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## ROOTS OF CHINESE DOCTRINE OF INTERNATIONAL LAW

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**Abstract:** *It is important for our Euro-Atlantic democracies is to understand the Chinese manner of thinking in such a way that we could professionally counter their permanent attempts to obtain advantages in international relations and to disrupt them to a certain extent. One method of how to understand China is to look for answers in China's long history. The article deals with history and logic of Chinese territorial expansion, isolation policy, or struggle with “non-Chinese” ideas. Finally, it explains development of Chinese concept of personality in international law.*

**Keywords:** *China, international relations, international law, Chinese history*

### INTRODUCTION

Napoleon Bonaparte seems to have said that “China is a sleeping giant; let him sleep, for when he wakes he will move the world.” This has undoubtedly happened. China is the second largest economy in the world and it does not hide its ambition to overtake the United States in this respect. China has been shaking the world through its approach to international relations and international law, which democratic countries of the international community often find as non-standard. On the other hand, China has confirmed its respect for international standards; but in one breath, it adds “in return for non-meddling in the Chinese internal affairs.” What is important in this respect for our Euro-Atlantic democracies is to understand the Chinese manner of thinking in such a way that we could professionally counter their permanent attempts to obtain advantages in international relations and to disrupt them to a certain extent. One method of how to understand China is to look for answers in China's long history, namely the history of the development of its doctrine of international relations and international law.

### I. TERRITORIAL EXPANSION

Although China was part of the international community since the beginning of half-legendary Chinese state formations in the 3<sup>rd</sup> century B.C., the first more detailed documents showing its doctrine of international law belong to the 2<sup>nd</sup> century B.C. under the rule of Emperor Wudi from the historically longest governing Chinese dynasty Han. His empire spread from the North Korea to the Middle Asia; his main slogan was “defence and trade”. The first step in the Chinese defence strategy was exploration of the neighbouring countries. For that purpose, the Emperor established an exploring mission led by his envoy

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Zhang Qian. In about 138 B.C. Zhang Qian, upon the Emperor's request, forwarded west-bound not knowing what destination he was to reach and whether he would have a chance to return back. The Emperor's court allegedly provided about one hundred volunteers to assist and defend him. In about 125 B.C., after a rather stressful journey, Zhang Qian returned back to the Emperor's court to inform the Emperor that there were significant civilizations in the West, which may be open to commence business relations with China.<sup>1</sup> Zhang Qian's journey was in fact a circle: he crossed Pamir in the North and got to Fergana in the territory of today's Uzbekistan. Returning to the capital city of the Empire – Han Chang'an – he moved across the North-East edge of Tibetan Plateau and across the today's borders of provinces Qinghai and Gansu in the North-West China.<sup>2</sup> Considering business Zhang Qian's expeditions formed the basis of the emerging Silk Road.<sup>3</sup> Considering the defence perspective, there was a requirement established that control should be taken over non-Chinese territories bordering China so that appropriate "buffer zones" against any potential attacks could be formed, and also Chinese trading caravans could be protected when moving along the Silk Road. In 59 B.C., there was the Protectorate General of Western Regions established approximately on the area of the Eastern Territory, i.e., today's Xinjiang Autonomous Region of the People's Republic of China.

The method of "buffer zones" became a popular mode of the protection of the Chinese mainland borders although China could afford such protection only when it managed sufficient diplomatic and military powers for that purpose. The most significant deployment of such strategies was used under the Tang Dynasty; in the second half of 7<sup>th</sup> century, the Chinese mainland borders were protected in all cardinal directions by six protectorates general and four protectorates.<sup>4</sup> The difference between "protectorate" and "protectorate general" was only formal and was derived from a person in the head of the territory. If that person was of imperial blood, he had to enjoy a higher title.<sup>5</sup> China uses the method of buffer zones even today although to the limited extent. There are two Autonomous Regions of the People's Republic of China: Tibet and Xinjiang.

As for Tibet, China has always considered it very important to have control over that territory. Since the formation of the Tibet State in the 7<sup>th</sup> century there has been rivalry between the two countries. Emperor Tang Emperor Taizong tried to mitigate the tension via marriage of the daughter of his cousin Wencheng with Tibet King in 647. It was an example of the Austrian policy *bella gerunt alii, Austria nubit* in the Chinese layout. The Chinese wedding policy did not count on sending direct relatives as brides to barbarians. On the other hand, and in consideration of family relations, a chosen bride could have been formally assigned the status of Princess. Unlike the Austrian model, there was another objective in addition to preserve peace, namely to spread cultural and ideological influence upon neighbours, i.e., their sinicization. Wencheng was accompanied by a thou-

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<sup>1</sup> LOEWE, M. "Zhang Qian 張騫". *A Biographical Dictionary of the Qin, Former Han, and Xin Periods (220 BC – AD 24)*. Leiden: Koninklijke Brill, 2000.

<sup>2</sup> WATSON, B. *Records of the Grand Historian of China. Han Dynasty II*. New York: Columbia University Press, 1993.

<sup>3</sup> WOOD, F. *The Silk Road. Two Thousand Years in the Heart of Asia*. Berkeley (CA): University of California Press, 2004.

<sup>4</sup> ROUX, J. P. *Dějiny Střední Asie. [History of the Middle Asia]*. Praha: Lidové noviny, 2007.

