

# The Xi-Putin Summit: Taiwanese Sovereignty and Modern Treaties

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President Xi Jinping of the People's Republic of China held talks with Russian President Vladimir Putin on February 4th. In a joint statement, they declared that Moscow fully supports Beijing's position on Taiwan, abides by the One-China principle and recognizes that Taiwan is an inalienable part of China's territory. The determination of Taiwan's sovereignty within Sino-Russian relations is closely connected to these countries' recognition of modern treaties. The myths behind these recognitions and their proper resolutions will have a profound impact on the future of the world.

There are also modern treaties between Russia and China that must be addressed. In 2020, a Russian scholar from Vladivostok visited my institute. He was disturbed that mainland Chinese netizens had been calling for the recovery of territory ceded to Russia during the Qing dynasty. However, the PRC officially signed an agreement with the Soviet Union in 1991 concerning the eastern section of the Sino-Soviet border. Then, in 2004, China and Russia signed a supplementary agreement to further resolve border issues. Both parties took the treaties signed between Russia and the Qing Empire as their basis for demarcating these borders.

In 2005, I visited Shanghai to participate in the academic conference, *From Unequal Treaties to the WTO*. The keynote speaker and international business law scholars agreed that treaties, like any contract, result in gains and losses but that they cannot be unequal. However, many participating historians from mainland China opposed this view. In 2018 and 2019, I asked two mainland Chinese scholars at conferences held in the United States and Australia if the keynote speaker from the conference was well. Their assurances of the speaker's wellbeing gave me some confidence in the PRC.

The current territory of the United States comes from its treaties with Britain, France, Spain, Mexico and Russia. I have never heard tale of Britain, France, Spain or Mexico wishing to retrieve their former territories from the United States through war,

nor of Russian expansion in the Arctic partially as an attempt to take back Alaska from the United States. This respect for treaties has its base in international law.

The term "unequal treaties" is commonly used by historians in Taiwan. However, among scholars of modern Chinese history from Republican era Taiwan, Professor Li Dingyi was the most well-known for the opinion that treaties, like any contract, create gains and losses but cannot be unequal. Such a modern understanding of treaties is consistent with intertemporal international law. Intertemporal norms of law interpret legal provisions based on context of legislation rather than requirements of implementation.

Sovereignty over Taiwan was ceded by the Qing to Japan through the Treaty of Shimonoseki. The reason that this sovereignty was not transferred to the Republic of China in Taiwan until 1952 after the conclusion of the San Francisco Peace Treaty and the Taipei Treaty is actually connected to the Soviet Union. In 1947, the United States had already prepared to sign a peace treaty with Japan. Due to Soviet opposition, it was not until 1951, after the signing of the Sino-Soviet Treaty of Friendship, Alliance and Mutual Assistance and the outbreak of the Korean War, that the United States began actively pursuing the conclusion of the San Francisco Peace Treaty and signed the Treaty of Mutual Cooperation and Security between the United States and Japan.

Although Russia first attended the San Francisco Conference, it later withdrew. The government of the PRC was not invited to participate because it was not the Chinese government that led the war against Japan. When the PRC established diplomatic relations with Japan in 1972, it insisted that Japan cut off diplomatic relations with the Republic of China and did not mention the indemnity that Japan had prepared to pay. The rivalry between the Nationalists and the Communists superseded the PRC's longing for reparations from Japan. However, the Republic of China's sovereignty over Taiwan was not lost when diplomatic relations with Japan were severed. The modern international treaties affecting the transfer of Taiwan's sovereignty are the product of modern international relations, not just the result of Nationalist-Communist relations.

Even though Russia and China still do not recognize the San Francisco Peace Treaty and the Taipei Treaty, the two countries are together part of the UN with Japan and have both established diplomatic relations with Japan. For both of these arrangements, the restoration of Japan's sovereignty through the San Francisco Peace Treaty is foundational. The United Nations began with the Declaration by United Nations, which was signed first by Soong Tse-ven, Acting Premier of the Republic of China, and representatives of the United States, Britain and the Soviet Union in January 1942. This declaration is also why Article 26 of the San Francisco Peace Treaty created the basis for the Taipei Treaty. The Herbst Theatre in San Francisco was both the place

where the United Nations was established and where the San Francisco Peace Treaty was signed. These efforts over 70 years ago have saved humanity from another world war. Whether to destroy the fruits of peace accumulated through these actions is a question deserving deep consideration by world leaders today.

