

UDC 341

International law in ancient China: encounter of the suzerain-vassal system and European international law in the nineteenth century

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Abstract

China faced tremendous challenges in its international relations maintenance and development in 19th century. Eastern suzerain-vassal system, as the basis of China's foreign policy, had been challenged by European international law system during this period. To survive western colonialism and keep its leadership in East Asia, Chinese government struggled in dealing with more and more drastic collisions between the two different international systems: from resistance to forced response, from selective application to creative use. Even though eastern suzerain-vassal system was replaced by modern international law eventually, from 19th century to early 20th century, China tried its best to define the content of European international law in terms of the eastern suzerain-vassal system and used the European one to protect and maintain China's control over eastern system after making certain adjustments. The paper will introduce this encounter by addressing three different cases to show ancient China's effort to protect its interests and leadership in East Asia.

Keywords

Eastern suzerain-vassal system, European international law, conflict, limited use, self-interesting, diplomatic transformation, creative use.

Introduction

For thousands of years the eastern suzerain-vassal system, introduced by China and Chinese civilization, was the basis of international relations and community order in East Asia. It effectively governed the area until western international legal concepts returned to the Far East in the nineteenth century. Facing what is considered to be a challenge, the Government of late Qing Dynasty tried its best to protect the eastern international system and its own interests. Although the application of European international law was inevitable, it underwent a series of changes: from resistance to forced response, from selective application to creative use.

The Ryukyu Sailors case was an example showing how the Chinese Government began to use European principles of international law with regard to Chinese territory. The case made Chinese officials aware of the differences between the eastern and the western international systems. They also realized some of the difficulties in dealing with conflicts. Because Chinese officials lacked knowledge about western concepts of governance and territory, and also because of China's relaxed control of Taiwan as a "vassal area", China's po-

sition in the debate with Japan about the ownership of Taiwan was very passive. However, from that time forward, some Chinese officials were aware of the importance of European international law.

After the 1880s, Sino-Korean relations had been restored. In order to protect China's status as suzerain and survive the colonial invasion by Japan, China used western international legal concepts to transform its relations with Korea. The western international legal and eastern international systems were merged to create a mixed status for Korea; that is, as a vassal of China but an independent sovereign to other States. In constructing this order China relied increasingly on western international law to be accepted and protected by western States, even though its primary purpose was to preserve the traditional eastern international order.

The Sino-French War was another example to illustrate the Chinese use of western international law. During this period, China's use of western international law was more active and systematic. Gradually, officials and scholars, even the mass media, had gained optimistic confidence in western international law and believed that by using it effectively, China would be respected and protected by western States and successfully survive

colonialism. China actively complied with western international law during the Sino-French War, protecting French nationals in China's territory. But in the meantime, considering the real situation and interests of China, China's utilization of western international law gradually became more limited and selective later. The selective use was reflected by such conduct as quoting words out of context in order to pursue a specific purpose or reading without full comprehension. The Government only used the words and interpretations favoring itself.

In a word, western international law did not replace the eastern system abruptly. On the contrary, China tried to define the content of western international law in terms of the eastern suzerain-vassal system and used the western one to protect and maintain China's control over eastern system after making certain adjustments.

Unique legal system in ancient China: eastern suzerain-vassal system

The Qing Dynasty was the last imperial dynasty of China, ruling from 1644 to 1912. The Qing Dynasty built a set of relationships with other nations based uniquely on feudal hierarchy and

patriarchal conceptions. Unlike the modern western international relationship, the so-called eastern suzerain-vassal system basically was an eastern international community linked by Chinese civilization.¹ To the people of the Qing Dynasty, China was not merely a "nation" located in Asia; instead, it was the origin of an advanced civilization and center of the eastern world. It led to the prejudiced opinion that the Chinese people were superior to any other people. This opinion had an important influence on China's view of international relationships.

Before the nineteenth century the eastern suzerain-vassal system successfully governed international relations and community in and even beyond East Asia. But when western countries were gradually modernizing during eighteenth and nineteenth centuries, China did not receive concepts of becoming a modernized country or of modernized diplomatic ideas. China had no consciousness of the modern international community and international law at all.² The reason was that, basing itself on the suzerain-vassal

1 Junmei, X. (1999), 宗藩政治的瓦解及其对远东国际关系的影响 [*Breakdown of Suzerainty and Its Effects to Far East*], p. 42.

2 Zhilian, H. (1992), 亚洲的华夏秩序——中国与亚洲国家关系形态论 [*Chinese Order in Asia – Relations between China and Asia*], p. 2.

system, China did not consider other States as equal to China and therefore could not accept modern international legal principles such as equality or establish modern diplomatic relations with other States.

After the Industrial Revolution, western States grew stronger and colonized Asian States. Inevitably, there was an unprecedented encounter and blending of the western international legal system and eastern suzerain-vassal system.

Introduction of eastern suzerain-vassal system

The eastern suzerain-vassal system has a strict hierarchical structure, from emperor to aristocracy, then to officials, based on administrative provinces. Other States, as vassals, had the lowest position.

The *Record of Qing History* has clear records about vassal States. Korea, Vietnam, Myanmar, Siam, Ryukyu, and many other States were vassals of the Qing. Even western States (e.g., The Netherlands) were considered to be vassals in early Qing (17th century); but in the middle Qing (18th century), official Administrative Law excluded western States from the list of Qing vassals. There was no strict standard to de-

cide whether a State was vassal or not. The reach of Qing vassals was flexible and depended on the scope of Qing ability to exercise control at a specific time.

