

EURASIA

THE PARTNERSHIP AGREEMENTS WITH JAPAN AS A PART OF STRUCTURAL FOREIGN POLICY

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Abstract

The partnership agreements between the EU and Japan are expected to bring a strategic partnership between the EU and Japan deeper and more operational. However, many observations overlooked the existence of the differences in the understanding of human dignity and capital punishment between the EU and Japan, which undermines the potential of the partnership agreements. Due to the difference, essential elements clause to link the EU-Japan SPA and the EU-Japan EPA was not introduced. The EU is a market power that attempts to influence the external environment and other actors by including non-trade objectives in a trade agreement. The failure to introduce essential elements clause lost the expected potential of the EU-Japan partnership agreements as foreign policy tools of the EU toward Japan. However, the failure of foreign policy in the short term doesn't mean the failure in the longer term. The EU has been influencing Japan to abolish capital punishment in many occasions, not only in the recent development of the partnership agreements. By considering the EU-Japan partnership agreements as part of structural foreign policy to make Japan a suitable partner for the EU, the EU-Japan SPA can be seen as an important step for the EU to influence Japan. Although the expected potential of the partnership agreements is lost in a short term, it still has a chance to be an effective foreign policy tool for the EU to influence Japan to abolish capital punishment and make Japan a suitable partner.



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Introduction

On 17 July, 2018, the *Strategic Partnership Agreement between the European Union and Its Member States, of the One Part, and Japan, of the Other Part* (EU-Japan SPA) was signed. As Japanese Prime Minister Shinzo Abe stated in the press conference held on the day of signing, the EU-Japan SPA is expected to “maintain and expand the free and open international order and lead the peace and prosperity of the international community” (Prime Minister of Japan and His Cabinet 2018). This agreement has been negotiated since 2013, simultaneously with the *Agreement between the European Union and Japan for an Economic Partnership* (EU-Japan EPA). For the EU, negotiating both the EU-Japan SPA and the EU-Japan EPA was aimed to bring “depth to the EU-Japan partnership and make it more operational” (Hellendorff 2018).

Many observations took the establishment of the partnership agreements positively. Not only there is the expectation on the further development of the strategic relationship between the EU and Japan, but also the effects on global affairs are expected. However, considering the relationship between the EU and Japan carefully, it seems that Japan is not necessarily an ideal strategic partner for the EU. Throughout the recent development of the relationship between the EU and Japan, they “have regularly stated their desire to implement a norm-making diplomacy, based on... shared values and a growing popular demand of ethical policies on a worldwide scale” (Albessard 2020). Although the EU and Japan share fundamental values and norms, such as democracy and the rule of law, it seems that many observations are overlooking the existence of a disagreement over human dignity between two actors. Japanese legal system still has capital punishment, although all of the member states of the EU abolished it. This disagreement was a symbolic difference during the negotiation of the partnership agreements between the EU and Japan. Although there being a factor undermining the effectiveness of the EU-Japan SPA and the EU-Japan EPA, how the partnership agreements can contribute to the development of strategic partnership between the EU and Japan? Especially focusing on how to make Japan a suitable partner for the EU, this paper reinterpret the EU-Japan partnership agreements.

Without the understanding of how such an element undermines the potential of the EU-Japan partnership agreements as foreign policy tools for the EU, the way for the EU to promote the future development of European foreign policy toward Japan cannot be posed. This paper first examines the elements undermining the potential effectiveness of the EU-Japan partnership agreements. Based on the analysis, how the EU should use the EU-Japan partnership agreements to make Japan a suitable strategic partner will be suggested.

Capital Punishment and the Relationship between the EU and Japan

The EU-Japan SPA is expected to provide both the EU and Japan to enhance their relationships over 40 policy areas. As can be seen in many explanations, it is thought that the partnership of the EU and Japan is “based on the promotion of a set of common values, ranging from democracy and human rights to high-quality labour standards and market economy” (Albessard 2020). Especially for the EU, the basis that the recognition of values and norms are shared is important, since the EU considers itself as “a normative power in global scene” (de Prado 2017, 447). With this shared basis, the EU and Japan are expecting the EU-Japan SPA to allow both actors to “reach its full potential” in future cooperation (D’Ambrogio 2019, 5). Through the cooperation, the EU and Japan “jointly promote peace, stability and prosperity globally” (Hellendorff 2018).

With this, the EU-Japan partnership seems a confirmation of the EU and Japan having common values and norms, and the EU and Japan seem ideal strategic partners. Is it so?

There were significant events that should be taken into account. As Bart Gaens explained, the EU and Japan have different views on some areas of values and norms. The existence of the death penalty is the symbolic

difference. This has been a continuous issue between the EU and Japan on human rights, and “[t]he EU has long been calling on Japan to place a moratorium on capital punishment” (Gaens 2017, 6).

