diplomatic equality, which had not existed before. And unlike the British, Cushing was not backed by a fleet of warships, but only arrived with a small squadron of two ships.⁴¹⁹ Nonetheless, the recent demonstration of Western military superiority, during the First Opium War, must still have been in the Chinese minds. A larger show of force might not have been seen as necessary by the United States.

For Japan, however, a distinction must be made between the negotiations of 1853-1854 and the ones from 1856 to 1858. These two approaches were entirely different, with different men and forces leading the U.S. efforts .

The first missions to Japan in the 1840s had all been led by senior naval officers from the East Asia Squadron on station along the coast of China. The officers, unlike the merchant-consuls who were not always the most reliable diplomatic agents for the government, were under careful control of the U.S. government and fulfilled many diplomatic functions abroad. Officers like Biddle and Glynn led the efforts from the decks of their warships and although failing to gain treaties, gained valuable experience in dealing with the Japanese. To gain trading rights, a potential negotiator had to have a hard and determined stance backed by veiled threats and a considerable naval force. The result was the Perry Expedition and its

⁴¹⁷ See Kearny, *Tsiang*, 86.

⁴¹⁸ See Kearny, *Tsiang*, 88.

⁴¹⁹ See Davies, John P., *Dragon by the Tail: American, British, Japanese, and Russian encounters with China and one another* (New York 1972), 72.

unprecedented show of force of ten warships in Japanese waters.⁴²⁰ Matthew Perry had experience as a diplomat during his naval career and he was well connected within the American elite.⁴²¹ For the mission, he was an ideal candidate, because he was willing to use force to persuade the Japanese to sign a treaty, whereas a diplomat might have appeared less threatening. It is impossible to know whether a more pacified approach might have been successful or not. In the end, his approach succeeded and he forced the Convention of Kanagawa onto Japanese, the start of U.S.-Japanese diplomacy on Western terms.

After the success of Perry's mission and right to station a Consul in Japan, the U.S. government sent Townsend Harris. Harris had spent several years in the Pacific area and Asia⁴²² and had some connections to the government in the United States.⁴²³ He was neither a diplomat nor a naval officer, and seems to have been more akin to the merchant-consuls of the pre-Wanghia days in China. He did however act like a diplomat and acted as a Consul General, not merely a consul.⁴²⁴ His main mission was to negotiate a more thorough treaty. For most of the time during his negotiations from 1856 to 1858 he was alone, only accompanied by his Dutch interpreter, the entire "show of force" the U.S. government was willing to maintain abroad for a such long time.

Harris himself lamented the fact that he did not have the backing of a warship to intimidate the Japanese⁴²⁵ and also the fact that he was out of communication with the State Department for over a year and a half at a time.⁴²⁶ This was something that, even given the long chain of communications to Washington and back, was very unusual, especially since Hong Kong was only nine days travel away.⁴²⁷ A number of unexpected circumstances, distracted U.S. attention, such as the Taiping Rebellion in China which occupied the few American warships in East Asia to protect the more valuable U.S. assets and personnel there. Yet it also shows a certain negligence and lack of interest towards the Harris negotiations and therefore the entire situation in Japan.

In the end, one of the main impetuses for the conclusion of the Harris Treaty in 1858 was not the U.S. naval presence as in 1854, but the threat of a potential British campaign against Japan in the wake of a seeming Chinese surrender in the middle of the Second Opium

⁴²⁰ See Schroeder, *Matthew*, 15.

⁴²¹ For a more detailed description of Perry's career see Schroeder, *Matthew*, 6-13. Here 7 and 6.

⁴²² See Cosenza, *The Complete Journal*, 6.

⁴²³ See Cosenza, *The Complete Journal*, 4.

⁴²⁴ See Cosenza, *The Complete Journal*, 24-25.

⁴²⁵ See Cosenza, *The Complete Journal*, 357-358.

⁴²⁶ See Cosenza, *The Complete Journal*, 350.

⁴²⁷ See Cosenza, *The Complete Journal*, 357.

War. In this way, the United States as in China in 1844 profited from the British Navy, whose mere potential for violence helped move along the negotiations.

Despite these differences there are some similarities to both openings. All U.S. missions carried letters from the President to the ruler, which were if possible to be handed over by the U.S. representative at the capital directly to the addressee. Caleb Cushing and Matthew Perry did not manage to do so in face of fierce opposition by the Chinese and Japanese officials, but Townsend Harris was persistent and eventually succeeded in handing over his letter to the *shogun* during his audience in December 1857.⁴²⁸ In many ways, the letters were similar, praising the state it was addressed too, as well as summarizing the demands of the United States.⁴²⁹ The goals of all the missions were basically the same, even though their approaches differed.

In all, the U.S. approaches to the treaty negotiations with China and Japan varied greatly, depending on the circumstances and preexisting conditions. In China, on the one hand, with whom an informal arrangement had been previously achieved, a senator was sent to finalize a treaty. The approaches to Japan, on the other hand, were made, first by a high ranking naval officer with the largest deployment of warships to Asia ever sent and secondly by a consul who was given instructions and then largely left to his own devices.

7.3 Similar Treaty terms

The Treaty terms the United States signed with China and with Japan were in some cases similar or even exactly the same, while in other cases they are only found in one country. In this part, the treaty terms which were similar or even exactly the same shall be compared in detail.

7.3.1 Free Trade

The first treaties were ultimately commercial arrangements, despite a few diplomatic additions, and it is therefore no surprise that free trade was the most important element established by them. These clauses are almost identical, allowing American merchants to trade with any local without government interference. In China, the Canton System had been regarded as one of the main reasons trade had not gone the way the Western countries had wanted and the monopolies had been one of the first things to be discarded when they established their domination in the 1840s. In Japan, Townsend Harris was most certainly influenced by his own experience in Japan, as during his stay, he was irritated at the long

⁴²⁸ For Cushing see Franke, *Zur Geschichte*, 58. For Perry see Hawks, *Commodore*, 251. For Harris see Cosenza, *The Complete Journal*, 462-463.

⁴²⁹ For the letter to China see Davies, *Dragon* 71-72. For the letter to Japan see Hawks, *Commodore*, 251-253.

delays and constant problems that arose when demanding things from officials.⁴³⁰ The Convention of Shimoda in 1857 even included an article underlining the right of the Consul or his household to buy wares without interference from Japanese officials.⁴³¹ But his personal experience was only a small reason compared to the beliefs in free trade cherished by the U.S. government and its officials. The Japanese government had been ever present in early interactions between locals and foreigners and clearly, Harris did not want this interference to continue, for it went against his fundamental beliefs of economic liberalism.

7.3.2 Treaty Ports

Part of the trade agreements between the United States and each Asian trading partner, was on the number of open ports. The “opening” was still restricted in both cases, but this nevertheless represented a great innovation, as in China five ports were opened instead of one. In Japan, Perry managed to secure two ports to provide provisions and other necessary items for passing ships, before full trade was opened. Nagasaki followed soon after, opened by the most favored nation clause in 1856-1857. Harris expanded on this, and in his final treaty, five ports would be fully open to Americans in the coming years. In addition, two more, Osaka and Edo would be open for traders, but no American would be allowed to reside there. The number of ports are similar, being five in China and five plus two in Japan. In both cases, the development of the ports ran similar too, with only one in each nation becoming a real trading center: Shanghai in China and Yokohama in Japan.⁴³² Foreign trade, in the rest of the Treaty Ports, including Nagasaki and Canton, was soon completely overshadowed by these two centers of commerce.

7.3.3 Residence and Inland Travel

As mentioned, residence of American citizens was allowed in all Treaty Ports in both nations, with the exception of Osaka and Edo. They were allowed to buy or rent buildings for their needs and build churches,⁴³³ warehouses and other buildings.⁴³⁴ However, in both cases, the residence was also restricted to the ports and their environs, and no access was allowed to

⁴³⁰ For an example about Harris request for servants see Statler, *Shimoda*, 78-81.

⁴³¹ The article mentions the consul or „his family“, which must have been the members of his household, i.e. his servants. Here see Cosenza, *The Complete Journal*, 572, Article VII.

⁴³² For Shanghai see Spence, *The Search*, 162. For Yokohama see Duus, *The Japanese Discovery*, 132.

⁴³³ For Japan see Cosenza, *The Complete Journal*, 582, Article VIII. For China see Zhungguo, *Treaties*, 683, Article XVIII.

⁴³⁴ For Japan see Cosenza, *The Complete Journal*, 579, Article II. For China see Zhungguo, *Treaties*, 683, Article XVIII.

the inland.⁴³⁵ The exception was the senior U.S. representative in Japan, who had “the right to travel freely in any part of the Empire of Japan.”⁴³⁶ The confinement of foreigners to a few ports on its periphery had always been one of the main components of foreign interaction in both Asian empires. They aimed at restricting contact between foreigners and the local populations in order to prevent potential unrest.