Generally, there were three layers of the system: the first layer consisted of States which shared the same civilization with China and were culturally governed by the ancient Chinese Empire, such as Korea, Vietnam, and Japan; the second layer was the Asian Inland, consisting of nomads and tribes, which shared little civilization with China but were influenced by it and had long-standing relations with China, good and bad; the third layer included States thousands miles away, such as South Asia and Europe.³ In a word, there existed "sequences" among those States. Those States that were near China geographically and shared civilization were the vassals having the obligation to present tribute. The Chinese Emperor appointed their kings in an imperial order; they enjoyed protection from China and had the closest relations with China. Other States only had commercial relations with China and China had no actual control of their appointment of Kings, even though China sometimes would appoint them unilat-

³ Wenzhao, T. (1992), *费正清集* [Collect of Fei Zhengqing], p. 5.

erally.⁴ In those first layer vassals, there was also a "sequence". To appoint kings of vassals, China would send officials to those close vassals and would only do it documentarily when the vassal had less close relationship with China.⁵

As mentioned above, the lines of different layers were not rigidly defined. Sometimes, in order to highlight its highest position in this system, the Qing government was willing to include those States that only had commercial relations into the category of vassals as well and considered merchants from those States as tributaries. But on the other hand, Qing had clear knowledge of the range of its power, so the Qing did not pursue real suzerain control over those foreign States, even though sometimes they were looked upon as vassals.⁶

A typical tributary relationship in the eastern suzerain-vassal system was as follows: economic relations consisted of tributes and rewards; only those who came to Qing to present tributes had the right to transact with Chinese merchants;

military relations were mutual military aid and protection; political relations were quite unique, that Qing did not interfere with vassals' domestic and foreign affairs except for the appointment of kings in an imperial order (this appointment was not the decision and choice of king, but only gave the king who had been chosen the legal power as a king and showed Qing's recognition of this power).

In fact, under the suzerain-vassal system, commercial transactions were the basic part of Qing foreign relations. Except for commercial transactions, Qing did not have ordinary diplomatic foreign relations with western States. The Qing held the view that foreigners, even in western world, needed merchandise such as tea, china, silk, and so on, but at the same time the Chinese people were autarchical. Some officials even thought that other countries' taxation, financial resources, and even economic arteries were relying on the Qing. Thus, the Qing did not have to establish diplomatic relations with western States.

However, the commercial transactions were not like modern ones; they were guided and controlled by the tributary system.⁷ Through this system, other

4 ShiFu, Q. (1959), *清代的外交机关* [*Foreign Organizations in Qing Dynasty*], p. 13.

5 Yun, T. (1764), *大清会典* [*Record of Qing*], Vol. 56, p. 1.

6 Zhitian, L. (1999), *后现代主义与中国研究: "怀柔远人"的史学启示* [*Postmodernism and China*], p. 111.

7 Qiya, X. (1988), *论鸦片战争前清政府的对外贸易* [*Foreign Trade Before Opium War*], p. 80.

countries obtained economic benefits but to the Qing government, its suzerain control over other countries was important – its status as "center of the world" – rather than any economic profits. For instance, in seventeenth century, the Netherlands wanted to obtain the right of free trade from the Qing government after the Dutch successfully occupied Indonesia, but the Qing government ignored the request. In the eighteenth century, Britain also wanted to gain free trade rights and establish solid commercial relationships with the Qing, but the Qing government refused and said that Britain did not have to send envoys to Qing to present tributes because the distances were so great. The Qing Government did not know about Britain's development after the Industrial Revolution and also did not realize the importance of free trade with other States; it still considered China to be the most powerful country in the world that need not depend on other States.⁸

The eastern suzerain-vassal system created by China dated from relations between the emperor and feudal princes thousands of years ago. Even though the system developed from internal relations to international relations, its essential value did not change: mo-

narchical ethics and hierarchy. Thus, the equality of States did not exist under this system. Any country, if it wanted to establish relations with China, became a "vassal". They had to present tribute and their kings had to be appointed by the Chinese emperor. It is noteworthy that ancient China never had a strict boundary between vassals and non-vassals; its control of vassal States was highly flexible. Even in Chinese territory, some frontier areas were also called "vassal," which showed the flexibility of China's control of its territory and vassals. Taiwan was a good example. In the eastern part of Taiwan, the people there were subjected to tribes and had little connection with local government. The Government called that area a "vassal area". There was no taxation on the "vassal area", and they were only subjected to casual governance by the local government.

Collapse of the suzerain-vassal system

In the eastern suzerain-vassal system China controlled the world. There were no modern boundary lines between China and its vassals. This system was not a typical "international" system, but rather was a "no-neighbor-empire". In the meantime, even to typical vassal

⁸ Zhichun, W. (1879), *清朝柔远记* [*Qing Foreign Policy*], p. 170.

States, China did not interfere with their domestic and foreign affairs; hierarchy was enough. The Qing Government did not pursue governance over vassal States; instead, those vassal States voluntarily respected China as suzerain and also served as a natural military protective screen of China.