In 2016, Francesco Fini, a minister of the Delegation of the EU to Japan, argued that Japan should abolish the death penalty. He claimed that governments should not impose capital punishment since every person has their fundamental human dignity under international law, “even on someone who has committed the most atrocious crime” (quoted in Hirano 2016). In his argument, Fini claimed that activity toward the universal elimination of the death penalty to protect human dignity is “a key priority of [EU] external human rights policy” (Ibid.).

On 6 July, 2018, significant executions of capital punishment took place in Japan. Seven people, one of the largest number of executions of capital punishment in a day, were executed, including Shoko Asahara, the head of a cult group, the *Aum Shinrikyo*, who killed 13 people and injured more than 6,000 people in the subway attack in Tokyo in 1995. The EU criticized these executions. The Delegation of the EU to Japan and ambassadors of European states to Japan together issued a joint statement saying “the death penalty is cruel and inhumane and is not an effective crime deterrent” (Takahashi 2018). Also, the statement suggested the Japanese government “to adopt a moratorium on execution, with a view to abolishing it”, since any legal system cannot exclude errors (Ibid.).

According to the poll by the Japanese government, more than 80% of the Japanese population consider the existence of the death penalty inevitable. As can be seen from the result, and as the Ministry of Justice of Japan officially stated, “the death penalty system is positively received” in Japanese society (quoted in Murakami 2020). The ideas on the death penalty are different between the EU and Japan. The EU and its member states abolished the death penalty from their legal system because they consider that “someone who has committed the most atrocious crime” even has fundamental human dignity (quoted in Hirano 2016). Clearly, the EU and Japan have a significant disagreement over the understanding of human dignity.

Lost Potential of the EU-Japan Partnership Agreements

Such disagreement was seen during the negotiation of the partnership agreements. Actually, at first, Japan only wanted to negotiate and conclude an economic agreement. As Yumiko Nakanishi explained, “[t]he conclusion of not only the EPA, but also the SPA reflects the EU’s political strategy” (Nakanishi 2019, 14). The EU demands its treaties to promote “its values, high social and environmental standards, and respect of human rights, around the world” (Ibid., 4). To negotiate to establish an economic agreement, the EU asked Japan to also negotiate and conclude a strategic partnership agreement. The signing of the EU-Japan SPA was significant for the EU.

However, considering the agreements concluded, the linkage of the EU-Japan EPA and the EU-Japan SPA is limited. This indicates that the EU-Japan partnership agreements are abnormal as a European partnership strategy.

Chad Damro argued that the EU can be considered as a market power Europe (MPE). The EU is market power in a sense that it “can and does use its market and regulatory strengths to externalize internal policies” (Damro 2012, 684). The EU can be a power through its market since “the EU has relatively high levels of regulatory expertise, coherence and sanctioning authority” that allows generating a standard which other actors converge (Ibid., 688). Market power becomes a powerful tool for the EU when non-trade objectives were included in trade agreements. Cecilia Malmström, a former European Commissioner for Trade, claimed that the EU will

use “trade agreements and trade preference programmes as levers to promote, around the world, values like sustainable development human rights” (Malmström 2015, 5).

The use of market power can be found in the EU partnership relations with Canada. The *Comprehensive Economic and Trade Agreement* (CETA) with Canada has a significant linkage with the *Strategic Partnership Agreement between the European Union and Its Member States, of the One Part, and Canada, of the Other Part* (EU-Canada SPA). Based on the EU-Canada SPA, the CETA will be suspended if a violation of fundamental values and norms occurs. By including such linkage, there will be a pressure to the third countries to follow the conditionality. The suspending of the economic agreements have negative effects on actual trade relationships, which may be a risk to the domestic economy of the third country. Such linkages cannot be found between the EU-Japan SPA and the EU-Japan EPA.

During the negotiation, there was one significant disagreement between the EU and Japan: the introduction of an essential elements clause, which is “an EU-demanded clause that allows for the suspension of the agreement should a partner violate human rights” (D’Ambrogio 2019, 4). This is the key clause to promote a market power, which will force the third countries to make sure to follow the conditionality of values and norms. An essential elements clause was intended to suspend or terminate the EU-Japan EPA, “if a serious violation of human rights or other essential elements in political agreements or conditionalities of the economic agreement occurs” (Nakanishi 2019, 14). This was denied to be included in the EU-Japan EPA by Japan. The difference over the legal systems, the existence of the death penalty in Japan was one of the reasons for the denial. As a result, as Nakanishi claimed, the EU-Japan SPA can be suspended if there be a significant violation, but there is no such effect on the EU-Japan EPA.