After the Unequal Treaties were established, China and Japan were forced to modify their old systems. In both cases, more ports were opened to foreign contact, multiplying the potential dangers of foreign interaction. In Japan at least, the government managed to make the opening of the ports gradual, as the seven ports would be opened only over a period of five years.⁴³⁷ It still provided a potential danger for each government and in an effort to stem the “flood” of foreign intrusion, they successfully constrained them to the ports and their surroundings. The U.S. negotiators allowed this confinement, because it was seen as unimportant compared to the gains of opening several ports, as compared to a mere single port in China or none in Japan. It was therefore of no immediate interest to broaden the area of movement, especially in face of strong Chinese and Japanese resistance on the matter.⁴³⁸

It was only much later that U.S. citizens were allowed to travel inland. In China, Americans were only allowed in the interior with the treaties signed between 1858 and 1860,⁴³⁹ while Japan opened its interior to private citizens only in 1874.⁴⁴⁰

7.3.4 Extraterritoriality

Together with residence came another treaty term which was invariably linked to it: extraterritoriality. It was codified in a similar way in the Treaty of Wanghia and in the Harris Treaty. Nonetheless, there were slight differences, probably due to the experience the Americans had gained in China. The system of extraterritoriality, especially in the early years, had been very flawed. American consuls in Asia lacked knowledge in law and the funds to enforce certain sentences. In the early years they even lacked the right to judge their fellow Americans. Therefore instead of judgments being passed according to American law, U.S.

⁴³⁵ For Japan see Cosenza, *The Complete Journal*, 582, Article VII. For China see Zhungguo, *Treaties*, 683-684, Article XVII.

⁴³⁶ See Cosenza, *The Complete Journal*, 579, Article I.

⁴³⁷ See Cosenza, *The Complete Journal*, 579-580, Article III.

⁴³⁸ For China see Gilbert, Rodney, *The Unequal Treaties: China and the Foreigner* (London 1929), 149-150 and for Japan see Cosenza, *The Complete Journal*, 525-527.

⁴³⁹ See Gilbert, *The Unequal Treaties*, 153.

⁴⁴⁰ See Elliott, Andrew, *Hospitality, the Perry Narrative, and the “Opening of Japan”*, In: English Language Notes, Vol. 48, Issue 2 (Fall/Winter 2010), pp. 51-62, In: Humanities International Complete <<http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=5ffeb661-b7a4-4abe-a36e-604d1c55ce28%40sessionmgr14&vid=1&hid=14>> (24th November 2012), 60.

citizens trading in the ports in China lived in a more or less law-free environment.⁴⁴¹ They could get away with crimes because the consuls lacked authority and means to punish them. To avoid many of these problems, some which he might have encountered himself during his years in Asia, Townsend Harris and the Japanese wrote out a more elaborate extraterritoriality clause. It stipulated that “the Consular courts shall be open to Japanese creditors, to enable them to recover their just claims against American citizens”⁴⁴² and vice versa. This was a measure to avoid U.S. merchants indebteding themselves and then leaving, giving Japanese traders no opportunity to recover their claims due to a diplomatic loophole.

In addition, the Japanese were more reluctant than the Chinese in granting the Americans extraterritorial rights without limitations. In Article VIII of the Harris Treaty, the Japanese government retained the right to revoke the residency of convicted American criminals and even evict them from the country.⁴⁴³ This gave the Japanese at least a minor degree of autonomy in dealing with foreign elements on their territory. In China, a demand like this would have almost certainly been denied by the Western powers.

This comparison of extraterritorial right in China and Japan is one of the best examples of how different the influence of each state on the treaty terms was. China had been defeated in war, which resulted in a loss of influence during the treaty negotiations. It simply had to accept the foreign demands and stipulations. Any attempt to bring in its own suggestions would at best have been regarded as highly suspicious, and at worst would result in a new war. The Japanese on the other hand avoided any outright conflict until the negotiations with Townsend Harris, which “allowed them a voice in the treaty negotiations.”⁴⁴⁴ In reality of course, despite some leeway in the negotiations and in certain treaty clauses, the situation in China and Japan ended up being the same. Extraterritoriality made both nations for all intents and purposes a lawless zone allowing Americans to exploit this legal vacuum for their commercial interests. And although consuls often did judge and punish their fellow citizens, they were often lenient.

7.3.5 Shipping Regulations

The matters which constituted the majority of the treaties and are in both nations similarly written down were the shipping and custom matters. In general, these were identical, for example the approach of a ship to a treaty port and the subsequent check of the cargo in

⁴⁴¹ See Scully, Eileen P., *Bargaining with the state from afar: American citizens in treaty port China, 1844-1912* (New York 2001), 67.

⁴⁴² Cosenza, *The Complete Journal*, 581, Article VI.

⁴⁴³ See Cosenza, *The Complete Journal*, 582, Article VIII.

⁴⁴⁴ Auslin, *Negotiating with Imperialism*, 2.

the customs house. Again, China was probably the model for the Japanese version of this clause. Townsend Harris himself had traded there and was familiar with the processes involved. In truth, the Japanese version is a bit more elaborate than the one in the Treaty of Wanghia, most certainly due to the experience gained in the twelve years in between.

The detail in which the shipping regulations were written down was certainly to avoid misunderstandings between merchants and officials. And to make the job for the consul easier, in case he had to deal with complaints by U.S. citizens. By writing down a more exact version, he was better able to smooth over problems, while the Japanese had a clearer understanding of how much they could control foreign imports.

One thing that was different here was the fact that in Japan, American ships did not have to pay tonnage duties.⁴⁴⁵ In China U.S. ships had to pay “the regular tonnage duty of one mace per ton.”⁴⁴⁶ The only exemptions to this were ships hired by Chinese or only transporting passengers, letters or other things not subjected to duties such as personal effects.⁴⁴⁷ This disparity in duties was balanced out by other fees merchants had to pay in Japanese custom offices for the necessary paperwork to enter and clear a port.⁴⁴⁸

7.3.6 Tariff and Tariff Autonomy

Connected to the shipping regulations, but standing out because of their importance are tariff and tariff autonomy. In both states, the tariff was fixed at a low level, which favored the United States. In general the duties were kept around 5 percent. Some items like bullion, coins and personal belongings were duty free in both nations, while some others were more heavily taxed. There was one major difference between China and Japan in that “five years after the opening of Kanagawa [1864] the import and export duties shall be subjected to revision if the Japanese Government desires it.”⁴⁴⁹ This was not the case in China, where tariff could only be changed “in consultation with Consuls or other functionaries thereto authorised in [sic] behalf of the United States.”⁴⁵⁰ On paper, this meant that Japan only temporarily lost its tariff autonomy. In reality, Japan did not manage to retain its tariff autonomy. This was because another part of the treaty specified that Americans would not pay higher duties than any other nation,⁴⁵¹ rendering any potential renegotiation futile. In addition,

⁴⁴⁵ Tonnage duties were duties on the general cargo capacity of a merchant vessel. Here see Cosenza, *The Complete Journal*, 588, Regulation 6.

⁴⁴⁶ Zhungguo, *Treaties*, 680, Article VII.

⁴⁴⁷ See Zhungguo, *Treaties*, 680, Article VII.

⁴⁴⁸ See Cosenza, *The Complete Journal*, 588, Regulation 6.

⁴⁴⁹ Cosenza, *The Complete Journal*, 589, Regulation 7.

⁴⁵⁰ Zhungguo, *Treaties*, 678, Article II.

⁴⁵¹ See Cosenza, *The Complete Journal*, 581, Article IV.

the situation in Japan had changed by the mid-1860s. Anti-foreign sentiment was common and a number of violent incidents led the foreign diplomatic community to deal with Japan more harshly.⁴⁵² In the case of the United States, Townsend Harris was no longer consul, and with him Japan lost someone who in part did look out for Japanese interests.⁴⁵³

7.3.7 Opium

In the trading regulations of the treaties, there was only one item which was banned from imports because of its danger, opium. In the case of China, the illegal opium trade had been a menace, which had eventually led to the defeat in the Opium War and the imposition of the Unequal Treaties upon China. It was one of the fundamental problems in Sino-American relations. Through Caleb Cushing, the U.S. government, made its official anti-opium stance clear by including opium on the list of contraband affixed to the treaty⁴⁵⁴ and making opium smuggling an offence not protected by extraterritoriality. Despite this, the opium trade continued to be one of the main products of foreign trade.

Japan did not have the same problem with opium trade. It did however see the potential danger in the Chinese example. Townsend Harris seems to have been a good match for the Japanese in this case, supporting their desire to prohibit the trade.

In the end, the fact that opium was forbidden did not put an end to the problem. The prohibition was only as effective as the government was able to enforce it, which, given the ongoing problem of opium smuggling, the Qing government clearly was unable to do. In Japan, however, the prohibition was well enforced. So even though the treaty terms were similar in this aspect, it did not result in same situation.

7.3.8 The most-favored-nation clause

Of the non-commercial privileges granted, the most important was probably the most-favored-nation clause. It was mostly the same, even in the wording and does not need further comparison. The only thing that might be worth mentioning is that it was applied in both nations and did result in some, if relatively minor, privileges such as the stationing of warships in Chinese ports or lower tariffs on some products in Japan.

⁴⁵² See Jansen, *The Making of Modern Japan*, 313-315 and LaFeber, *The Clash*, 26-29.

⁴⁵³ See Statler, *Shimoda*, 570.

⁴⁵⁴ See Zhunguo, *Treaties*, 697.