<sup>5</sup> TOMÁŠEK, M. *Právo na Hedvábné cestě. [Law on the Silk Road]*. Praha: Karolinum, 2022.

sand of various specialist, artisans, scientists, medical doctors, and Buddhist monks. Immediately after the wedding the Queen started to bring up members of her Tibetan environment. It cannot be denied, simplistically said, that the physical substance of Tibetan culture is essentially based upon old Chinese culture: house construction, its basic equipment such as furniture or carpets, external statues, silk, tea, some crop-plants, natural therapy, but also literature, folk literature, etc. The Indian-Nepal origin applies rather to the superstructure: jewellery, writing, some Buddhist and folk literature. The King's wife brought to Tibet Buddhist statues and literature. Tibetan Vajrayāna Buddhism is a combination of Chinese Mahayana Buddhism and that of South Theravāda, improved with ancient Tibetan tradition. What was not sinicized under the Tang Dynasty was completed under the Ming Dynasty. Even the Dalai-Lama's ceremonial gown was inspired by a Ming official's clothing. Although the Chinese wedding policy did not prevent all conflicts it substantially contributed to inconspicuous sinicization of other territories the population of which happily abandoned their traditions. Manchu people even abandoned their own language in order to become more Confucian than Confucius himself.

The rivalry between China and Tibet resumed in the 8<sup>th</sup> century. In 783 a peace agreement between China and Tibet was signed; its purpose was to define the borders and to confirm the Tibetan claim to part of the Gansu Province.<sup>6</sup> The following period was also conducted in the spirit of negotiations and military attacks until another peace agreement between Tibet and China in 821. The main point of that agreement was mutual reassurance of one another of the friendship between both countries and repeated confirmation of their agreement from 783 regarding their borders.<sup>7</sup> The text of the agreement from 821 was carved into three stone steles. One of them was placed in front of the Jokhang Cathedral in Lhasa; others were located in Chang'an and at the Chinese-Tibetan border. The Lhasa stele, raised in 822, has survived until today and has been recognized by both Tibetan and Chinese historians as a valid historical document. Tibet was again attached to China in 13<sup>th</sup> and 14<sup>th</sup> centuries by Mongolians. Then, after several minor events including a relatively short period of independence, Tibet again became part of China in the 17<sup>th</sup> century under the Qing Dynasty; it existed as an autonomous part of the Chinese Empire until its fall in 1911. The Chinese Republic intended to reassume Tibet back; the Chinese Constitution even included provisions regarding parliamentary representation of Tibet,<sup>8</sup> but it never had sufficient potency to gain military control over Tibet. Communist China was successful in that respect, which occupied Tibet in 1950 and formed in its territory the Autonomous Region of the People's Republic of China.

For a limited time, Tibet was acquired for China by non-Chinese dynasties, namely the Mongolian Dynasty Yuan and Manchurian Dynasty Qing. In addition to Tibet, other strategically important territories, namely East Turkistan or Xinjiang were taken for China by the Manchurian Dynasty Qing through its victory over Dzungar Khanate in 1756, following the genocide of the population and declaring the territory part of the Chinese

<sup>6</sup> CABLE, M. et al. *The Challenge of Central Asia: a brief survey of Tibet and its border lands, Mongolia, north-west Kan-su, Chinese Turkistan, and Russian Central Asia*. London – New York City: World Dominion Press, 1929.

<sup>7</sup> BECKWITH, C. I. *The Tibetan Empire in Central Asia: A History of the Struggle for Great Power among Tibetans, Turks, Arabs, and Chinese during the Early Middle Ages*. Princeton, (NJ): Princeton University Press, 1993.

<sup>8</sup> TOMÁŠEK, M. *Právní systémy Dálného východu, II. [Legal Systems of the Far East II]*. Praha: Karolinum, 2019.

Empire.<sup>9</sup> The territory was called Xinjiang, meaning “The New Border”. Today, Xinjiang is an Autonomous Region of the People’s Republic of China, and considered as a component part of China as is Tibet or Taiwan. It should be noted that Taiwan was not always part of China as one may assume regarding various Chinese declarations in that respect. When the Ming Dynasty forbade sea trading in 1371 illegal traders moved to the island of no-one – Taiwan. That was why the island was considered by main-land Chinese as the island of pirates and smugglers.<sup>10</sup> Originally, Taiwan was not part of the Chinese Empire, but at the end, paradoxically, it became the part due to various interventions against pirates. The island went through a rather complicated history in the 17<sup>th</sup> century when Holland and Spain competed with each other to get the territory. The Dutch winner was subsequently ejected from the island by Chinese immigrants – supporters of the Ming Dynasty were gradually driven out from mainland China after 1644 by the new non-Chinese Dynasty Qing. In 1683 the Qing undertook a massive invasion into Taiwan and annexed it to the Chinese Empire. Taiwan was part of China until 1895, when China lost the war with Japan and had to cede the island to it. Taiwan again became part of China after the defeat of Japan in WWII and remained such *de facto* and *de iure* for another four years. In 1949, as three hundred years earlier, Taiwan was the destination for all those who disagreed with the regime in the mainland China. From the historical perspective, the invasion of the People’s Republic of China into Taiwan is nothing unprecedented.