In contrast with the eastern system, the Treaty of Westphalia established the most important principles of western international law – sovereignty and equality, which indicated the birth of western international law. Also, religious beliefs, including freedom, equality, and democracy, played important roles in the development of western international law. Its most distinctive characteristic is that States have sovereignty and are independent international legal persons. Each State has a certain territory, population, independent government, and absolute sovereignty. As for the economy, after the Industrial Revolution, the western world developed *laissez faire* under capitalistic structures. There was no absolutely powerful State controlling others. To maintain stable international relations, western States adjusted them by balancing actual economic interests among States. Because of the balance and also because they needed more and more goods, capital, and markets to de-

velop, it was inevitable for western States to seek them outside of Europe, that is, to expand outward. Exploring overseas markets became their major activity, to compete with each other.

Finally European States came to the eastern world. The Opium War, known as the Anglo-Chinese War, begun in 1840, indicated a "formal" collision of the two totally different international systems: sovereign equality and hierarchical inclusion.⁹ However, this was not only a competition of different legal systems; it was also China's struggle to protect its sovereignty and integrity, and to fight against colonialism from western States. Before the Opium War, China was unwilling to give equal treatment to foreign States; after the war, it was foreign countries that did not want to treat China equally.¹⁰ Beginning in 1840, during and after several wars with the United Kingdom, France, Japan, Russia, and other countries, China was forced to sign many treaties with different countries requiring China to treat those countries "equally".

With more and more treaties being signed by China involuntarily as a

9 Zhitian, L. (1999), 后现代主义与中国研究: "怀柔远人"的史学启示 [Postmodernism and China], p. 105.

10 Yanxian, J. (1996), 中国近代史大纲 [China's Modern History], p. 9.

result of wars and after more areas surrounding China became the victims of colonialism; China's suzerain-vassals system was destroyed. In 1878 Britain conquered Afghanistan; in 1876, Uzbekistan became part of Russia; in 1861, Sikkim belonged to Britain; in 1865, Britain obtained control of large part of land in Bhutan; in 1851, Spain conquered the Philippines and Siam was protected by France; in 1862, Britain conquered Myanmar; 1863, France controlled Cambodia; in 1874, France required Vietnam to separate from China's suzerain-vassal relationship and then conquered Vietnam¹¹; in 1872, Ryukyu became a vassal of Japan and then became part of Japan in 1879; in 1876, Japan stop paying tribute to China; in 1876, Korea was forced to interrupt the suzerain-vassal relation with China by Japan. After a series of wars, China was not the "the center of the world" any longer and forced to give up most of its vassals; on the other hand, vassal States in the past became independent States or colonies controlled by western States. Finally, despite several struggles, China was forced to surrender many parts of its territory and territorial sea, independence of the administration

11 It led to the France-China War. Defeated by France, China was forced to recognize France's control of Vietnam and China's suzerain-vassal relation ended.

of justice, and customs powers to western States.

It was a lengthy period from the time when the Qing government came across western international law for the first time to the time when western international law destroyed and eventually replaced the eastern system. During the period, the Qing Government was struggling to protect its interests by retaining its traditional power in East Asia. To do so, officials were forced to study and use western international law when dealing with western States. They tried their best to reconcile these two different systems. Even though they finally failed, there were many cases illustrating their struggles during this period.

Case study: Ryukyu Sailor case – early conflict of these two systems

In 1864 the Chinese version of *The Elements of International Law* written by Henry Wheaton appeared; it had an impressive impact on the acceptance of western international law in Asia. The Qing government printed and distributed 300 copies for trading ports to use when dealing with foreign States.¹² In

12 同治朝筹办夷务始末 [*Foreign Policy in Tongzhi Dynasty*], 1836, Vol. 3, p. 1185.

the Ryukyu Sailor case, the Qing Government began to use international law from *The Elements of International Law*. But those officials held different views on these brand new concepts. The case witnessed the Government's developing use of and different attitudes towards western international law.

Background

In the early Qing, Taiwan became part of China. As mentioned above, part of Taiwan was called a "vassal area". In this area the Qing government did not determine the local government, and Taiwanese aborigines living there were not under effective control. They sometimes killed foreign sailors and merchants in this area.

The Rover Incident occurred in March 1867, when the American merchant ship *Rover* was wrecked off the coast of Taiwan. The United States Government wanted to persuade the governor-generals in Fujian and Zhejiang (Chinese provinces near Taiwan) to intervene and put pressure on the Qing authorities in Taiwan to resolve the issue. In response, the officials of Fujian stated that the Qing government had no control of those aborigines living in the "vassal area" and they were not Chinese people, thus Qing had no jurisdiction over the issue.¹³ The

American Consul in Fujian province replied that for two hundred years the Qing had never recognized its "vassal area" in Taiwan as an independent State and controlled the whole area by regulating commerce and some other conduct.¹⁴ The Qing central government also disagreed with the local governmental statement regarding jurisdiction by confirming that even the "vassal area" was controlled by Qing.

Although the Qing had absolute control of Taiwan, this control was flexible. A vassal people could be free from government control if they so wished. To the Qing Government, whether vassals were under Qing actual political control or not could not affect governmental ownership of Taiwan. "Citizens-vassal people" was an administrative hierarchy that only reflected different levels of influence by Chinese civilization rather than ownership.

By contrast, in western international law, effective governance is an important factor to constitute sovereignty. In the early 1870s the American Consul in Zhejiang province changed his mind and asserted that because local officials said those aborigines and their lands were

13 同治朝筹办夷务始末 [*Foreign Policy in Tongzhi Dynasty*], 1836, Vol. 5, p. 2107.