7.3.9 Renegotiation

Another manner in which the treaties were similar was the fact that a renegotiation date of the treaties was agreed. In China, this was fixed at twelve years after the signing of the treaty.⁴⁵⁵ In the Convention of Kanagawa, there was no a time limit, but it included the appointment of a consul to Japan within eighteen months of the signing.⁴⁵⁶ For the United States, this agreement implied that the consul would negotiate a more comprehensive treaty. Later in the Harris Treaty the time was fixed to fourteen years.⁴⁵⁷

In the Chinese version, it is not further specified which government could initiate it, only that both governments would come together and renegotiate or amend the treaty. By the United States, it was indubitably used as a means of forcing China to renegotiate in the mid-1850s, in concert with the other Western nations. In Japan in contrast, it was clearly stated that negotiations would be initiated “upon the desire of either the American or Japanese Governments [sic].”⁴⁵⁸

In both cases, the American negotiators were aware that experience and future developments might make it necessary to modify the treaties. For Caleb Cushing, the treaty terms were already a considerable success and twelve years must have been the earliest he thought additional terms might be desired or needed. For Townsend Harris, within fourteen years open trade would be fully establish and then give the United States an opportunity to modify the treaty if the experienced gained in the meantime would make it necessary. In addition, it must have given the Japanese a feeling of hope as to revoke the unequal treaty in a foreseeable future.

7.3.10 Other Terms

Besides the terms already discussed, there are a number of other terms that are shared by both nations. What was entirely new in the treaties was a paragraph establishing peace and friendship between the signatories.⁴⁵⁹ For despite the treaties’ focus on commerce, there were diplomatic appearances to be observed. The clauses were very similar and the article seems to have been copied word for word from the Treaty of Wanghia into the Convention of Kanagawa. The influence of the Chinese treaty was undeniable here and shows one of the precedents set by negotiations between China and the United States.

⁴⁵⁵ See Zhungguo, *Treaties*, 690, Article XXXIV.

⁴⁵⁶ See Hawks, *Commodore*, 377, Article XI.

⁴⁵⁷ See Cosenza, *The Complete Journal*, 583-584, Article XIII.

⁴⁵⁸ Cosenza, *The Complete Journal*, 583-584, Article XIII.

⁴⁵⁹ For the Treaty of Wanghia see Zhungguo, *Treaties*, 677, Article I. For the Convention of Kanagawa see Hawks, *Commodore*, 375, Article I. For the Harris Treaty see Cosenza, *The Complete Journal*, 579, Article I.

Other terms, for example, assured that none of the governments involved could be held responsible for the debts of its citizens,⁴⁶⁰ and that shipwrecked persons, even if stranded outside of the Treaty Ports, would be rescued.⁴⁶¹

7.4 Treaty terms exclusive to China

The Treaty of Wanghia included a few provisions that were not shared by the treaties the United States signed with Japan. These, more than anything else, show certain historical developments and political and cultural elements unique to China. Most of these terms arose out of the past experiences of the United States or its citizens in China that Caleb Cushing thought he had to address.

7.4.1 Standards & Measures

The expansion of the trade from one to five ports, also made it necessary to standardize the weights, measures and scales in use to avoid any problems at the custom houses of all Treaty Ports. Examples of these standardized measurements would be distributed by the Custom House of Canton to the Consuls resident at all five ports to secure uniformity and allow the Americans to control Chinese custom efforts.⁴⁶² Such a provision is not to be found in any Japanese treaty, but it is likely that set standards and measures were also present in all its Treaty Ports.

7.4.2 Irregular Fees

One of the most significant issues Caleb Cushing dealt with was the abolition of all irregular fees. This matter was mentioned no less than three times in the treaty articles, showing that the United States truly desired to put an end to these practices.⁴⁶³ All together they made the trade of American merchants in China much easier. They arose out of a long history of trading between the U.S. and China and therefore, they were absent in the Japanese treaties. There was simply no necessity to address irregular fees, because there had been no trade and a fixed tariff in a treaty would automatically forestall any such practices.

7.4.3 Communication

Another matter that arose out of the long history of contact with China was that of communication between both signatories. The United States had always been unsatisfied with

⁴⁶⁰ For Japan see Cosenza, *The Complete Journal*, 582, Article VI. For China see Zhungguo, *Treaties*, 683, Article XVI.

⁴⁶¹ For Japan see Hawks, *Commodore*, 376 Article III. For China see Zhungguo, *Treaties*, 687-688, Article XXVII.

⁴⁶² See Zhungguo, *Treaties*, 681, Article XII.

⁴⁶³ See Zhungguo, *Treaties*, 677-678, Article I, 679, Article V and 680, Article IX.

the high handed, at times even insulting, treatment they received by Chinese authorities and governmental officials. Although deeply ingrained in the culture and tradition of the Celestial Empire, Chinese ideology mismatched the beliefs of the U.S. Against this treatment, Articles XXIV, XXX and XXXI of the Treaty of Wanghia set down rules for future communication, where the “language be proper and respectful.”⁴⁶⁴

It might seem unimportant or even ridiculous to have special treaty clauses to specify what form of address was to be used between officials, but it was in fact very significant. For the United States, China was an equal member in the “family of nations” and communications were therefore to be exchanged on an equal basis. Yet, the Chinese world view was very different. The two mutually exclusive beliefs could no longer coexist, and due to the military defeat of China, it was the Middle Kingdom, which had to bow to Western demands. Despite this, the use of derogatory terms continued for some time. For example during negotiations in 1858 the Chinese officials addressed the President as a tributary vassal and only at the insistence of the American negotiator, William B. Reed, was the form of address changed to one similar to that of the Emperor.⁴⁶⁵ The first step towards a diplomatically equal communication was however taken in 1844.

Nevertheless, the Chinese were able to prevent the United States from gaining one thing they sought: direct access to the Emperor or his court. Just like the Chinese were able to prevent the residence of a diplomatic agent in the capital, the Qing officials managed to include a barrier of sorts in the communications with the capital. In Article XXXI, it was agreed that any official U.S. communication to the court would go either through the Superintendent for foreign issues or through one of three provincial governor-generals.⁴⁶⁶ This way, they could at least control the American access to their center of government, a position that would change with the treaties signed during and after the Second Opium War. At that time, the Western powers broke down even this barrier and the British – and by dint of the most-favored-nation clause the U.S. – succeeded in obtaining residence at the capital for their representatives. Direct access to the Emperor was still restricted, as differences in protocol made it impossible for either side to participate in an audience.⁴⁶⁷

With Japan, the United States did not have this problem in such a big way. Its government still treated Americans haughtily before 1854, but the Western figures suffering the Japanese treatment of Westerners as barbarians were the Dutch. And as shown by the

⁴⁶⁴ Zhungguo, *Treaties*, 686, Article XXIV.

⁴⁶⁵ See Tong, *United States Diplomacy*, 225-226.

⁴⁶⁶ See Zhungguo, *Treaties*, 689, Article XXXI.

⁴⁶⁷ See Gilbert, *The Unequal Treaties*, 153.

Perry Expedition, the Americans were not willing to be treated that way in official contacts between both nations.⁴⁶⁸ For example, during the first negotiations between Perry and the Japanese, the latter used two different designations for the Emperor and the President. The Americans wanted to show the equally high standing of their President and insisted that the same terms should be used for both national leaders. They had realized that it was important to pay attention to even the minutest detail in the highly ceremonial society of Tokugawa Japan.⁴⁶⁹

Insisting on diplomatic equality, Matthew Perry had established equal relations between both nations early on and thus prevented any communication problems. Perry's determination to be dealt with as a high ranking person equal to the Japanese, was continued by Townsend Harris. He did not strictly limit himself to the role of a consul, as for example seen by the number of guns he insisted on for his salutes.⁴⁷⁰ His attitude was more that of a minister plenipotentiary to maintain a high status in comparison with his negotiation partners. He only retained his rank as consul general to satisfy the terms of Article XI of the Convention of Kanagawa.

7.4.4 Language

Closely related to equal communication was the clause, allowing Americans to learn "any of the languages of the [Qing] Empire."⁴⁷¹ Previously this had been forbidden, even though Americans, especially missionaries, learnt the language. In Japan, the government had only been reluctant to let foreigners learn their language, and the Dutch had learnt Japanese well during their two centuries of contact. They served as the first interpreters for other nations, like Henry Heusken for Harris.

7.4.5 Special Protection

Another exceptional provision in China was Article XIX which placed Americans under "the special protection of the local authorities of Government."⁴⁷² It could have only been inserted in light of past problems with local officials protecting American lives or property or to protect U.S. citizens from the widespread anti-foreign feelings amongst the general population. Although the Articles III and V of the Convention of Kanagawa were

⁴⁶⁸ See Hawks, *Commodore*, 340.

⁴⁶⁹ See Hawks, *Commodore*, 235.

⁴⁷⁰ Salutes for consuls consisted of nine guns, while Harris insisted on thirteen for himself, which was the equivalent for the Japanese governor of Shimoda. See Cosenza, *The Complete Journal*, 90, 207 and 268.

⁴⁷¹ Zhungguo, *Treaties*, 684, Article XVIII.