Unlike the doctrines of European powers, the Chinese doctrine of territorial expansion did not include the formation of colonies overseas although China had ideal chances to do so earlier than Spain or Portugal. Between 1405 and 1433, fleet-admiral Zheng He led seven expeditions during which China established business and diplomatic contacts with more than thirty countries. Zheng He reached India and the African East coast where Chinese culture left deep traces.<sup>11</sup> Transactions in Muslim countries were heavily supported by Zheng He’s Muslim origin and religion. His influence was so strong that, for example, Malaysia, Indonesia, Ceylon or South India became dependent on China for several decades. The position of China in those regions was strengthened and the strong impact of Chinese culture can be seen in Malaysia or Singapore even today.<sup>12</sup> Each of Zheng He’s voyages was a demonstration of Chinese sea fleets and of the technical excellence of their ships. Examples were, in addition to the Chinese invention of compass, so-called porous rudder made of hard teak wood in order to better resist heavy sea and other sea dangers. There were six-angle holes in the keel rudder. When the rudder bumped into a strong water flow water went through the holes and the pressure on the rudder was minimized and the ship was manageable and easy to manoeuvre. The porous rudder was another Chinese invention (after compass) imitated by European ship builders. Some Chinese

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<sup>9</sup> PERDUE, P. C. *China Marches West: The Qing Conquest of Central Asia*. Cambridge (MA): Harvard University Press, 2005.

<sup>10</sup> TAI PAO-TSUN. *The Concise History of Taiwan*. Nantou City: Taiwan Historica, 2007.

<sup>11</sup> YING LIU, CHEN ZHONGPING, BLUE, G. (eds.). *Zhen He’s Maritime Voyages (1405–1433) and China’s Relations with the Indian Ocean World a Multilingual Bibliography*. Leiden: Koninklijke Brill, 2014.

<sup>12</sup> PEREIRA, C. J. Zheng He and the African Horizon: An Investigative Study into the Chinese Geography of Early Fifteenth-Century Eastern Africa. In: Sien Chia-lin – Sally K. Church (eds.). *Zheng He and the Afro-Asian World*. Malakka: Perbadanan Muzium, 2012.

ships had their underdeck space subdivided up to thirteen parts; if the hull was broken water burst into just one part. When such ship was repaired only the damaged part was emptied and the freight was returned back after the repair to the respective part without the need to unload the whole ship. This mode of repair of ships was launched in Europe as late as on the turn of the 18<sup>th</sup> and 19<sup>th</sup> centuries. For example, the Brits were amazed with special pumps used by Chinese to drain the water from damaged sectors of a ship.<sup>13</sup> Many historical analyses agree in their conclusions that voyages pursued much later by Christopher Columbus or Vasco da Gama would have been much harder if the builders of their ships had been unaware of Chinese ships and their technology.

Zheng He's expeditions terminated after his death in 1433 and the Chinese Government failed to make use of his experience and findings. Just on the contrary, the Admiral's notes and diligently made sea maps were destroyed in 1479 as a result of the Chinese isolation policy. Zheng He's significance was recognized much later. Today, he is considered as a great figure in the Chinese history and belongs among those who inspired the sea branch of the New Silk Road.<sup>14</sup> It is interesting to observe that today's Chinese investments in Africa go to those regions visited hundreds of years ago by Zheng He.

## II. ISOLATION POLICY

The creation of buffer zones on the borders resulted from another part of the Chinese doctrine of international policy and international law, namely the isolation policy. The isolation policy was based on two factors: fear regarding potential external danger, and fear that “non-Chinese thoughts might endanger the internal balance of the country. The Great Wall of China became a symbol of the isolation policy. Legendary tyrant Qin Shi Huangdi is considered its founder; he was the Qin Dynasty emperor who joined, in the 3<sup>rd</sup> century B.C., the former defensive walls of small states he had defeated in order to secure a defence against offensive neighbouring tribes.<sup>15</sup> However, for most of the Wall's history it was located inside the Empire borders. In the beginning of the reign of the Ming Dynasty, Emperor Hungwu had the northern border guarded by so-called eight outer garrisons as a vanguard between the steppe and internal fortresses.<sup>16</sup> Those became the basis of the Ming Great Wall of China after 1372. The Wall spanned the Gobi Desert in the South-West and the Bohai Gulf in the East. Eight and half thousand kilometres of the Great Wall was extended in the East in 1442 with the Liaodong wall at the Liaodong peninsula. That wall was simpler in its construction in comparison with the Great Wall; it was constructed by pouring mud between parallel rows of stakes, with moats dug on both sides, with some parts made of stones and tiles.

The Great Wall of China helped the isolation of China on the mainland. When the Chinese Empire spread up to the seashore, particularly in the 10<sup>th</sup> century under the Song

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<sup>13</sup> TOMÁŠEK, M. Námořní Čínská zeď a její hradby. [Sea Chinese Wall and Its Fencing]. *Dálný východ*. 2019, No. 2.

<sup>14</sup> TOMÁŠEK, M. *Právo na Hedvábné cestě*.

<sup>15</sup> POKORA, T. *Čchin Š'chuang-ti*. Praha: Orbis, 1967.

<sup>16</sup> DARDESS, J. W. *Ming China, 1368–1644: A Concise History of a Resilient Empire*. Lanham (MD): Rowman & Littlefield, 2012.