14 Jiamo, H. (1966), 美国与台湾: 一七八四至一八九五 [*United States and Taiwan: 1784-1895*], p. 213.

not under control of the Qing, the "vassal area" was not part of China. Encouraged by this assertion, Japan began to invade and occupy this part of Taiwan.

Rise of western international law in China

As mentioned above, after a series of wars the Qing signed many treaties with other countries. One was the *Sino-Japanese Friendship and Trade Treaty*. When negotiating, Chinese officials used *The Elements of International Law* to protect Chinese interests, so the treaty protected equal rights and respected territorial integrity and political independence of both countries. But Japan did not stop invading Taiwan despite the treaty.

On 18 October 1871 four ships started from Naha (Japanese city) to the Ryukyuan Kingdom. They were shipwrecked; one reached the eastern tip of Taiwan ("vassal area") and 54 sailors were killed there. Another ship reached the western part and was safe. The local government protected sailors and sent them to Ryukyu.

Japan thought this was a good reason to invade Taiwan. To achieve this, the Japanese government unilaterally established suzerain-vassal relations with

Ryukyu. Thus, Japan obtained justification to interfere with the case as the suzerain of Ryukyu. Then Japan threatened to invade Taiwan to solve the dispute. Japan adopted western international law concepts and insisted that the "vassal area" was actually *terra nullius*, so invasion and occupation was legal.

However, the eastern suzerain-vassal system recognized that Taiwan was part of China even if there was no effective governance. Because Chinese officials were gradually becoming familiar with western international law, some encouraged the Qing government to garrison the "vassal area" in order to establish effective control according to western international law.¹⁵ And the Qing government did so after Japan began to invade. But Japan still invaded the "vassal area" as revenge and even required Qing officials to cooperate.¹⁶

Qing officials refused to do so. In the Notes to Japan they declared that the Qing government had absolute territorial rights over Taiwan and governing power over all people in Taiwan according to western international law. To prove

15 Weiming, Z. (2011), *晚清中国对国际法的运用* [*Late Qing Use of International Law*], p. 31.

16 *同治朝筹办夷务始末* [*Foreign Policy in Tongzhi Dynasty*], 1836, Vol. 10, pp. 5149-5150.

this, the Qing government referred to the County Annals of Taiwan and found that even without real administrative control of "vassal area," local government continually regulated commerce of the whole Taiwan, controlling the supplement of salt and other important goods to the vassal people. What is more, Ryukyu was a vassal of the Qing rather than Japan, so the Qing government had exclusive jurisdiction over the case.

In addition, Japan's invasion, absent negotiating with and giving notice to the Qing Government, was also a violation of western international law. Japan violated its obligations under the *Sino-Japanese Friendship and Trade Treaty* to respect Qing's sovereignty and territorial integrity. Japan's purpose to invade Taiwan was not to resolve the case, but to obtain control over Taiwan and destroy Qing sovereignty. However, Japan ignored the Notes and refused to withdraw troops.

First-time use of international law – limited and self-interesting

This was the first time that Chinese officials used western international law to deal with international conflicts. On one hand, the Qing government began to enjoy the benefits of using west-

ern international law. First, the western world changed their views of the case after Qing officials sent the Notes clarifying Taiwan's status as part of Qing by sufficient evidences. Japan was at a disadvantage and lost some support. For example, Russia and Britain stopped selling warships to Japan.¹⁷ Second, the Qing government required other countries to remain neutral. The American Consul, Charles W. Le Gendre, and some officers directly participated in Japan's invasion. The Qing Government sent a Note to the United States, citing the *The Elements of International Law* and urged the American government to stop Le Gendre and stop leasing ships to Japan.¹⁸ Then American officers apprehended Le Gendre. After the continuous negotiations of Qing according to western international law, Britain, Spain, United States, and some other countries remained neutral.

On the other hand, even though the Qing required other countries to be neutral, the Qing government planned to buy warships and import technologies from them. In the view of Qing of-

17 Weiming, Z. (2011), 晚清中国对国际法的运用 [*Late Qing Use of International Law*], p. 39.

18 中美往来照会集 (1846-1931) [*Record of International Documents of United States and China (1846-1931)*], 2006, p. 126.

ficials, Japan had declared war, and so was bound by the international law of war; instead, China did not declare war against Japan and could seek help from other countries.¹⁹

Continuous use of international law during confrontation

When Japan refused to withdraw its troops, the Qing took several measures to end the confrontation according to western international law. First, the Taiwan local government managed to place the "vassal area" under control, made sure that no Ryukyu people were killed in that area, and, more importantly, changed its status as part of the Qing, which meant that people in that area started to pay taxes and were controlled by local government politically. At that time, both Japan and the Qing had punished aborigines who killed. However, Japan still refused to leave and insisted that part was a vassal of Japan. Second, the Qing continued to send several Notes to Japan to declare sovereignty and Japan's violations of its obligations under the *Sino-Japanese Friendship and Trade Treaty*. But Japan ignored all of them.

19 Weiming, Z. (2011), 晚清中国对国际法的运用 [*Late Qing Use of International Law*], p. 40.

However, because the Qing Government sent more troops and many Japanese soldiers were acclimatized, Japan was forced to think about withdrawal. Japan stated that it would not withdraw troops until the Qing paid their military expenditure.²⁰ The Qing Government refused. Four months after the Qing sent those Notes, Japan responded that Japan's purpose was to punish those aborigines rather than make an invasion,²¹ which was inconsistent with its acts in Taiwan.