⁴⁷² Zhungguo, *Treaties*, 684, Article XIX.

somewhat similar, protecting shipwrecked seamen from mistreatment, they were not the same blanket try to make the Chinese responsible for “insult of injury of any sort.”⁴⁷³

7.4.6 Neutrality

The protection of American citizens was also achieved by forcing the Chinese to respect “the neutrality of the flag of the United States.”⁴⁷⁴ This had been a problem previously, when the Qing Empire was in conflict with another Western nation. For U.S. diplomats, it was therefore necessary for the U.S. to insist that the neutrality of the United States was respected by its trading partner. It was an important concept in Western diplomacy in the nineteenth century. In practice, it was often violated, but it still held an important place in international law.⁴⁷⁵

In contact with China, this had been problematic, as the Chinese on occasion punished all foreigners collectively when they deemed it necessary. For example during the Lady Hughes affair in 1784, the Chinese besieged the foreign quarter and threatened to stop all trade unless a British gunner was surrendered for the accidental killing of two Chinese during a salute.⁴⁷⁶ Usually the threat was applied only to one nation,⁴⁷⁷ but it was clear that a concept such as neutrality was not acknowledged. This incensed the Americans, who saw themselves apart from the squabbles of China and other nations, especially the imperialistic Europeans. Article XXII of the Treaty of Wanghia therefore codified American neutrality in case of a war with a third party, while Article XXVIII went even further stating that neither American citizens nor their property should be seized, detained, embargoed or molested by officials under any pretense.⁴⁷⁸ Together these two articles make it very clear what the United States understood as neutrality and that they considered it unbearable to be penalized for the actions of others or to be intimidated.

7.4.7 United States vs. Federated States

One of the most curious differences in the treaties does not actually directly relate to China or Japan, but rather to the United States itself. For in the Treaty of Wanghia it was deemed necessary to add the following provisions: that no “individual State [sic] of the United States can appoint or send a Minister to China to call in question the provisions of the

⁴⁷³ Zhungguo, *Treaties*, 684, Article XIX.

⁴⁷⁴ Zhungguo, *Treaties*, 686, Article XXII.

⁴⁷⁵ See Wheaton, *Elements*, 426-427, § 414.

⁴⁷⁶ See Spence, *The Search*, 127.

⁴⁷⁷ See Morse, *The international relations*, 103-104.

⁴⁷⁸ See Zhungguo, *Treaties*, 685-686, Article. XXII and 688, Article XXVIII.

[treaty].”⁴⁷⁹ The fact that it is not found in any of the Japanese treaties, is significant, as it shows that the situation within the U.S. had changed so as to no longer make this clause necessary. In the 1840s China was mostly of interest to a few of the northeastern states, so it seems to have been necessary or at least prudent. The federal government must have lacked confidence in the control it could enforce on individual states, which at the insistence of its citizens abroad might have gone against the treaty. Barely fifty years after the independence of the U.S. when the country was still in the process of working out its governmental system such an approach was absolutely necessary. It must also have set a precedence because such a clause was not added in any of the Japanese treaties.

7.5 Treaty terms exclusive to Japan

The Japanese treaties with the United States also involve a number of terms that were not shared with China. They came into being due to the unique culture and historical relationship with the United States, as well as new demands that originated in the U.S.’s experiences with China.

7.5.1 Internal Tariffs

In the commercial provisions of the treaties, China and Japan were generally very similar. By the time of the Harris Treaty, however, the United States insisted on one important tariff issue, which was not included in the Treaty of Wanghia: the abolition of internal trade barriers in Japan. This provision was secured in Article IV wherein it is stated that:

*“All goods imported into Japan, and which have paid the duty fixed by this Treaty, may be transported by the Japanese into any part of the empire without payment of any tax, excise, or transit duty whatever.”*⁴⁸⁰

The issue is important considering that Japan at the time was separated into competing semi-independent domains, which regulated and taxed merchandise from other parts of Japan.⁴⁸¹ Potentially even the *bakufu* could raise additional duties for imports just outside of the Treaty Ports, thus circumventing the tariff in the treaties.

Exactly this had happened in China during the Taiping Rebellion, when provincial governors raised money through an internal tariff, the so-called *likin*. And although technically not applicable to imports under the unequal treaties, it was occasionally applied to

⁴⁷⁹ Zhungguo, *Treaties*, 690, Article XXXIV.

⁴⁸⁰ Cosenza, *The Complete Journal*, 581, Art. IV.

⁴⁸¹ Vaporis, Constantine Nomikos, *Breaking Barriers: Travel in the State in Early Modern Japan* (Cambridge 1994), 132-133.

them.⁴⁸² This would de facto undermine to the open trade agreements by heightening the ultimate prices of the foreign goods. Indeed, as the American produce was intended to feed a whole internal market and not solely the port areas, any tariff barriers within would limit the incentive of the Chinese merchants to buy goods that would end up too expensive for their internal partners. Yet it was important for the Qing government because the generated revenue was used to finance the war effort against the Taiping Rebellion. In the end, little could be done to prevent such a tax, as foreign influence in the interior of China was minimal.

7.5.2 Fortifications & Armament Trade

The United States did not always manage to infringe on Japanese sovereignty in the treaties and in two articles, the Japanese actually managed to insist on some terms of their own, something the Chinese had not achieved. One of the most interesting and significant differences to China was a provision in Article III, which, while allowing Americans to rent or erect buildings, added the stipulation that “no fortification or place of military strength shall be erected under the pretense of building dwellings or warehouses.”⁴⁸³ It also reserved the right for the *bakufu* to inspect all foreign buildings to prevent such a construction.

It stands in stark contrast to the Chinese treaty, which, founded on military defeat, could never have contained such a stipulation. In Japan, it was of significant importance, for it reveals the military nature of the Japanese government. Therefore it wanted to make sure that it retained its military supremacy in the country. The stipulation might have also been included to be able to expel the foreigners quickly and violently at a future point without them being able to defend themselves. The *bakufu* had no monopoly of military power, as the semi-independent *daimyo* still maintained their own forces, but this clause sought to curtail a foreign military presence in Japan

The concern with military power further reflects in the provision of Article X that allowed only the Japanese government to purchase ships and arms from the United States.⁴⁸⁴ By doing so the *daimyo*'s access to Western military equipment was restricted. In these provisions, the Japanese negotiators showed considerable far-sightedness, although one must not fault the Chinese too much, for they did not enjoy the same freedom of negotiation. The Treaty of Wanghia was a dictate and not as freely negotiated as the Harris Treaty. At the same time we must not forget, that the Chinese rarely thought in such military manners as the Japanese did and hardly insisted on such limitations. Either way, this part provides a stark

⁴⁸² See Rich, *Extraterritoriality*, 43-44.

⁴⁸³ Cosenza, *The Complete Journal*, 579-580, Article III.

⁴⁸⁴ See Cosenza, *The Complete Journal*, 583, Article X.

contrast between China and Japan, not only in the regard to their fear of potential danger, but also with regard to freedom in negotiations.

7.5.3 Religious Tolerance

Another matter, which was only found in the treaty terms in Japan was religious freedom. It was granted in China too, but only per Imperial edict and not in a treaty. By common misconception, it is often seen as part of the French Treaty of Wamphoa but a close examination of its articles reveals that no article in the treaty actually spells out religious tolerance.⁴⁸⁵ They merely secured the right to build churches, which the Americans had already achieved beforehand.⁴⁸⁶ Instead, the French managed to receive toleration of Catholicism in the negotiations around that time, but it was never included in the treaty. The fact that this toleration was later extended to Protestantism in 1845, did not make it part of the treaty frame work.⁴⁸⁷ Therefore, religious toleration cannot be regarded as part of the Treaty of Wanghia for the purposes of this thesis, despite that fact that toleration was still gained. Its lack in the treaty must have been due to its relative unimportance for Caleb Cushing in comparison to commerce. Only in the Treaty of Tientsin of 1858 was tolerance for Christianity written down and became part of the treaty terms.⁴⁸⁸

In Japan on the other hand, Harris seemed to have been very interested in the issue of religion. In several parts of his diary he wrote down his religious practices while in Japan, mentioning especially his services during his visit in Edo, which seems to have been of great symbolic importance to him.⁴⁸⁹ In the Harris Treaty a provision on religious tolerance was included in Article VIII. It also included a stipulation that neither, Americans nor Japanese, should incite religious unrest or disturb the others place of worship.⁴⁹⁰

In both cases, the previous enmity must be understood, as protection against a potential danger for foreigners undermining the traditional society of each state. By prohibition and persecution, this potential foreign threat was eliminated. With the advent of the Treaty Ports other more pressing issues such as opium or foreigners travelling inland were more important than religious tolerance. Therefore allowing foreigners to practice their religion was not heavily contested by either the Chinese or Japanese during negotiations. Yet one reason for this tolerance was the fact that in neither state the Americans were not allowed

⁴⁸⁵ For the full French treaty see Zhungguo, *Treaties*, 771-790.

⁴⁸⁶ For the French see Zhungguo, *Treaties*, 782, Article XXII. For the Americans see Zhungguo, *Treaties*, 683, Article XVIII.

⁴⁸⁷ See Gilbert, *The Unequal Treaties*, 130-132.

⁴⁸⁸ See Zhungguo, *Treaties*, 726, Article XXIX.

⁴⁸⁹ See Cosenza, *The Complete Journal*, 465-466.