Dynasty, the “Chinese Sea Wall” started to be constructed.<sup>17</sup> At that time, the former sea-wall was in the hands of non-Chinese tribes. In 971 there was a law adopted to govern maritime trading; the Emperor appointed two officials to supervise maritime trading in Canton and, in fact, thereby establishing the Supervisorates of Maritime Trade and Shipping.<sup>18</sup> The control over maritime shipping and trade was then consistently pursued by all Chinese dynasties. The rather paranoid Ming Dynasty prohibited maritime trade in its full extent in 1371. The Ming Emperor Hungwu had the defence of Northern seas strengthened in connection with the maritime trade prohibition, and he believed that the measures taken would be sufficient for the protection of China.<sup>19</sup>

Maritime trade prohibition was lifted in 1683 by the Qing Dynasty whose doctrine of maritime law can be described as relatively open. The Dynasty not only opened maritime customs offices between 1683 and 1684, but also officially supported maritime trade under the slogan “get open to the ocean”.<sup>20</sup> However, the government concentrated business activities in Macao and Canton. Primarily the concentration of sea trade in Canton gave rise to conflicts between China and Great Britain culminating in the military defeat of China in the Opium War of 1841.

British trading with China was, as was the case of all other foreign countries, subject to the so-called Cantonese system which became a Chinese instrument of controlling the trade with the West between 1757 and 1842. The objective was to concentrate all foreign trade into the Port of Canton upon the principle “trading through the sole port”. The whole foreign trade went through the guild of thirteen Chinese trading companies chosen by the Qing government for that purpose.<sup>21</sup> The guild designated according to the Cantonese pronunciation as *cohong* obtained an import-export monopoly regarding foreigners in 1725. The official status of a trade controller was assigned to Canton by an imperial decree in 1760.<sup>22</sup> Every Western ship was taken over by one Chinese company which became its business guarantor, i.e., a supervisor. In addition to this horizontal control there was a vertical supervision pursued by the Cantonese superintendent of maritime customs. Foreigners knew the official who was usually appointed from amongst the narrower imperial court members in Beijing, as *hoppo*.<sup>23</sup> Besides the control over the circulation of goods, certain restrictions were imposed upon the entry of Europeans into China. European traders were not allowed to bring women into China and Chinese people were not allowed to teach the Chinese language to foreigners. Violation of the latter ban led even to execution of some Chinese.

<sup>17</sup> TOMÁŠEK, M. *Námořní Čínská zeď a její hradby*. [Sea Chinese Wall and Its Fencing].

<sup>18</sup> SCHOTTENHAMMER, A. *China's Rise and Retreat as a Maritime Power*. In: Robert J. Antony – Angela Schottenhammer (eds.). *Beyond the Silk Roads – New Discourses on China's Role in East Asian Maritime History*. Wiesbaden: Harrassowitz Verlag, 2017.

<sup>19</sup> WANG YUAN-KANG. Managing Regional Hegemony in Historical Asia: The Case of Early Ming China. *The Chinese Journal of International Politics*. 2012, No. 5.

<sup>20</sup> Van DYKE, P. A. *Merchants of Canton and Macao*. Hong Kong: Hong Kong University Press, 2016.

<sup>21</sup> PO, R. C. *The Blue Frontier: Maritime Vision and Power in the Qing Empire*. Cambridge: Cambridge University Press, 2018.

<sup>22</sup> FAIRBANK, J. K. *Dějiny Číny*. [A History of China]. Praha: Lidové noviny, 1998.

<sup>23</sup> FARRIS, J. A. Thirteen Factories of Canton: An Architecture of Sino-Western Collaboration and Confrontation. *Buildings & Landscapes: Journal of the Vernacular Architecture Forum*. 2007, V14.

A rather coercionary break-through in the Chinese isolationist policy within international law was the system of so-called unequal treaties introduced after the defeat of China in the opium war. The first of them was the Nanking Treaty 1842 which compelled China to open five ports in Canton, Xiamen, Fuzhou, Ningbo, and Shanghai for foreign trade. In 1843, Great Britain imposed upon China the Treaty of the Bogue (Humen), giving British citizens the rights of extraterritoriality, which subject British citizens to consul jurisdiction, i.e., the jurisdiction of British consuls rather than Chinese courts.<sup>24</sup> Brits were allowed to establish their settlements in the open ports and administer them.<sup>25</sup> Great Britain attained the most favoured nation clause, namely all privileges which may be assigned to a foreign country in China. Unequal treaties were also imposed on China by the USA in 1844 with the Treaty of Wanghia, and by France in the same year. In 1858, China concluded unequal treaties with Russia; similar treaties were subsequently concluded with Denmark, Belgium, Germany, Italy, and Austria-Hungary. The coercionary break-through into the isolation of China continued until 1949, when Communists assumed power in the country. As a result, China closed its doors to the outer world except for the Soviet Union. In 1958, during the visit of Soviet leader Nikita Sergeevich Khrushchev in Beijing, Mao Zedong refused the Soviet proposal to construct a military base in China with nuclear weapons. The Chinese were irritated particularly with the requirement that such entity would be excluded from the jurisdiction of Chinese courts and legislation. That requirement resembled too much the former right of extraterritoriality and consul jurisdiction. The conflict between the two leaders resulted in a long-lasting rupture between the two countries.<sup>26</sup> Subsequently, China isolated itself also from the Soviet Union.