First, the Qing refused to pay military expenditures. Japan was the one who had invaded Qing territory and deserved no payment at all. Second, the Qing was willing to resolve the conflict through arbitration according to western international law.²² Third, some Chinese held the view that Japan was required to protect the Chinese in Japan and their properties according to western international law.²³

During the confrontation, the Qing and Japan spent more than 40 days negotiating and debating over the issue of ownership of the "vassal area." As

20 Ibid. P. 41.

21 同治朝筹办夷务始末 [*Foreign Policy in Tongzhi Dynasty*], 1836, Vol. 10, p. 3761.

22 Weiming, Z. (2011), 晚清中国对国际法的运用 [*Late Qing Use of International Law*], p. 42.

23 Ibid.

mentioned above, in the eastern suzerain-vassal system, a "vassal area" belonged to the Qing; but Japan insisted on using western international law to justify its invasion, stating that the area was *terra nullius*. Thus, the Qing government tried to use the western system to justify its position, even though some officials rejected the notion that western international law could bind the Qing.

First, given that the Qing government set up counties in Taiwan and relocated more than 10,000 Chinese people to live there, the Qing had effectively governed Taiwan. The governance lasted for 200 years. During this period, other countries did not object to the situation, so they had implicitly recognized this ownership. Even though there was no government in the "vassal area", every county had specialized individuals to regulate the aborigines and also had the power to prosecute criminals there, even incidentally. This relaxed governance style was not unique in China; it reflected the way that the Qing governed its frontier areas and did not mean that the Qing totally gave up its sovereignty over those areas.

Second, the Qing Government realized that both the Qing and Japan were at fault. The Qing should have declared sovereignty and taken international responsibility when the *Rover* incident oc-

curred rather than avoiding international responsibility by stating that the "vassal area" was not part of the Qing. Japan was at fault by invading Qing territory and violating its obligations under the treaty. The Qing should have taken the responsibility to punish the murderers in that incident. But Japan punished them by itself, so the Qing could have reimbursed their expenses with regard to the punishment. But Japan's military expenditures were not reasonable, so the Qing refused to pay.

The problem was finally resolved after negotiations and mediated by Britain according to western international law. The *Beijing Agreement* was signed in 1874. Japan withdrew its troops; China paid Japan 400,000 taels of silver for the costs of building houses and roads and punishing aborigines and paid 100,000 taels of silver to Ryukyu as compensation for the deaths of the seamen.

Brief summary: challenges to the suzerain-vassal system

China benefited from the suzerain-vassal system for thousands of years. However, after China opened its door to the world of the nineteenth century, it witnessed dramatic changes in economic and political structures all over the world and was forced to recognize and use the modern western version of international

law. As shown by the Ryukyu Sailors case, when the Qing government lacked sufficient military force to deal with invasions from other countries, it used western international law as a tool to restrain Japan's aggressive acts and obtain other countries' support.

When China realized the differences between western and eastern concepts of territory and vassals, the Government began to find an effective way to justify its relaxed control of "vassal area" according to western international law. However, China could not accept all concepts of western international law and abandon its own. At that time the Qing Government wanted to localize western international law; when it benefited the Qing, the Qing would use it and when it did not, the Qing would continue to use the suzerain-vassal system. An example is the Qing's different views with regard to the neutral status of other countries during a confrontation. On one hand, the Qing stopped other countries from providing warships to Japan; on the other hand, the Qing was willing to buy warships from those countries because officials thought that helping the aggrieved countries was real justice and neutrality.

At least this case introduced western international law into Chinese suzerain-vassal system and added some

western concepts of sovereignty to the traditional system. The Qing government realized that the relaxed governance of its territory would lead to misunderstandings about its sovereignty and ownership. During and after the Self-Strengthening Movement,²⁴ more concepts of western international law were introduced to the Qing and gradually transmuted into the Chinese traditional view of an international system, which entailed more intensive encounters between the eastern and western styles.

Case study: status of Korea debate – diplomatic transformation of the late Qing

Relation with Korea in the late Qing is a good illustration of the Qing use of modern international law in its own structures of traditional international relations. Interestingly, when dealing with Korea, the Qing Government used two different approaches: the Department of Minorities and Vassals insisted on tradi-

24 The Self-Strengthening Movement (1861–1895) was a period of institutional reforms initiated during the late Qing Dynasty following a series of military defeats and concessions to foreign powers. The Qing Government adopted Western military technology and armaments, establishing shipyards and arsenals, hiring foreign advisers to train Chinese artisans to manufacture such wares in China.

tional etiquette and the Ministry of Foreign Affairs focused on modern ways acceptable to western States.²⁵ These two methods were not mutually exclusive. After a series of wars with western States, the Qing began to establish diplomatic relations with western States based on treaties and modern western international law; in the meantime, the Qing continued to deal with the States surrounding China based on the eastern suzerain-vassal system, which was called "One Diplomacy, Two Systems".²⁶

Cooperation and conflicts of two diplomatic systems

In 1871 the Qing and Japan signed a peace treaty recognizing the equal sovereignty of one other. Japan ceased to be a vassal of the Qing and began to intervene in Korean affairs. When Japan asked Qing officials whether the Qing governed Korea, the Qing responded that Qing was not governing Korea and would not intervene in Korea if Korea continued to respect the Qing as its suzerain and presented tribute

in a timely manner. Believing in *pacta sunt servanda*, the Qing thought Japan would not invade Korea after signing the treaty, which provided that those two States should respect the territorial integrity and political independence of each other.