The strategy of the EU to conclude both an economic agreement and a strategic agreement with partners have a potential for the EU to benefit in international affairs. That was also expected with the partnership with Japan. Although many observations argued that the EU-Japan partnership agreements will bring the relationship between the EU and Japan to “reach its full potential”, as a result, the influence the EU can make through a market power toward Japan is limited (D’Ambrogio 2019, 5). The failure to introduce an essential elements clause in the EU-Japan EPA lost the potential of the partnership agreements to benefit the EU.

The EU-Japan Partnership Agreements as Part of Structural Foreign Policy

Considering the EU-Japan SPA and the EU-Japan EPA as relational foreign policy, “that seeks to influence the attitude and behaviour of other actors as well as the relations with and between other actors”, toward Japan, the agreements lost the potential the EU was expecting (Keukeleire and Delreux 2014, 27). As a relational foreign policy with full potential, the set of an economic agreement and a strategic agreement is expected to pressure a partner to follow the conditionality based on fundamental values and norms. In a short term, the lack of an essential elements clause in the EU-Japan EPA can be seen as a failure. However, as Joseph Nye, Jr. said, “[a] foreign policy should be judged not only by specific actions, but also by how a pattern of actions shapes the environment of world politics” (Nye 2020). Although the EU-Japan partnership agreements has no full potential for the EU to influence Japan, it still has a role in the future development of the relationship



between the EU and Japan. The relevance of the agreements should be judged also with how it affects relationship in a broader view.

The EU still has a chance to make Japan a suitable partner. As an international actor, the EU focuses not only on shaping mutual relationships, but also, or even more, on influencing developments and changes abroad, since the EU prefers external environment to be favorable for itself. To do so, the EU uses structural foreign policy.

Structural foreign policy is a type of foreign policy that “tries to shape and influence political, legal, economic, social and other roles of the game in other parts of the world” (Keukeleire and Delreux 2015, 44). Unlike relational foreign policy which only “seeks to influence the attitude and behaviour of other actors” (Keukeleire and Delreux 2014, 27), structural foreign policy ambitiously influences “the *structures* that determines how other actors behave” (Ibid.). As Stephan Keukeleire explained, it is “structural” foreign policy, since the promotion of structural change in the longer term in the external environment is aimed (Keukeleire 1999, 472).

There are two objectives in structural foreign policy: shaping or influencing structures and producing its sustainable effects. The first objective is, as mentioned above, shaping or influencing structures in the external environment. The definition of structure here is not limited to so-called “sectors” such as political, legal, economic, social, or security. It also consists of organizing principles, institutions, and norms that lay operational with a complex interrelation of formal and informal institutions and norms (Keukeleire and Delreux 2014, 28). Structures are also not limited to state-level but at various levels such as individual, societal, regional, etc. The second objective aims not just “simply to shape or influence structures” (Ibid., 29). With both material and immaterial factors, the structural foreign policy seeks to make shaped or influenced structures to develop itself an enduring character, which operates without any further external influence. Material factors refer to functional institutions and mechanisms based on organized principles, and immaterial factors refer to functional institutions and mechanisms based on organized principles, and immaterial factors refer to “the extent to which the structures are seen as legitimate and are (or becoming) part of the belief system, culture or identity of the people concerned (population as well as elites)” (Ibid., 30). With these factors, the internalization of structures is aimed in the longer term. Especially immaterial factors are important since the sense of desire and legitimacy on shaped or influenced structures brings internalization deeper than with senses on structures as something brought from external factors.

By interpreting the EU-Japan partnership agreements as a part of structural foreign policy, the chance for the EU to make Japan a suitable partner and to regain the lost potential of the partnership agreements can be found. As mentioned in the previous section, “[t]he EU has long been calling on Japan to place a moratorium on capital punishment” (Gaens 2017, 6). This attempt to influence Japan will not change in future, and the EU will continue, since the abolishment of capital punishment is a key goal for the EU to promote the protection of human rights universally. This promotion will be a long term foreign policy aiming to influence structure to change. To promote, the EU-Japan SPA can take a significant role. For the further development of the EU-Japan strategic partnership, the Joint Committee founded based on Article 42 of the EU-Japan SPA will “make recommendations and adopt decisions, where appropriate, and facilitate specific aspects of cooperation” (Article 42 of the EU-Japan SPA). This Joint Committee can be an official place for the EU to influence Japan to abolish capital punishment. The effectiveness seems stronger to the use of MPE with essential elements clause. However, it cannot bring a deep internalization since it is a regulatory power by an external actor. To

make an influence on Japan effectively, a sense of structural foreign policy is needed. To do so, the EU-Japan SPA can be placed in the centre of European foreign policy to make Japan a suitable partner for the EU.

Conclusion

Although the EU-Japan SPA and the EU-Japan EPA be significant for the development of the EU-Japan relationship, the lack of the linkage between the EU-Japan SPA and the EU-Japan EPA is undermining the potential as a foreign policy tool toward Japan for the EU. Without an essential elements clause in the EU-Japan EPA, the market power of the EU toward Japan is limited. To make Japan a suitable partner, the EU cannot use its market power without an essential elements clause in the EU-Japan EPA.