The reopening of China after launching economic and legal reforms in 1978 rather should be designated as cracking. China remained, and to a certain extent remains until today, an isolated country except for areas which gained a special status regarding the economic cooperation with foreign countries. Special regions were constituted, as stipulated by the Constitution of the People's Republic of China from 1982, as regions with “*political, economic, and cultural specificities*”. The purpose was to form more favourable legal, economic, and later even political regime in such regions, which would give preferential treatment to foreign capital, but, at the same time, the regime limited the capital just within the borders of those regions and prevent it from penetrating other parts of China. Spiritual fathers of that idea under the lead of Deng Xiaoping got inspired by the model of foreign concession rights from the 19<sup>th</sup> century. However, in no case were they willing to provide extraterritoriality rights or anything similar to foreigners in the new regions. They consistently applied Chinese law, but its regime could have been to a certain extent adapted in favour of foreigners bringing capital therein.<sup>27</sup>

<sup>24</sup> KAYAOGU, T. *Legal imperialism: sovereignty and extraterritoriality in Japan, the Ottoman Empire, and China*. Cambridge: Cambridge University Press, 2010.

<sup>25</sup> WANG DONG. *China's Unequal Treaties: Narrating National History*. Lanham (MD): Lexington Books, 2005.

<sup>26</sup> TOMÁŠEK, M. *Právní systémy Dálného východu, II. [Legal Systems of the Far East II]*.

<sup>27</sup> TOMÁŠEK, M. “一带一路”的法律维度. In: 马雷克·赫鲁贝克 (Ed.) 全球视野下的中国 - 中国改革开放与“一带一路”. 北京: 外文出版社 (Peking: Foreign Languages Press), 2021.

### III. AGAINST “NON-CHINESE” IDEAS

One of the essential reproofs against modern China has been that China has refused “Western” ideas such as democratic competition of political parties or the protection of basic rights and freedoms. One of the basic features of the Chinese doctrine of international relations has been very reserved or even a negative approach to “non-Chinese” ideas although there were periods in Chinese history when even those ideas applied. The first successful, perhaps the most successful, stream of thought was Buddhism in China. It had been spread from India since the 1<sup>st</sup> century A.D. and reached its greatest expansion after 220 A.D. when the empire of the Han Dynasty collapsed and China became internally divided into parts. The division of China and the weakening of the central Confucian ideology might be the reason for the success of Buddhism in China, as some historians assume.<sup>28</sup> On the other hand, it should be noted that Buddhism was strongly supported from the bottom. Ordinary people primarily liked Buddhist pantheons. If we compare (as certain exaggeration) Confucianism and religion then (rather simplistically) every religion should have its ideology, moral code, and its deities. Confucianism ads only the first two items; its understanding of the Heavens was too abstract. That is why, particularly in popular circles, the Buddhist pantheons could easily complement it.<sup>29</sup>

Communication on along the Silk Road brought other foreign ideologies or religious directions into China, such as Nestorianism, Manichaeism, and Zoroastrianism.<sup>30</sup> Their spread in China is relating to the rule of the Tang Dynasty whose rulers supported those religions in the beginning but condemned them at the end. The sources of Nestorianism were researched by the Emperor himself; he was so amazed that he adopted special decrees in 638 to support its growth.<sup>31</sup> However, the official support of Nestorianism later minimized. Unlike Buddhism, Nestorianism remained the religion of foreigners, as the number of converts was negligible. Manichaeism was also supported by the emperors of the Tang Dynasty, particularly when it became the official religion of the Uyghur Empire in 763.<sup>32</sup> It was a strong ally of the Tang Dynasty even against national rebellions. After the collapse of the Uyghur Khaganate in 840 Manichaean churches in China were considered as symbols of foreign arrogance and gradually ceased to exist.<sup>33</sup> Those churches that survived became an object of attack of Chinese population which burnt their pictures and icons. Zoroastrian churches had been built in China since the rule of the Sui Dynasty and were used primarily by Persians living or travelling in China. The functioning of Zoroastrianism in China has not been well documented. We can only find administrative legal regulations of a special office for Zoroastrianism issues. All three religions fell victim to

<sup>28</sup> YAMPOLSKI, P. C. A Historical Sketch. In: Takeuchi Yoshinori. *Buddhist Spirituality. Later China, Korea, Japan and the Modern World*. Delhi: Motilal Banarsidass, 2003.

<sup>29</sup> TOMÁŠEK, M. *Právo na Hedvábné cestě. [Law on the Silk Road]*.

<sup>30</sup> TOMÁŠEK, M. Formation of Silk Road – Formation of Euro-Asian Business Relations. *The Lawyer Quarterly*. 2020, Vol. 10, No. 2.

<sup>31</sup> HORNE, C. F., (ed.). *The Sacred Books and Early Literature of the East. Vol. XII. Medieval China*. New York, London: Parke, Austin & Lipscomb, 1917.

<sup>32</sup> PELLIOU, P., CHAVANNES, É. *Un traité manichéen retrouvé en Chine*. Paris: Imprimerie nationale, 1912.

<sup>33</sup> CHAO, H. New Evidence of Manichaeism in Asia: A Description of Some Recently Discovered Manichaean Temples in Turfan. *Monumenta Serica*. 1996, No. 44.



the Emperor's Edict 845 aimed against non-Chinese churches. The Edict ordered that monasteries of foreign churches should be demolished and their monks should either convert to Buddhism or be killed. Unlike Buddhism coming to China from India, religions coming to China from the West, were not fully accepted in China. The reason was definitely not their geographical dimension nor any ignorance of the Chinese. Historical documents show that the Chinese studied Western thoughts in detail and that those ideas even became part of wider awareness although to a certain extent; however, they were unable, as was Buddhism, to enrich traditional Confucian thinking.