⁴⁹⁰ See Cosenza, *The Complete Journal*, 582-583, Article VIII.

to proselytize Christianity.⁴⁹¹ This again shows that in as far possible foreign intrusion was limited and especially contact with the majority of the local population restricted.

7.5.4 Diplomatic Representative in Edo and his Right to Travel

Of the diplomatic aspects of the treaties, two more important clauses in the Harris Treaty had never been included in the Treaty of Wanghia. The first dealt with the residence of diplomats in the capital. In Article I, Harris secured for himself and his successors the right to reside in Edo.⁴⁹² Although it was technically not the capital, Edo was at the time the seat of power of the *bakufu*, the de facto government of Japan. The second allowed the consul general or other highest ranking U.S. representative “the right to travel freely in any part of the Empire of Japan.”⁴⁹³

This may seem like a small concession considering that the posting of ambassadors and ministers between states was taken for granted in Western diplomacy since the Congress of Vienna but for China and Japan, it was a violation of their sovereignty. In their world view, foreign diplomats or similar figures were only allowed in the capital on tributary missions, in submission to the host nation, never as equals. In the 1840s in China, diplomatic residence at the capital was approached by Western diplomats, but after firm rebuffs from the Chinese the matter was dropped in favor of securing the far reaching commercial agreements. These, the Qing government could grant while still pretending to maintain its system of foreign management. Allowing diplomats to the capital however would be contrary to the entire diplomatic tradition of the empire and in effect useless, because it made no sense in the Chinese world order.⁴⁹⁴ Therefore such a clause was not included, but merely a way for the United States government to communicate with the Imperial court.⁴⁹⁵

In Japan, the *bakufu* was equally wary to let foreigners come close to its center of power. Already Perry’s presence near Edo troubled the Japanese. His boasting with the U.S. naval strength had highlighted the ease with which foreigners could cut off Edo from its overseas supplies.⁴⁹⁶ To keep foreigners as far away from Edo as possible, the Convention of Kanagawa only allowed the posting of a U.S. consul to isolated Shimoda. The Convention

⁴⁹¹ For Japan see Earns, *The Foreign Settlement*, 487 and for China Gilbert, *The Unequal Treaties*, 131.

⁴⁹² Although technically the Emperor was the head of state and Kyoto the actual capital, Edo was the center of the political power, as the transfer of the capital from Kyoto to Edo in 1868 proved later. Here see Cosenza, *The Complete Journal*, 579, Article II.

⁴⁹³ Cosenza, *The Complete Journal*, 579, Article II.

⁴⁹⁴ See Kissinger, *On China*, 43.

⁴⁹⁵ See Zhungguo, *Treaties*, 44, Article XXXI.

⁴⁹⁶ See Cassel, , *Grounds of judgement*, 87-88.

moreover allowed the Japanese to draw out the negotiations with Harris, as they could always delay them by claiming to wait for instructions from the decision makers in the capital.

However, the results in Japan differed from the results in China. Perry had already shown what could be achieved when negotiating near the capital and Harris achieved much from his visit to Edo in late 1857 and early 1858. The Japanese could do little against an insistence of diplomatic presence in the capital. Especially as Harris' visit and temporary residence in the capital was already an informal admission that foreign diplomats could come to the capital.

The difference from China could be not greater, were it not for the fact that around the same time, the Americans and others were pushing for the same rights in China. In the early 1850s, it had been realized that despite the gains of the first unequal treaties, the Western powers wanted more. The U.S.'s provision for a renegotiation of certain parts twelve years after the Treaty of Wanghia, taken over by the British through the most-favored-nation clause, came as a convenient excuse to demand just that.⁴⁹⁷ Troubled by internal rebellions and trying to avoid giving the Western powers even more rights, the Chinese refused to give in. Under a shaky pretext the British in collusion with the French started the Second Opium War which lasted from 1856 to 1860.⁴⁹⁸ The United States remained neutral in the war, but could not avoid conflict completely. Despite some incidents, the United States avoided most of the fighting, yet sought the demanded the same terms as Britain or France. They even signed the Treaty of Tientsin in 1858.⁴⁹⁹ However, the full implementation of the treaty was delayed until the end of the fighting in 1860, when they also profited from further demands won by the British. These included the posting of an ambassador to Peking and the right to travel inland with an authorized passport.⁵⁰⁰

So while the difference between the Harris and Wanghia Treaties on the matter is great, in truth the United States gained these terms around the same time in another treaty. It shows the parallel development of the demands in China and Japan. While in the 1840s certain issues were taboo, in the 1850s they were strongly sought after and achieved no matter the nation.

⁴⁹⁷ See Spence, *The Search*, 179.

⁴⁹⁸ For details see Cassel, *Grounds*, 56-61.

⁴⁹⁹ See Zhungguo, *Treaties*, 713-735 for the full treaty.

⁵⁰⁰ See Spence, *The Search*, 180.

7.5.5 Mediator

Another diplomatic article part where the Harris Treaty differed significantly was Article II. This was a clear result of the special position that Townsend Harris thought the United States had in Japanese foreign affairs. This article allowed the Japanese government to call on the President as a “friendly mediator in such matters of difference as may arise between the Government [sic] of Japan and any European Power.”⁵⁰¹ Today, the United States is still commonly regarded as the sole nation responsible for the opening of Japan, due to the success of Matthew Perry and the subsequent Convention of Kanagawa, which was presented as a much greater treaty than its terms reveal. In a way, however this is true, for America spearheaded the Western efforts in the 1850s, yet it would be unwise to disregard the contributions that the other Western powers made in the drive to open Japan as shown above in the Russian and British influences on the negotiations in 1854 and 1858.

Article II showed the special place the United States claimed for itself as a kind of mentor for Japan. It was an attitude that would continue for a time, but soon the United States went on to focus on the American Civil War. The leading Western power would soon become Britain, just as it was in China.⁵⁰² It is also possible to argue that with the most-favored-nation-clauses present in all other Western treaties, the other nations might have taken over this privilege. On the other hand, it was unlikely, because even Britain usually argued that only a “commercial and non-political privilege granted by one state to another, may be claimed under the most-favored-nation clause.”⁵⁰³ However if it might have proven beneficial, the claim might have been put forward. As it was, the article never really came to be used, because of the U.S. withdrawal to internal matters and Britain’s ascension to Japan’s main negotiating partner.

This U.S. did not have this presumption in China in 1844, where other Western nations had traded long before the United States even came into being. But in the Treaty of Tientsin in 1858, the United States offered China “to exert their good offices [...] to bring about an amicable arrangement”⁵⁰⁴ in case of problems with other powers. They styled themselves into a power less aggressive than the other Western nations, when in reality they demanded just the same terms.

⁵⁰¹ Cosenza, *The Complete Journal*, 579, Article II.

⁵⁰² See Beasley, *The foreign threat*, 285.

⁵⁰³ Sze, *China*, 19.

⁵⁰⁴ Zhungguo, *Treaties*, 713, Article 1.

7.5.6 Dutch

Of the various differences in the treaties, one did not emerge from the United States history with Japan, but rather with another Western nation, the Netherlands. As the Netherlands had been the only Western nation involved in the trade with Japan, many of the first interpreters such as Henry Heusken, who served Townsend Harris, or Mr. Portman, who served Commodore Perry,⁵⁰⁵ were Dutch. They were the only Westerners familiar with the language and in turn the Japanese were most familiar with Dutch and commonly used it in negotiations. In the 1850s, the importance of the Netherlands in this field was undisputable and it was agreed in the Convention of Shimoda and the Harris Treaty that the Dutch version of each treaty would be considered the original, i.e. the most authoritative one.⁵⁰⁶

In light of the potential troubles, it will be little surprising that the most common language was chosen as the one with true meaning. Such a problem had arisen early on, during Harris' arrival in Japan, when the Japanese argued that a consul was only to be sent provided that both governments found it necessary. However, in the American version of the Convention of Kanagawa it was either government and Harris eventually managed to get the Japanese to accept this version.⁵⁰⁷ A Dutch and a Chinese version of the Convention had also been made, but it was never specified which would be the preeminent version in case of conflicting interpretations. Problems such as this were certainly the reason the Dutch version was accepted by both sides as the original in the later Japanese treaties, because it was the most spoken language.

It is obvious that such provision was unnecessary in the Treaty of Wanghia, because "middle men" like the Dutch did not exist. Communication between the two nations was direct, even though the Chinese frowned upon outsiders learning their language.

7.5.7 The Convention of Kanagawa and the Convention of Shimoda

Unlike the Treaty of Wanghia, the Harris Treaty was the third treaty signed between the United States and Japan and the previous treaties were mentioned in two of its articles, because they were superseded by the new treaty. The parts of the Convention of Kanagawa that were in conflict with the Harris Treaty were revoked, as was the entire Convention of Shimoda.⁵⁰⁸ It was done to avoid any misunderstandings and to condense the documents necessary to regulate the contact between the United States and Japan. In addition, it was most

⁵⁰⁵ See Hawks, *Commodore*, 255.

⁵⁰⁶ For the Harris Treaty see Cosenza, *The Complete Journal*, 584, Article XIV. For the Convention of Shimoda see Cosenza, *The Complete Journal*, 572, Article VIII.

⁵⁰⁷ See Cosenza, *The Complete Journal*, 209 including footnote 275.