In 1875 Japanese forces attacked Korea. The Qing Government condemned Japan's violation of treaty by invading the Qing vassal. Later Japan expressed its willingness to establish peaceful relation with Korea.²⁷ At this point, the Ministry of Foreign Affairs would not intervene because the traditional system governed Sino-Korean relations. The reason was that, as a vassal of the Qing, Korea had autonomous powers to deal with foreign affairs and decide whether to establish peaceful relations with Japan. However, Japan knowingly misunderstood the Qing's attitudes towards Korea, insisting that the Qing's non-intervention showed Korea's independent status from the Qing, so that Japan's attack and invasion was not a violation of the peace treaty.

Admittedly, the Qing's concept of vassals was inconsistent with the western one. In the western system, if a State exercises its power to appoint and receive ambassadors, sign treaties, and so on, it is an independent State, regardless of whether it

25 Mali, R. (2002), 同治中兴: 中国保守主义的最后抵抗 (1862-1874) [*China's Last Resistance and Conservation (1862-1874)*], pp. 294-296.

26 Weiming, Z. (2011), 晚清中国对国际法的运用 [*Late Qing Use of International Law*], p. 88.

27 Shixue Hui, Z. (2000), 中日战争 [*Sino-Japan War*], pp. 292-295.

is influenced by other States. And as a suzerain State, it has the obligation and right to intervene in the vassal's domestic and foreign affairs. To Japan, the Qing expressly gave up its obligation as a suzerain, so it was not unreasonable to consider Korea to be an independent sovereign according to modern international law. It is a good illustration of the confusion caused by these two different international systems.

To clarify the confusion and strengthen the Qing's status as suzerain, different officials had different tools. Unlike the Department of Minorities and Vassals, which insisted on the traditional view, officials in Ministry of Foreign Affairs tried to incorporate modern international law in their arguments. First, Japan's violation of the treaty was a clear violation of international law. Second, they used natural law to justify the Qing's suzerain status because the suzerain-vassal relation with Korea had lasted for a long time and was recognized by the world. They tried to use natural logic to rebut the modern view of vassals in the eastern world.

Transformation of Qing suzerain power over Korea: use of modern international law

After 1876, not only Japan but also other western States tried to con-

trol Korea, commercially and politically. The Qing realized that the traditional suzerain-vassal system could not effectively adapt to the changing international situation. Rather than passively reacting, the Qing was willing to resolve the situation in advance.²⁸ The concept of balance of power came into Qing official minds. Also, gradually, Qing attitudes towards Korea changed from non-intervention to initiating intervention. The Qing Government used modern international law selectively to support and replace its traditional view.

The balance of power theory takes the view that no State can be strong enough to dominate all others. Originating in Europe, the concept is that when a State is stronger than other States, it will take advantage of this and attack weaker States, which provides an incentive for others to unite in a coalition to defend against the anticipated attack. When dealing with Korean situation, the Qing Government directed Korea to establish commercial relations with western States and obtain their support. Specifically, the Qing ordered Korea to open those trading ports that had been opened to Japan to western States, rather than opening

28 Tingyi, G. (1972), *清季中日韩关系史料* [Relations among China, Japan and Korea], p. 377.

other ports. Then, when there were conflicts with Japan, other western States had an interest to protect Korea.²⁹

The Qing used the concept of vassals in western international law to justify its intervention in Korea. When the Qing ordered Korea to establish commercial relations with western States, Qing officials knew this requirement was inconsistent with traditional suzerain-vassal system because it was a direct intervention in the vassal's foreign affairs. But the Qing had to do this in order to restrain Japan from destroying the Qing traditional relation with Korea. So Qing officials were eager to reconcile the western system with the eastern one.

First, the Qing used the western concept of suzerainty. The Qing changed its view with regard to non-intervention and sent officials to Korea to preside over negotiations and the conclusion of treaties, acting as a suzerain State according to western international law. When presiding over the negotiations, the Qing insisted upon its suzerain status with respect to Korea and the western States accepted this assertion. Second, in the name of presiding over the commercial negotiations, the Qing sent officials

to control Korean domestic and foreign affairs, especially to control military forces, and even sent troops to Korea to confront Japan. However, the Qing intervention only had the purpose to protect Korea and northeastern China against invasion and occupation by Japan. The Qing did not totally accept the western view of international relations and did not change Korea from an eastern style vassal to a western style colony.

Special status of Korea – mixture of two systems

To achieve these purposes, during the negotiations the Qing focused on Korean sovereignty and tried to come up with fair and equal agreements with western States. Those treaties exhibited some western international legal concepts. The exchange of diplomatic and consular representatives must be done in an equal manner. The obligation of providing assistance to ships in distress was included. Korean judicial sovereignty was respected and consular jurisdiction was limited. Foreign merchandise was subjected to Korean tariff regulations. Those treaties included the most-favored-nation principle and a declaration that they were subject to regulation by modern international law.

29 清季外交史料 [*Materials of Qing's history of diplomacy*], 1934, Vol. 16, p. 305.

The treaties included some traditional eastern views. As a suzerain State presiding over the negotiations, the Qing controlled the process and Chinese language prevailed when an inconsistent interpretation occurred. In annexes to the treaties, Korea declared itself as a vassal of the Qing but retained autonomy to govern its domestic and foreign affairs. But at the same time, other States should treat Korea fairly and equally and not interfere in the Qing suzerain-vassal relation with Korea.³⁰ The Qing also strengthened its suzerain-vassal tie with Korea by obtaining privileges in various fields, such as consular jurisdiction and preferential commercial treatment.