The destiny of another Western religion – Christianity and Catholicism were quite convoluted. Christianity penetrated China in three waves and it seems to be rather impossible to determine which one was the most successful. The first wave was connected with the reign of the Mongolian Yuan Dynasty. Mongolian emperors were very cosmopolitan. If they did not want to worship Confucianism they had to respect the Muslim religion and Nestorianism opened the door to Catholics as well. They were very careful not to even pretend that they preferred one religion over another in regard to their subjects. The Catholic mission was established in Beijing in 1294 and its Superior John Montecorvino was appointed by the Pope not only as Beijing's Archbishop (*archiepiscopus Cambalensis*), but also the Supreme Church Dignitary in the Mongolian Empire (*summus archiepiscopus in toto dominio Tartarorum*). Montecorvino in his letter to the Pope in 1305 informs that he baptised about 6,000 persons and built a church in Beijing.<sup>34</sup> His followers – Franciscan missionaries – entered other Chinese towns where they built churches converted the local population to Christianity. Catholic missionaries finished their activities with the fall of the Yuan Dynasty. In 1368 the reign was taken over by the Chinese Ming Dynasty; Han nationalism boosted, the Chinese values were promoted and everything non-Chinese was marginalized.<sup>35</sup>

The second wave of Catholicism in China is connected with activities of the Society of Jesus (Jesuits) who came into China at the end of the 16<sup>th</sup> century from Portuguese Macao. Jesuits learned Chinese, studied Chinese culture and, at the same time, they brought in new knowledge in astronomy, mathematics, and also the arts. That knowledge helped them attract the attention of the Chinese Emperor and live, for many years, in the Emperor's court. It was shown that Chinese emperors were able to tolerate non-Chinese ideologies providing that those brought valuable and usable know-how with them. The number of Catholics in China was slowly increasing even in during the reign of the nationalistic Ming Dynasty. The original number of 2,500 in 1610 increased to 150,000 in 1644 – the year of the fall of the Dynasty.<sup>36</sup> Catholic churches were open in 13 Chinese

<sup>34</sup> *Epistolæ Fr. Iohannis de Monte Corvino*, In: *Sinica Franciscana. Collectio documentorum ad historiam fratrum minorum in Sinis spectantium*. Vol. I. *Itinera et relationes fratrum minorum sæculi XIII et XIV*, collegit, ad fidem codicum redegit et adnotavit P. Anastasius van den Wyngaert O. F. M. Ad Claras Aquas prope Florentiam (Quaracchi presso Firenze): apud Collegium S. Bonaventuræ 1929. Translation: Letter of John Monte Corvino. In: *Cathay and the Way Thither*, translated and edited by Sir Henry Yule, second edition revised by Henri Cordier. London: Hakluyt Society 1914. Vol. III, Second Series, Vol. 37. Slightly abridged and reprinted In: L. Barnard – T. B. Hodges (eds.). *Readings in European History*. New York: Macmillan 1958.

<sup>35</sup> TOMÁŠEK, M. O vývoji zákazu evangelizace v Číně. [On the Development of Prohibition of Evangelisation in China]. *Revue církevního práva*. 2021, p. 82–2.

<sup>36</sup> HARRIS, G. L. The Mission of Matteo Ricci, A Case Study of an Effort at Guided Culture Change in China in The Sixteenth Century. *Monumenta Serica*, 1966, Vol. XXV.

provinces. The Qing Dynasty did not refuse most of the non-Chinese as they knew that the Chinese were culturally superior to them; they did not expressly deny the opinions of foreigners who had been heard by the Ming emperors. Some Jesuit missionaries again attracted new rulers with their knowledge which might have been useful for them. Jesuit missionaries preserved their position and influence in China even after 1644.<sup>37</sup> Its undoing was paradoxically caused by the Catholic Church itself. Particularly the Dominicans and Franciscans did not accept the Jesuit's success in China they themselves had not reached; they started to attack the Jesuit conception under which practising Confucian ceremonies and respecting the cult of predecessors by Chinese converts was not contrary to Christian religion. Eventually, the Dominicans and Franciscans persuaded the Pope that such approach was a demonstration of idolatry and paganism. Pope Clement XI banned the traditional Chinese rites in his bill of 1704 and bound all missionaries in China to observe the ban. When the Chinese Emperor became familiar with the content of the bill in 1719 imperial offices prohibited Christianity, ordered the expulsion of missionaries, and the destruction of churches; however, such orders were not consistently executed. The Emperor ordered that the ban did not apply to missionaries who would apply for the Emperor's licence for their activities that could only be non-missionary and prohibiting evangelization.<sup>38</sup>