⁵⁰⁸ See Cosenza, *The Complete Journal*, 583, Article XII.

certainly done to ensure that the Japanese did not try to argue future matters based on older treaties which were not as complete or far reaching as the United States desired.

7.6 Concluding Remarks

From the comparison of the early treaties, it becomes apparent that in the most important treaty terms, the treaties with China and Japan differ little. Free trade, the number of Treaty Ports, a fixed tariff, most-favored-nation privileges, extraterritoriality, amity and friendship, prohibition of opium, shipping regulations and other parts are similar. For the United States, these treaty terms were important because they served as the basic foundation of their commercial goals. They were the foundation of any treaty with an Asian state in the mid-nineteenth century. The U.S. goal was always free, unrestricted and equal trade and the protection of its citizens from the allegedly unjust Asian legal system. Despite this there were minor deviations in a few of the clauses and in general, the Japanese treaties were a bit more elaborate and not as oppressive. This was due to the fact that the Japanese did not negotiate after a military defeat and had a voice in the negotiation, whereas China's terms were very much dictated. In addition, experience gained in China influenced the later treaties.

Despite these major similarities, there were some differences which arose out of the historical contact and uniqueness of each nation. On one hand, in China for instance, communication between foreigners and Chinese was carefully codified due to past problems. Japan, on the other hand, insisted on preventing foreigners to build military fortifications upon their territory, a clear inheritance from the military background of the *bakufu*. Other terms were forced upon Japan such as residence of a diplomat in the capital, which were not part of the initial American treaty with China. In the 1840s, these provisions were impossible to achieve in China. They did however appear in the new treaties forced upon China in the late 1850s and make the similarities even more apparent, although not strictly part of the treaties analyzed here.

8 Conclusion

A look at the United States and the Opening of China and Japan through the first treaties shows interesting developments of the actions and interactions of the participating nations. They reveal much about the intentions and goals of the different governments, as well as the balance of power between them. It is important not merely to compare the treaties, but also see the background of the treaty terms to completely understand the unique development of each. Thereby a more complete picture of why and how the terms were included emerges and in turn allows for a better understanding of the involved parties' demands.

The treaty terms gained in the treaties were varied and numerous: free trade, several Treaty Ports, a low fixed tariff, the most-favored-nation clause, extraterritoriality, amity and friendship, the prohibition on opium trade, shipping regulations, inter-governmental communication, or the language in which the treaty was to be read, as well as several others. These were all done for one reason: namely to facilitate the commerce between the United States and each Asian trading partner. There were few diplomatic articles but they were mostly included to allow a peaceful trade relation. They were however also a sign of the shift in power, because before the treaties, the United States had adhered to a trading system at the terms of each Asian empire. It was based on their world view of other nations being inferior to them and being officially only recognized as tributaries. The treaties changed this and now China and Japan were not only forced to accept U.S. trade terms, but to at least partly acknowledge to the Western system of equality among the nations. Despite this diplomatic gains, it is clear that the main goal of the United States was a trade on its own terms. Beforehand this had not been possible, but as soon as the opportunity arose such as in China after the Opium War or a sufficient force such as during the Perry Expedition could be assembled the U.S. government changed things to its own advantage.

At the same time, the previous system of trade in China and the isolation of Japan influenced the treaties significantly. It is particularly noteworthy that the experienced the United States had gained in China clearly influenced the Japanese treaties. It provided a proven and tested framework on which the later treaties could be modeled on, because there was no actual experience with Japan itself due to its isolation. In each case, problematic issues from past experiences or potential future points of contention were addressed and changed to a system that suited the U.S. best. For example, free trade as the main goal was enshrined within the treaties with additional paragraphs against potential governmental interference or monopoly. For the United States, these had often been seen as some of the worst terms

enforced by the Chinese and Japanese governments, inhibiting a bigger and more profitable trade. Therefore, they were some of the first restraints to be abolished.

In the comparison between the treaties, it soon becomes clear that they differ in many regards, though the essentials of the treaties remain the same. An evaluation of the approaches also reveals that the means were different but the ends were mostly the same. The United States dealt with each situation differently, with its main negotiators ranging from a Senator to a Commodore to a failed merchant backed with unequal military forces. In their terms, however, the treaties were very much the same. Many of the most important treaty terms were included in treaties with both states, as for example extraterritoriality, the most-favored-nation clause, a fixed tariff, residence for its citizens in the Treaty Ports, the regulations for a ship arriving and leaving, a prohibition on opium and many others. They were terms which were universally sought after by the United States, because they laid the foundation of free trade favorable to the U.S. It also removed American citizens from the control of, what were seen as, despotic Asiatic empires with an arbitrary and “unjust” judicial system.

The differences in the treaty terms arose mostly out of certain ongoing problems such as the Chinese officials imposing irregular fees on foreign traders or the mistreatment of shipwrecked sailors by the Japanese. These problems were addressed and give each treaty unique features that distinguish it from others. These exclusive clauses make it interesting to compare such similar documents, because they give insight into regional differences in countries that appeared so much alike to Westerners as China and Japan. It is also a reminder that even though the treaties are generally lumped together under the term unequal treaties, they were not the same in all aspects and are worth studying individually. Comparisons between them can best reveal the diversity among the unequal treaties, because they allow a detailed evaluation of the various terms and with a look at the historical background reveal the origin of the unique terms.

8.1 Outlook

In another work, the comparison of treaties the United States signed in Asia in the nineteenth century might be expanded upon by an inclusion of another country. Potentially interesting studies could be made with Siam or Korea.

On the one hand, Siam Before would be because Townsend Harris negotiated a treaty with it in 1856, and it could be analyzed to see if there were similarities between the Japanese and Siamese treaties which originated from one common American negotiator. It is also chronologically closer than the Treaty of Wanghia allowing it to be viewed from the

perspective of a United States not in change. The problem with this, however, would have been the limited amount of literature available. Siam and its unequal treaties are by far not as well studied as China and this would make it difficult to make a comprehensive study.

On the other hand, Korea would also make an interesting field of study because it was different from China and Japan. Due to its geographic isolation relative to the West, contacts with Korea were scarce in the 1840s and 1850s and it successfully resisted foreign intrusion until the 1880s. For example, in 1866 an American merchant ship trying to open trade was destroyed by the Koreans. A retaliatory strike by the U.S. Navy in 1871 was defeated, as were other attempts from other Western nations had been.⁵⁰⁹ It was only due to Chinese pressure that Korea signed treaties with the West, the first being signed with the United States in 1882.⁵¹⁰ The date of the treaty makes it removed from the events of the mid-nineteenth century yet might make a comparison in the case of the United States interesting, as it could be coupled with a view on its pre- and post-American Civil War Asian policies.

⁵⁰⁹ See Lee, Ki-biak, *A New History of Korea* (London 1984), 264-266.

⁵¹⁰ See Lee, *A New History*, 275.

9 Bibliography

- Adshead, Samuel A. M., *China in World History* (Basingstoke 2000)
- Ashworth, John, *The Sectionalization in Politics, 1845-1860*, In: Barney, William (ed.), *A Companion to 19th-Century America* (Malden 2001), page 33-46
- Auslin, Michael R., *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (London 2004)
- Beasley, W.G., *The foreign threat and the opening of the ports*, In: Jansen, Marius B., *The Cambridge History of Japan Volume 5: The Nineteenth Century* (Cambridge 1989), page 259-307
- Belohlavek, John M., *American Expansion, 1800-1867*, In: Barney, William (ed.), *A Companion to 19th-Century America* (Malden 2001), page 89-104
- Berger, Stefan, *Comparative History*, In: Berger, Stefan and Feldner, Heiko (ed.), *Writing History: Theory & Practice* (London 2003)
- Brinkley, Alan, *The Unfinished Nation: A Concise History of the American People* (New York 1993)
- Brook, Timothy and Wakabayashi, Bob Tadashi, *Opium Regimes: China, Britain and Japan, 1839-1952* (Berkeley 2000)
- Cassel, Pär Kristoffer, *Grounds of judgement: extraterritoriality and imperial power in nineteenth-century China and Japan* (New York 2012)
- Cohen, Warren I., *East Asia At the Center: Four Thousand Years of Engagement with the World* (New York 2000)
- Cosenza, Mario E., *The Complete Journal of Townsend Harris: First American Minister and Consul to Japan* (Tokyo 1959)
- Davies, John P., *Dragon by the Tail: American, British, Japanese, and Russian encounters with China and one another* (New York 1972)
- Dillon, Michael, *China: A Modern History* (London 2010)
- Downs, Jacques M., *American Merchants and the China Opium Trade, 1800-1840*, *The Business History Review*, Vol. 42, No. 4 (Winter 1968), pp. 418-442, In: JSTOR
<<http://www.jstor.org/stable/3112527>> (27th December 2011)
- Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004)
- Duus, Peter, *The Japanese Discovery of America: A Brief History with Documents* (Boston 1997)

Earns, Lane, *The Foreign Settlement in Nagasaki, 1859-1869*, The Historian, Vol. 56, Issue 3, (Spring 1994), pp. 483-500, In: Humanities International Complete
<http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=7302a817-655f-443d-9cb0-4ee6e0d2c443%40sessionmgr11&vid=3&hid=14> (24th November 2012)