Influenced by the Qing view of the transformation of international relations, Korea gained a special status – vassal of the Qing within eastern suzerain-vassal system and an independent sovereign outside the system.

Brief summary

During the encounter between the eastern and western international systems, the Qing use of the western system was not uncommon. Rather, the use was sometimes creative. The western system and views failed to dominate, but were indispensable. It even led the eastern system to change and evolve with de-

³⁰ Ibid.

velopment of the international situation. Korea's special status was an invention of Qing officials after struggling to reconcile China with western international law. This mixture achieved a strange but stable balance in the situation of north-eastern Asia.

Case study: Sino-French War – use of international law based on eastern system

Before the Sino-French War, several important books on western international law were translated into Chinese and introduced to the Qing. More officials accepted international legal concepts. During the war, China showed an unprecedented willingness to use western international law as guidance in the negotiation of international affairs and military actions.

Validity of suzerain-vassal relationship between Qing and Vietnam

In the 1870s, France invaded the South of Vietnam, six provinces of which became a French colony. In 1873, requested by Vietnam, the Qing sent troops to aid Vietnam. The Qing Government refused in response to France's Note to

recognize France's rights in Vietnam. In 1874 Vietnam and France signed a peace treaty. The Qing declared that it refused to recognize the validity of the treaty and required France not to obstruct Qing rights in Vietnam as its suzerain.³¹

The treaty provided that Vietnam was an independent sovereign and France had the right to protect and care about its sovereignty. The Qing objected to the treaty not because France had the right to protect Vietnam; rather, the Qing disagreed because the treaty denied China's rights in Vietnam as suzerain State and completely excluded China's right to interfere. To the Qing government, the treaty's purpose was to end the suzerain-vassal relationship between the Qing and Vietnam by establishing Vietnam's independent sovereignty.³²

Just as the debate over Korea's status mentioned above, the arguments whether Vietnam was a Qing vassal became the critical issue. France used western international law to justify its position, declaring that the Qing never had actual and effective control over Vietnam. Qing officials disagreed. First, they could not accept that France directly imposed European inter-

national law on the eastern world without considering the different situations and structures.³³ Second, even though France insisted that Vietnam was an independent sovereign; they did not really respect Vietnam as a sovereign by conquering, occupying, and governing.³⁴ To Qing officials, the French aim was to make Vietnam its protected State and secure a colonial relationship with Vietnam.

Unfortunately, unlike the creation of the mixed status of Korea, the Qing Government's use of western international law to protect its control over its vassal State failed, and the failure eventually led to war.

Eve of the war – negotiation and violation of bilateral treaties

To resolve the problem peacefully, in 1882 the Qing tried to negotiate a treaty with France to share control over Vietnam. Specifically, in the treaty France promised not to invade Vietnam and the Qing promised to withdraw troops; also the treaty drew a line in Vietnam, south of which was under the control and pro-

31 Yanjiu Yuan, Z. (1983), *中法越南交涉档* [*Debates and Negotiations between China and France on Vietnam*], pp. 150-152.

32 Ibid. P. 170.

33 清光绪朝中法交涉史料卷四 [*Guangxu's Records of Relations between China and France*], 2011, Vol. 4, p. 321.

34 Weiming, Z. (2011), *晚清中国对国际法的运用* [*Late Qing Use of International Law*], p. 60.

tection of France. However, France, after signing the treaty, continued invading the northern part of Vietnam. The Qing had conflicts with French troops but was defeated several times. But the Qing did not give up trying to find a peaceful way to resolve the problem.

Then *Sino-French Agreement* was signed in 1884. The Qing promised to withdraw troops and France promised not to ask for reparations, stating that the two parties must propose and reach a detailed plan to reorganize Vietnam within three months. But only three days later, France sent military forces to the northern part of Vietnam (in Qing control, according to 1882 treaty), killed the Qing envoy, and forced the Qing to pay their military costs.

France repeatedly violated its obligations under the treaties. Its acts were inconsistent with western international law. Qing officials knew this and used western international law many times to negotiate with France and condemn French violations. At this time the Qing Government had unprecedented confidence in western international law.

Declaration of War and Protection of Foreign Nationals

Negotiations between France and the Qing broke down in mid-August

1884. French military forces attacked the Chinese fleet at Fuzhou and annihilated the Qing Fujian fleet. Now the Qing Government changed its tolerant attitudes and finally declared war against France.

The Qing had no knowledge of a declaration of war in western international law in the several wars before the Sino-French War. The Qing often fought against a State at some place or other and in the meantime was on friendly term with this State elsewhere. After western international law was introduced, Qing officials learned that a declaration of war was a procedural requirement for a war between States. The advantage was that when other States knew the identity of a warship, they should comply with the international law of war to be neutral and not to provide military supplies and military intelligence. On 26 August 1884 the Qing Emperor declared war and sent Notes to the envoys of other States. At the same time, the Qing criticized France for starting an undeclared war and violating international law.