The ban on evangelization applied to all Christian churches in China including the Russian Orthodox Church which began its activities in China in 1716;<sup>39</sup> the ban also covered Protestants who started entering China in the early 19<sup>th</sup> century. The situation changed with the mechanism of unequal treaties, namely the Treaty of Whampoa concluded with France in 1844. The Treaty included provisions regarding the right of foreigners to stay in the mainland China within the extraterritoriality principle, which opened the door to Catholic missionaries to the whole country.<sup>40</sup> A special clause secured protection for the Catholic missionaries including the jurisdiction of the French Consul should they have been subject to only Chinese prosecution or courts.<sup>41</sup> The clause expressly forbade the chastisement of Catholics in the whole Chinese territory. The protection of Catholic missionaries under that most-favoured nation clause extended to Catholic and non-Catholic missionaries from other countries. After signing the Beijing Treaty in 1860 France established itself as the protector of Catholicism in China. In 1846, the Chinese Emperor issued an imperial decree officially permitting the practise of Christianity in China.<sup>42</sup> Until 1894, the number of Catholic missionaries in China increased up to 750; there were about 400 local priests and about a half million of people were members of the Roman-Catholic

<sup>37</sup> TOMÁŠEK, M. Jezuité v soukolí čínského práva. [Jesuits in the machinery of Chinese law]. *Revue církevního práva*, 2020, No. 81-4.

<sup>38</sup> TOMÁŠEK, M. O vývoji zákazu evangelizace v Číně. [On the development of the ban on evangelization in China]. *Revue církevního práva*, 2021, No. 82-2.

<sup>39</sup> ДАЦЫШЕН В. Г. *История Российской Духовной Миссии в Китае*. ред. прот. Дионисий Поздняев. Гонконг: Братство Святых Первоверховных Апостолов Петра и Павла, 2010.

<sup>40</sup> GROSSE-ASCHHOFF, A. F. J. *The Negotiations between Ch'i-Ying and Lagrené, 1844–1846*. New York: Franciscan Institute, 1950.

<sup>41</sup> GERNET, J. *Chine et christianisme – Action et réaction*, Paris: Nrf Édition Gallimard, 1982.

<sup>42</sup> TSING-SING, L. W. *La Politique missionnaire de la France en Chine, 1842–1856*, Paris: Nouvelles Éditions latines, 1961.

church. At the same time, there were about 1,300 Protestant missionaries in China, particularly Brits, Americans, and Canadians. They maintained missionary centres in about 350 bigger and smaller towns; however, the number of converts was rather low – about 60 thousand.

Non-Chinese ideologies were successful in China only to the extent that they could have been practically utilized. Buddhism was popular among common people, Catholics brought into the country new scientific knowledge. As soon as they could not provide anything new they became forgotten. It should be noted that even Marxism-Leninism is a non-Chinese ideology. However, Mao Zedong enriched it with so many Chinese elements that it reliably serves the objectives of the contemporary governing dynasty of the Communist Party of China.<sup>43</sup>

#### IV. PERSONALITY IN INTERNATIONAL LAW

China has played a substantial role of a Global Power in the contemporary system of international law. Despite that, China has been perceived in the “Western” understanding of international law as a person with equal rights. However, China often seems to consider itself as a person superior to the other members of the international community.

The Confucian doctrine designates China as the “middle country” (*Zhongguo*); Chinese tried, within that doctrine, to do everything possible to strengthen the authority of their Emperor’s court in the international field. They sought legal recognition of many rules regarding their relations with rulers of many countries. The basis was a vassal system. China considered all surrounding countries to be its vassals and requested them to bring tributes to the Emperor’s court. Foreign envoys were prescribed to preserve certain rules in addressing the Chinese Emperor in official documents. Delegations were ordered to follow the prescribed rite, etc. At the same time, China showed the sovereign power of its Emperor over foreign countries and exhorted respective governments to send their delegations on a regular basis which would bring their gifts and pay tribute to the Emperor.<sup>44</sup> The tribute system of international relations was applied by China to its contacts with European states. It was in the 16<sup>th</sup> century for the first time when Spain tried to establish contacts with China. In 1573, the Ming court imposed a duty on Spain to visit Fujian every three years and to bring tributes to honour the Emperor; on the other hand, the Spanish delegation would also receive gifts that would be proportionate to their position of a vassal country.<sup>45</sup> On the one hand, Spain did not fully understand the Chinese tribute system; but from what they could they did not like at all the fact that they would have to play the vassal role towards China, which Spain considered to be underdeveloped and Barbarian. King Philip II of Spain intervened personally in establishing contacts with China and de-

<sup>43</sup> TOMÁŠEK, M. *Právní systémy Dálného východu, II. [Legal Systems of the Far East II]*.

<sup>44</sup> WANG GUNGWU. Ming Foreign Relations in Southeast Asia. In: Denis Twitchett – Frederick W. Mote (eds.). *The Ming Dynasty 1386–1644, Part 2, Vol. 8 Cambridge History of China*. Cambridge: Cambridge University Press, 1998.

<sup>45</sup> SAN AUGUSTIN, G. *Conquistas de las islas Philipinas (1565–1615)*. Madrid: Consejo Superior de Investigaciones Científicas, 1975.

cided to communicate directly with the Chinese Emperor on an equal basis – not as a ruler of a vassal state, but as the King of the European Power. In 1580, he wrote a letter to the “King of China” (*Rey de la China*); Philip II fostered his own position a year later after the conjunction of Spanish and Portuguese Crowns when he wrote a letter using his title as the “King of Spain and Portugal”. That was how Chinese-Spanish relations totally got shipwrecked.<sup>46</sup>

The British mission led by George Macartney in 1793 was also taken by China as a tributary delegation coming to pay honour of the vassal state to the Chinese Emperor.<sup>47</sup> However, when Brits refused to bow to the Emperor with “forehead beating”, i.e., to touch the ground with their foreheads, their mission was also frustrated.<sup>48</sup> Another British envoy William Pitt Amherst also refused to pursue forehead beating in 1816.