Edwards, R. Randle, *Ch'ing Legal Jurisdiction over Foreigners*, In: Cohen, Jerome and Chen, Fu-mei Chang (ed.), *Essays on China's Legal Tradition* (Princeton 1980), page 222-269

Elliott, Andrew, *Hospitality, the Perry Narrative, and the "Opening of Japan"*, English Language Notes, Vol. 48, Issue 2 (Fall/Winter 2010), pp. 51-62, In: Humanities International Complete <http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=5ffeb661-b7a4-4abe-a36e-604d1c55ce28%40sessionmgr14&vid=1&hid=14> (24th November 2012)

Emmerson, John K. and Holland, Harrison M., *Eagle and the Rising Sun: America and Japan in the Twentieth Century* (Stanford 1987)

Fairbank, John K., *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports 1842-154* (Stanford 1953)

Fairbank, John K. (ed.), *The Cambridge History of China: Volume 10 Late Ch'ing, 1800-1911, Part I* (Cambridge 1978)

Fairbank, John K. and Liu, Kwang-ching (ed.), *The Cambridge History of China: Volume 11 Late Ch'ing, 1800-1911, Part II* (Cambridge 1980)

Fairbank, John K., *The United States and China* (Cambridge 1979)

Fairbank, John K.(ed.), *World Order: China's Foreign Relations* (Cambridge 1970)

Franke, Otto, *Zur Geschichte der Extraterritorialität in China* (Berlin 1935)

Fu, Lo-Shu (ed.), *A Documentary Chronicle of Sino-Western Relations (1644-1820)* (Taipei 1966)

Gilbert, Rodney, *The Unequal Treaties: China and the Foreigner* (London 1929)

Gordon, Andrew, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford 2003)

Hawks, Francis L. (comp.), *Commodore Perry and the Opening of Japan: Narrative of the Expedition of an American Squadron to the China Seas and Japan, 1852-1854* (Stroud 2005)

Hao, Yen-p'ing, *The Commercial Revolution in Nineteenth-Century China: The Rise of Sino-Western Mercantile Capitalism* (Berkeley 1986)

Harvey, Robert, *The Undeclared: The Rise, Fall and Rise of the Greater Japan* (New York 1965)

Hoare, J.E., *Japan's Treaty Ports and Foreign Settlements: The Uninvited Guests 1858-1899* (Folkestone 1994)

- Hornbeck, Stanley, *The Most-Favored-Nation Clause: History*, The American Journal of International Law , Vol. 3, No. 2 (April 1909), pp. 395-422, In: JSTOR
<<http://www.jstor.org/stable/2186129>> (24th November 2012).
- Hsü, Immanuel, *China's Entrance into the Family of Nations: The Diplomatic Phase 1858-1860* (Cambridge 1968)
- Iriye, Akira, *Across the Pacific: An Inner History of American-East Asian Relations* (New York 1967)
- Iriye, Akira, *From nationalism to Internationalism: US Foreign Policy to 1914* (London 1977)
- Iriye, Akira, *The Chinese and the Japanese: Essays in Political and Cultural Interaction* (Princeton 1980)
- Jansen, Marius B., *The Making of Modern Japan* (Cambridge 2002)
- Jiang, Arnold Xiangze, *The United States and China* (Chicago 1988)
- Kaempfer, Engelbert, and Bodart-Bailey, Beatrice (ed.), *Kaempfer's Japan: Tokugawa culture observed* (Honolulu 1999)
- Kayaoglu, Turan, *The Extension of Westphalian Sovereignty: State Building and the Abolition of Extraterritoriality*, International Studies Quarterly, Vol. 51, Issue 3, (September 2007), pp. 649-675, In: Humanities International Complete
<<http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=b3c83fb1-754a-426f-933b-f936fadaa98e%40sessionmgr11&vid=1&hid=14>> (24th November 2012).
- Kearny, Thomas, *Tsiang documents: Elipoo, Ke-ying, Pottinger and Kearny and the most favored nation and open door policy in China in 1842 – 1844: An American viewpoint* (Peking 1932)
- Kelliher, McCabe, *Trade, Anglo American Rivalry and the Origins of U.S. China Policy*, In: Merrill, Dennis and Paterson, Thomas G. (ed.), *Major Problems in American Foreign Relations Volume I: To 1920* (Boston 2010), page 248-254.
- Kirsch, Peter, *Die Barbaren aus dem Süden: Europäer im alten Japan 1543 bis 1854* (Wien 2004)
- Kissinger, Henry, *On China* (New York 2011)
- LaFeber, Walter, *The Clash: U.S.-Japanese Relations throughout history* (New York 1998)
- Lee, Ki-biak, *A New History of Korea* (London 1984)
- Liu, Shih Shun, *Extraterritoriality: Its Rise and Its Decline* (New York 1925)
- Mackerras, Colin, *Western Images of China* (Hong Kong 1989)
- Macleod, Julia H., Matthew Perry, George Henry Preble, James Rodgers Goldsborough, *Three Letters Relating to the Perry Expedition to Japan*, The Huntington Library Quarterly,

Vol. 6, No. 2 (Feb., 1943), pp. 228-237, In: JSTOR <<http://www.jstor.org/stable/3815667>> (21st August 2012).

Merrill, Dennis and Paterson, Thomas G. (ed.), *Major Problems in American Foreign Relations Volume I: To 1920* (Boston 2010)

Morris, Richard B. (ed.), *Encyclopedia of American History: Bicentennial Edition* (New York 1953)

Morse, Hosea Ballou, *The international relations of the Chinese empire: The period of conflict 1834-1860* (London 1910)

Nester, William R., *Power across the Pacific: A Diplomatic History of American Relations with Japan* (Basingstoke 1996)

Neu, Charles, *The Troubled Encounter: The United States and Japan* (New York 1975)

Ng, Chin-keong, *Maritime Frontiers, Territorial Expansion and Hai-fang during the Late Ming and High Ch'ing*, In: Dabringhaus, Sabine and Ptak, Roderich (ed.), *China and her neighbours: Borders, Visions of the Other, Foreign Policy 10th to 19th Century* (Wiesbaden 1997), page 211-253

Nozari, Fariborz, *Unequal Treaties in international law* (Stockholm 1971)

Perkins, Bradford, *The Cambridge History of American Foreign Relations Volume I: The Creation of a Republican Empire, 1776-1865* (Cambridge 1993)

Pohl, Manfred, *Japan* (München 2002)

Pollard, Robert T., *Dynamics of Japanese Imperialism*, *The Pacific Historical Review*, Vol. 8, No. 1 (Mar., 1939), pp. 5-35, In: JSTOR <<http://www.jstor.org/stable/3633608>> (21st August 2012).

Reischauer, Edwin, *The United States and Japan* (Cambridge 1970)

Rich, Raymond T., *Extraterritoriality and tariff autonomy in China* (Shanghai 1925)

Sansom, George, *A History of Japan, 1615-1867* (Stanford 1963)

Schroeder, John H., *Matthew Calbraith Perry: Antebellum Precursor of the Steam Navy*, In: Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004), page 131-154

Scully, Eileen P., *Bargaining with the state from afar: American citizens in treaty port China, 1844-1912* (New York 2001)

Spence, Jonathan, *The Search for Modern China* (New York 1990)

Statler, Oliver, *Shimoda Story* (New York 1969)

Sze, Tsung-Yu, *China and the most-favored-nation clause* (Taipei 1971)

Tarling, Nicholas, *Imperialism in Asia: an essay* (Aukland 2005)

- Teng, Ssu-yü and Fairbank, John K., *China's response to the west: a documentary survey 1839-1923* (Cambridge 1974)
- Tong, Te-kong, *United States Diplomacy in China, 1844-60* (Seattle 1964)
- Van Dyke, Paul A., *The Canton Trade: Life and Enterprise on the China Coast, 1700-1845* (Hong Kong 2005)
- Van Zandt, Howard F., *Pioneer American Merchants in Japan* (Tokyo 1980)
- Vaporis, Constantine Nomikos, *Breaking Barriers: Travel in the State in Early Modern Japan* (Cambridge 1994)
- Vattel, Emer de and Fenwick, Charles, *The Law of Nations or the Principles of Natural Law: Applied to the Conduct and the Affairs of Nations and of Sovereigns* (Washington 1916)
- Vevier, Charles, *American Continentalism: An Idea of Expansion, 1845-1910*, In: Dudden, Arthur (ed.), *American Empire in the Pacific: From Trade to Strategic Balance, 1700-1922* (Aldershot 2004), page 91-104
- Wang, Dong, *China's Unequal Treaties: Narrating National History* (Lanham 1967)
- Wheaton, Henry and Wilson, George Grafton, *Elements of International Law* (Oxford 1936)
- Zhungguo, *Treaties, conventions, etc., between China and foreign states Volume I* (New York 1917)
- Zinn, Howard, *A People's History of the United States, 1492 - Present* (New York 2005)

Internet:

Office of the Historian, U.S. Department of State, *Chronology of U.S.-China relations, 1784-2000*, <<http://history.state.gov/countries/issues/china-us-relations>> (14th March 2012)

Naval History and Heritage Command, U.S. Navy, *Naval traditions: name of ranks*, <<http://www.history.navy.mil/trivia/triv4-5k.htm>> (22nd April 2012)

10 Supplement

10.1 Abstract German

Durch die Öffnung von China und Japan, Mitte des 19. Jahrhunderts, veränderte sich die Beziehung zwischen den Vereinigten Staaten von Amerika und China beziehungsweise Japan signifikant. In dieser Zeit änderte sich der Fernhandel, der bis dahin von der asiatischen Reichen bestimmt war, zu Gunsten der USA, die ab diesem Zeitpunkt die Handelsbeziehungen dominierten.