The Qing assumed its obligations to protect French nationals in Qing territory according to western international law. The Qing Government promised to those French nationals that they could stay in the Qing and continue their daily life. The Qing would not deport them and

or confiscate their property unless they took part in the war against the Qing.³⁵

As mentioned above, the Qing declared war to make other States remain neutral. The Qing showed its optimistic and naïve confidence in other States at first. However, despite repeated objections, Macao provided land and food to the French military. Denmark and Britain supplied French forces with military intelligence. Russia and the United States expressed their non-cooperation.³⁶ In addition, the Qing Government realized that neutrality had disadvantages for the Qing itself to obtain international aid. They could not get the warships they had ordered in Germany when France blockaded Taiwan. When the Qing military forces were in battle on the mainland, Taiwan was in danger without military assistance from other States.

After realizing this dangerous situation, the Qing began to change their attitudes towards modern international law and stopped strictly complying with it. After Britain confessed that it had shipped military supplies to French forces, the Qing requested Britain to ship

ammunitions and weapons to it. In addition, the Qing sought military support from Germany secretly, and Germany did send troops disguised by commercial documents to China.³⁷

Brief summary

The Sino-French War is noteworthy because it was the first time that the Qing Government had voluntarily and systematically used western international law during a war. Before the war, only a few scholars and officials tried to do this and the use was limited to such narrow issues such as the rights of ambassadors or declarations of sovereignty.

During the war, the Qing Government pattern of action was to refer to western international law in order to condemn France's violations and then negotiate. The Qing had unprecedented confidence in western international law at first; because of this confidence, the Qing tried to replace its traditional concepts and actions in order to establish a mode of modern diplomacy. To survive worldwide colonialism,³⁸ the Qing was willing to behave according to the west-

35 清季外交史料 [*Materials of Qing's history of diplomacy*], 1934, Vol. 45, p. 820.

36 Yanjiu Yuan, Z. (1983), *中法越南交涉档* [*Debates and Negotiations between China and France on Vietnam*], pp. 150-152.

37 Weiming, Z. (2011), *晚清中国对国际法的运用* [*Late Qing Use of International Law*], p. 78.

38 After Japan annexed Ryukyu and forced it to depart from Qing control, most of the Qing vassals were in danger of being conquered. Britain, Russia, and Japan invaded States which surrounded the Qing.

ern system of international law accepted by western States.³⁹

Later the Qing use of modern international law was selective and evolving. The Qing complied with international law when this was advantageous. Officials selectively used western concepts of vassals and protected States to justify the eastern system, disregarding their different applications. When realizing that many States did not remain neutral after the Qing declared war against France, the Qing stopped strictly complying international law and also sought help from other countries.

This selective use of modern international law served the purpose of protecting the eastern system of international relations. It could hardly be used to prove that China in the nineteenth century was willing to place itself in the western system. When there was an inconsistency between western international law and the eastern suzerain-vassal system, the eastern system prevailed. For the Chinese people, the eastern system was the basis of their civilization and could not be altered totally. Admittedly, the Qing Government appreciated some parts of

modern international law, such as justice and rationality, and was willing to establish western-style international relations regulated by modern rules at a certain level. However, the Qing Government did not have blind faith in the western system. When the Qing insisted on its own international view, it also changed its optimistic attitudes towards modern international law after realizing that colonialism from the western world overrode its own international law.

Conclusion

No matter how late the Qing government used western international law, whether forced, or active, or even creatively, the western system was only treated as a tool for China's international contacts to achieve its self-interested diplomatic goals and survive colonialism in the nineteenth century. The eastern suzerain-vassal system had been the basis of Qing foreign policy.

The western system did not replace the eastern one abruptly; rather, it was combined with the eastern traditional system and experienced a lengthy period of mixture until it finally replaced eastern system and international law was unified globally because of the western world's comprehensive powerful strength.

France, after invading Vietnam, even threatened to invade Qing territory.

39 Tao, T. (2001), *国际法输入与晚清中国* [*Import of International Law in Late Qing*], p. 321.

Although different and competitive, both the eastern suzerain-vassal system and the modern western international legal system were based on those two worlds' own unique economic and political characteristics and had their own values. As a loose political link, the eastern suzerain-vassal relation was a useful enable the eastern world to develop stably for thousands of years. But the values of modern international law, such as freedom and equality, are more

suitable for modern economic and political structures. China's traditional system was not justification for its seclusion and, at the same time, the western world could not justify its colonialism by modern international law. It is difficult to say that this was a collision of two civilizations. Rather, it was an encounter and a competition of two systems, one of which would prove to be more suited to the modern world, economically and politically.

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Международное право в Древнем Китае:

коллизия восточной системы сюзерен-вассал и западной системы международного права в 19-м веке

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Аннотация

На протяжении тысяч лет восточная система сюзерен-вассал, представленная Китаем и китайской цивилизацией, была основой международных отношений и государственного строя в Восточной Азии. Данная территория эффективно регулировалась в рамках данной системы до тех пор, пока западные международные правовые понятия не вернулись на Дальний Восток в девятнадцатом веке. Сталкиваясь с тем, что считалось большим испытанием, правительство в последние годы существования династии Цин старалось изо всех сил защитить восточную международную систему и свои собственные интересы. Хотя и применение европейского международного права было неизбежно, оно претерпело ряд изменений: от сопротивления к вынужденным мерам, от избирательного применения к продуктивному использованию. В статье рассмотрено данное столкновение, обращаясь к трем различным случаям, которые наглядно демонстрируют усилия древнего Китая защитить свои интересы и лидерство в Восточной Азии.

Ключевые слова

Восточная система сюзерен-вассал, Европейское международное право, конфликт, ограниченное применение, корыстолюбивость, дипломатические преобразования, продуктивное использование.

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