International law *ius gentium* was brought to China by the Russians in the modern times. Disputes between Russia and China regarding the Amur area (Heilong Jiang) resulted in conflicts where the Russians were more successful.<sup>49</sup> The Chinese Emperor then opted for diplomatic negotiations. Those took place in Nerchinsk under huge pressure and in the presence of troops of both countries but were predominant Chinese armed forces. At the end, the two countries entered into the Treaty of Nerchinsk, the historical evaluation of which seems quite unambiguous. There is a prevailing opinion that the Treaty was signed under pressure thus becoming an unequal treaty.<sup>50</sup> That was the reason why its invalidity or nullity was never claimed. Needless to say, two hundred years later, the Powers concluded unequal treaties with China made under military and political duress. Whilst Russia lost “only” part of its alleged territory through the Treaty of Nerchinsk, China, due to unequal treaties concluded during the 19<sup>th</sup> century, lost a significant part of its sovereignty and jurisdiction in the respective port cities. The historical significance of the Treaty of Nerchinsk subsists in something else. It was the first international treaty in the history of China concluded upon generally recognized principles of international law. China acted as an equal member of the international community without forehead beating, supremacy, and vassal tributes. The circumstances went even so far that tents of both delegations were raised in such manner to make it unidentifiable who was a host and who was the guest.<sup>51</sup>

It took relatively a long time for China to cope with its new understanding of international law personality – more than one hundred years; however, eventually China has become a successful player within the system of international relations. This could be seen in relation to the membership of the People’s Republic of China in the United Na-

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<sup>46</sup> IACCARINO, U. Conquistadors of the Celestial Empire. In: Robert J. Antony – Angela Schottenhammer (eds.). *Beyond the Silk Roads – New Discourses on China’s Role in East Asian Maritime History*. Wiesbaden: Harrasowitz Verlag, 2017.

<sup>47</sup> CRANMER-BYNG, J. L. Lord Macartney’s Embassy to Peking in 1793. *Journal of Oriental Studies*, 1957–58, Vol. 4, No. 1, 2.

<sup>48</sup> ROCKHILL, W. W. Diplomatic Missions to the Court of China: The Kotow Question I. *The American Historical Review*, 1897, Vol. 2, No. 3.

<sup>49</sup> ЛЕКСАНДРОВ, В. А. *Россия на дальневосточных рубежах (вторая половина XVII в.)*. Москва: Наука, 1969.

<sup>50</sup> КОВЛЕВА П. Т. *Первый русско-китайский договор 1689 года*. Москва: Издательство Академии наук СССР, 1958.

<sup>51</sup> STOLBERG, E. M. Interracial Outposts in Siberia: Nerchinsk, Kiakhta, and the Russo-Chinese Trade in the Seventeenth/Eighteenth Centuries. *Journal of Early Modern History*, 2000, No. 3-4.

tions. After the Communist coup d'état 1949, the position of China in international relations reflected the reality of the divided world. The Soviet Union only recognized the People's Republic of China, whilst the USA and their Western allies prioritized Taiwan. As Chiang Kai-shek's China was a signatory of the UN Charter from 1945, it was automatically recognized as the only successor of the Chinese people in that organization including the permanent membership in the Security Council. Since the beginning of the People's Republic of China in 1949 the Soviet Union or any of its allies behind the iron curtain regularly proposed at the UN General Assembly that the People's Republic of China should become the sole representative of China but they never got sufficient support from the UN member states. The prospect of Soviet support of the People's Republic of China membership in the UN receded after the disruption of communication between Mao Zedong and Nikita Khrushchev in 1958. Nevertheless, in the mid-1960s, Zhou Enlai – the skilful foreign minister of the People's Republic of China – attracted many supporters from Asia and Africa as he seconded their efforts to become independent of the colonial metropolises. The great success of Zhou Enlai who was educated in France, was the diplomatic recognition of the People's Republic of China by France in 1964. Subsequently, the proportion of supporters and opponents of the UN membership of the Peoples Republic of China became balanced; however, there was a position adopted that a two-third majority would be required for taking the vote on that issue of an extraordinary importance. It was clear that the solution for New York was necessary to be looked for in Washington D.C. American diplomacy, in the spirit of the principle that the enemy of my enemy is my friend, launched the policy to warm the relations with China in 1969. That approach reached its peak with the visit of President Richard Nixon in Beijing in 1972 and with the establishment of diplomatic relations between the two countries in 1979. In 1971, Albania proposed that the People's Republic of China should become a member of the U.N.; the proposal was supported by 75 participating delegations against 35 opposing. The resolution of the 26<sup>th</sup> General Assembly of the UN, n. 2758 of 25 October 1971, terminated the membership of Taiwan in this organization including its permanent membership in the Security Council.<sup>52</sup>

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A history of the Chinese position in international relations and international law is quite edifying. It helps us not only understand Chinese positions regarding many international issues, but also to react correctly and knowledgeable so that China can see that we know its national and historical realia and we are able to assess them properly.

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<sup>52</sup> TOMÁŠEK, M. *Právní systémy Dálného východu, II. [Legal Systems of the Far East II]*.