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# 習普會 台主權與近代條約

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中華人民共和國國家主席習近平四日與俄羅斯總統普亭舉行會談，雙方聯合聲明指出，莫斯科完全支持北京對台灣的立場，恪守一個中國原則，承認台灣是中國領土不可分割的一部分。俄中的台灣主權認定與近代條約的認知息息相關。有關這項認知的迷思與正解將深刻影響未來世界。

俄中之間也有近代條約要面對。二〇二〇年，一位來自海參崴的俄國學者來訪，他對大陸網民一直有收復清朝中國割讓給俄國的領土呼聲感到不安。但至少在政府層面，中華人民共和國先於一九九一年與蘇聯簽訂關於中蘇國界東段的協定，之後中俄又於二〇〇四年簽訂補充協定，進一步解決雙方國界問題，兩者皆以清俄間條約畫界為準。

二〇〇五年筆者到上海參加「由不平等條約到WTO」學術研討會，主題演講者與國際商法學者齊聲認為條約跟任何契約一樣，一定得有失，不會是不平等的。但席間有不少大陸的歷史學者反對。二〇一八與一九九一年筆者在美國與澳洲兩位大陸學者，那位二〇〇五年的主題演講者是否安好，他們的正面答案，讓筆者對中華人民共和國有所肯定。

當前美國的領土來自其與英國、法國、西班牙、墨西哥、俄國間的條約，不但沒聽過英、法、西、墨要透過戰爭跟美國取回故土，也沒聽過俄國因目前在北極的積極擴張，要透過戰爭向美國取回阿拉斯加。這些對條約的尊重，都有著國際法的依據。

「不平等條約」的說法在筆者所處的歷史學界相當普遍，但中華民國在台灣時期的中國近代史學者，以李定一教授也認為條約跟任何契約一樣，一定得有得有失，不會是不平等的，最

為有名。這樣的近代條約認知與國際法上的時際法 (Inter-temporal law) 是一致的。時際法規範以立法時的背景而非執法時的需求解釋法律條文。

對於清朝於馬關條約割讓給日本的台灣主權，於二次大戰一九四五年結束後的進一步轉移，之所以會到一九五二年才在舊金山和約與台北和約的基礎上移轉給選台的中華民國政府，其實與蘇聯有關。一九四七年美國已準備對日簽訂和約，因蘇聯反對，一直到一九五〇年中蘇友好同盟互助條約及韓戰爆發，美國才積極推動一九五一年九月簽訂的舊金山和約，並簽訂美日安保條約。

俄國雖一開始出席了舊金山和會，但之後退出，中華人民共和國政府因非領導對日作戰的中國政府，未獲邀請參加。一九七二年中華人民共和國與日本建交時，不提日本原已準備給付的賠款，堅持日本與中華民國斷交，國共對立情結壓過對日求償情結。但中華民國對台灣所擁有的主權不因與日本的斷交喪失。影響台灣主權移轉的近代國際條約是近代國際關係的產物，而非只是國共關係所造成。

儘管俄中長期不承認舊金山和約與台北和約，但兩國與日本共同在聯合國，或是與日本建立外交關係，都是建立在舊金山和約所恢復日本主權的基礎之上進行。聯合國源起於一九四二年一月中華民國行政院代理院長宋子文與美、英、蘇代表先簽署的聯合國國家共同宣言，這項宣言也是舊金山和約第廿六條為台北和約奠定基礎的依據。聯合國成立的場址與舊金山和約簽定的場址，同為目前舊金山市赫伯特劇院的場址。七十多年前的這些努力，為人類避開了世界大戰。是否要毀棄其所積累的和平果實，值得當前世界的國家領導人們深思。