In dieser Diplomarbeit sollen die Öffnungen von China und Japan aus der Sicht der USA betrachtet werden. Dabei werden die Beziehungen durch den Blick auf die ersten Verträge, die die USA jeweils mit China und Japan abgeschlossen hat, analysiert und verglichen. Im Fall von China war dies der Vertrag von Wanghia im Jahre 1844, während es in Japan die Konvention von Kanagawa im Jahre 1854 und der Harris Vertrag von 1858 waren. Durch die Analyse und den Vergleich dieser Verträge sollen die folgenden Hauptfragen beantwortet werden: “Was waren die Vertragsklauseln, die die USA mit China und Japan aushandelten?” und “Haben sich die Klauseln zwischen China und Japan unterschieden?”. Um die Handelsverträge besser zu verstehen, wird ein genauer Blick auf ihre Entstehungsgeschichte und die Geschichte der Beziehungen zwischen der USA und Japan und China geworfen. Dadurch soll verständlicher gemacht werden wieso es Gleichheiten und Unterschiede bei der Herangehensweise der USA beziehungsweise den Vertragsklauseln gab.

Um die Arbeit einzugrenzen und in einem passenden Rahmen zu halten, wurde die Methode der Vergleichenden Geschichtswissenschaften verwendet. Die verwendeten Verträge sind Dokumente des selben Typs ebenso wie ihre Klauseln und lassen sich dadurch gut vergleichen. Um das Ganze auch in einen zeitlich begrenzten Rahmen zu halten liegt der Fokus nur auf den ersten Verträgen, da diese innerhalb eines Zeitraumes von 14 Jahre abgeschlossen wurden. Der begrenzte Zeitrahmen erlaubt es auch die Entwicklung in den Vereinigten Staaten zu berücksichtigen und zu analysieren inwiefern die interne Entwicklungen der USA die Ostasien-Politik des Landes beeinflusst hat. Denn die Expansion der Vereinigten Staaten über den Nordamerikanischen Kontinent hatte einen entscheidenden Einfluss auf die Öffnung von Japan, da erst die Erschließung Kaliforniens Japan zu dem pazifischen Nachbarn der USA machte.

Diese Herangehensweise hat sich bewährt und interessante Einblicke in die drei involvierten Staaten und deren Beziehungen, sowie ihrer Geschichte, geliefert. Die vielen Vertragsklauseln wie etwa die Anzahl der Vertragshäfen, der fixe Zolltarif oder die

Behandlung von gestrandeten Seeleuten wurden analysiert und in ihrer historische Bedeutung untersucht. Der Vergleich ergab, dass es sowohl Gleichheiten, als auch Unterschiede bei den Vertragsklauseln gab. Viele der wichtigsten Artikel wie etwa Extraterritorialität oder Regeln bezüglich der Regulierung des Warenaustausches waren im Ländervergleich ähnlich oder in manchen Fällen identisch. In anderen Fällen zeigte sich, dass die Erfahrungen und Klauseln, die die USA durch den früheren Vertrag mit China gewonnen hatten, in die japanischen Verträge eingeflossen sind. Darüberhinaus gab es auch Klauseln, die nur mit jeweils einem Staat ausgehandelt wurden. Im Fall von China war es etwa der Fokus auf eine gleichberechtigten Kommunikation zwischen den Repräsentanten der jeweiligen Regierungen, da chinesische Beamte in der Vergangenheit mitunter beleidigend amerikanischen Vertretern mit kommuniziert hatten. Im Vertrag von Wanghia wurde dieser Praxis offiziell ein Ende gesetzt, auch wenn es länger dauerte, dieses Problem endgültig zu beseitigen. In Japan andererseits war es vertraglich festgelegt worden, dass die niederländische Version der Verträge als das Original angesehen werden sollte. Die Niederlande waren vom 17. bis zum 19. Jahrhundert, der einzige westliche Staat, der Kontakt mit Japan hatten und bei der Öffnung Japans waren Niederländer deswegen meist als Dolmetscher tätig. Es war deshalb die westliche Sprache in der am problemlosesten verhandelt werden konnte und sie wurde zum Original erhoben um mögliche Missverständnisse bei der Interpretation von Vertragsklauseln zu vermeiden.

Durch eine solche vergleichende Methode zeigte sich klar, dass es nicht nur zwischen den Verträgen Unterschiede gab, sondern auch in den Beziehungen, die die USA mit China und Japan hatten. In einer folgenden Arbeit könnte etwa ein drittes Land, wie etwa Korea, mit dem erst 1882 ein Vertrag abgeschlossen wurde, inkludiert werden. Dadurch könnte man nicht nur in die US-Koreanische Beziehungen im Vergleich zu dem Rest Ostasiens analysieren, sondern auch die Veränderungen in der US-Asienpolitik in diesem erweiterten Zeitrahmen untersuchen.

10.2 Abstract English

The Opening of China and Japan are important events, because they mark the turning point in the relations United States and these two states. For the United States it was the start of their participation in the Western domination of the overseas trade with both Asian empires. While for China and Japan it saw the end of the trade on their own terms and the beginning of trading on terms imposed by the West.

In this thesis, the Openings of China and Japan will be looked at from a perspective of the United States. To provide a manageable framework the focus will be on the first treaties signed between the U.S. and China and Japan respectively. In the case of China, it will be the Treaty of Wanghia signed in 1844, while in the case of Japan it will be the Convention of Kanagawa from 1854 and the Harris Treaty from 1858. Through the medium of these commercial treaties the following main questions will be answered: “What were the treaty terms the United States negotiated with China and Japan?” and “Did the treaty terms differ between China and Japan?”. To better understand the treaty terms, a closer look will be taken at how they came to be and in which historical context they arose. Therefore a look at the history of the relations between the relevant states is necessary. This background will give a more detailed view of the similarities and differences between the treaties.

In order to develop a comparative history of these relations and treaties, the three main treaties will be analyzed and compared. The treaties are legal documents of the same nature and their treaty terms allow us to compare the terms about specific differences. They provide an interesting view of the United States’ relations with two close, yet different states. In addition, the focus will be only on the first treaties, because they lie within fourteen years of each other. This provides a temporal framework which is not too far apart, therefore allowing a pertinent historical comparison. In fact, the United States will have experienced some changes in its own history within this time frame, allowing us to study the impact these domestic developments had on the later treaties. For example, the westward expansion across continental North America had an effect on the Opening of Japan, through the incorporation of the Californian ports that suddenly made Japan closer to the territorial United States than it was before.

In the end, this approach proved very fruitful, because it gave some interesting insights into all three involved states and the history of their relations. The main conclusion, which might be a bit mundane for a comparative history, yet nonetheless true was that the treaty terms between the United States and each China and Japan were the same, yet also different. Many of the most important treaty terms, such as extraterritoriality, most-favored-nation or

the simple matters of approaching a port and handing over ship's papers at the customs house, the treaties were the same. In fact, in some cases the conclusion can be drawn that the experiences and clauses gained from the earlier Chinese treaty were taken over in the Japanese ones. Yet in other cases, as for example the importance of equal communication between officials in the Treaty of Wanghia or the fact that the Dutch copy of the Harris Treaty was to be considered the original, they were clearly different. These discrepancies developed throughout the long history of interactions between the involved states, but also others participants, like the Netherlands, who traded exclusively in Nagasaki from the mid sixteenth to the mid nineteenth century and had significant influence on the mid nineteenth century contact between Japan and any Western nation.

Through these findings, it becomes clear that a comparative approach can yield important conclusions not merely about the treaties, but also about the complex and often very different relations between the United States and each Asian empires. In another, more extended work, another third comparison may be added, maybe with Korea, which only agreed to a treaty with the U.S. in 1882. This addition could not only provide insight in the United States relation to Korea, but could also be used to analyze potential changes in U.S. diplomatic and economic policy to East Asia after the U.S. Civil War.

10.3 Curriculum Vitae

Persönliche Daten

Name: Andreas Eichleiter
Geburtsdaten: 02.01.1987, Korneuburg
Anschrift: Böcklinstraße 110/4
1020 Wien
Telefon: 0664/232 95 86
Email: andi.eichleiter@gmx.at

Schulbildung

1993 – 1997 Volksschule, Aspernallee, Wien
1997 – 2005 BRG 2 Vereinsgasse, Wien, Matura mit gutem Erfolg

Studium

Seit 2006- Diplomstudium Geschichte
2006 - 2007 Bakkalaureatsstudium Japanologie
2009 - 2010 Auslandsjahr mit dem Erasmus-Programm in Cork, Irland
2011 Sommersemester 2011 Tutor an der Universität Wien, Institut für Geschichte

Sonstiges

Sprachkenntnisse Englisch und Französisch