To use the EU-Japan partnership agreements effectively, the consideration that the partnership agreements are part of structural foreign policy to make Japan a suitable partner for the EU is useful. There is a chance for the EU-Japan SPA to be a significant foreign policy tool for the EU. The Joint Committee founded by the EU-Japan SPA has the potential to be an official place to negotiate and influence Japan to abolish capital punishment. It will be a tough path for the EU since 80% of the population in Japan considers the existence of capital punishment inevitable. However, without the EU-Japan SPA, there was no chance to have the Joint Committee which has the potential to be an effective place to conduct structural foreign policy. Moreover, the use of MPE cannot bring a deeper internalization of structure, since the regulatory tool brings the sense that the change was brought from external factors. Since then, structural foreign policy that can bring a deeper internalization is more effective. Since the EU has a foreign policy tool to realize it, there is no reason to not to use it.

Bibliography

“Joint Press Conference by H.E. Mr. Shinzo Abe, Prime Minister of Japan, H.E. Mr. Donald Tusk, President of the European Council, and H.E. Mr. Jean-Claude Juncker, President of the European Commission, Following the Signing of the Japan-European Union Economic Partnership Agreement and Japan- European Union Strategic Partnership Agreement.” Prime Minister of Japan and His Cabinet, 17 July, 2018, https://japan.kantei.go.jp/98_abe/statement/201807/_00003.html.

Albessard, Timothée. “The EU-Japan Partnership: Blooming Hope for the World Liberal Order?” Institute for a Greater Europe, 1 April, 2020, <https://www.institutegretereurope.com/single-post/2020/03/31/The-EU-Japan-partnership-blooming-hope-for-the-world-liberal-order>.

D’Ambrogio, Enrico. “The EU-Japan Strategic Partnership Agreement: A Framework to Promote Shared Values.” European Parliament Research Service, January, 2019.

Damro, Chad. “Market Power Europe.” *Journal of European Public Policy*, Vol. 19, No. 5, 2012: 682-99.

De Prado, César. “Towards a Substantial EU-Japan Partnership.” *European Foreign Affairs Review*, Vol. 22, No. 4, 2017: 435-54.

Gaens, Bart. “The EU-Japan Partnership: Stepping Stones for a Stronger Presence in Asia?” FIIA Briefing Paper 218, March, 2017.

Gilson, Julie. “The Strategic Partnership Agreement between the EU and Japan: The Pitfalls of Path Dependency?” *Journal of European Integration*, Vol. 38, No. 7, May, 2016: 791-806.

Hellendorff, Bruno. “Waiting for New Deliverables: Can the EU-Japan Strategic Partnership Measure Up to Global and Regional Challenges?” European Policy Centre, 10 April, 2018.

Hirano, Keiji. “EU Calls on Japan to Abolish the Death Penalty.” *The Japan Times*, 21 December, 2016, <https://www.japantimes.co.jp/news/2016/12/21/national/crime-legal/eu-calls-japan-abolish-death-penalty/#.Xs34ycBUvIU>.

Keukeleire, Stephan. “Onbekend, Onbemind en Onderschat: Het Structureel Buitenlands Beleid van de Europese Unie.” *Internationale Spectator*, Vol. 53, No. 9, September 1999: 471-5.

Keukeleire, Stephan, and Tom Delreux. “Competing Structural Powers and Challenges for the EU’s Structural Foreign Policy.” *Global Affairs*, Vol. 1, No. 1, 2015: 43-50.

Keukeleire, Stephan, and Tom Delreux. *The Foreign Policy of the European Union*. 2 nd ed. London: Palgrave Macmillan, 2014.

Malmström, Cecilia. Foreword by Cecilia Malmström to “Trade for All: Towards a More Responsible Trade and Investment Policy,” The European Union, 2015.

Murakami, Takakazu. “Over 80% Accept Death Penalty in Japan as ‘Inevitable’: Government Poll.” *The Mainichi*, 18 January, 2020, <https://mainichi.jp/english/articles/20200118/p2a/00m/0na/010000c>.

Nye, Joseph S. Jr. “What is a Moral Foreign Policy?” Project Syndicate, 4 March, 2020, <https://www.project-syndicate.org/commentary/how-to-judge-morality-of-foreign-policy-by-joseph-s-nye-2020-03>.

Takahashi, Shogo. “What is the Perception of the Death Penalty in Japan?” NHK, 13 July, 2018, <https://www3.nhk.or.jp/nhkworld/en/news/backstories/184/>.

Zamfir, Ionel. “The Death Penalty and the EU’s Fight against It.” European Parliamentary Research Service, February, 2019