

## INTERNATIONAL LEGAL THEORY

# Learning Western Techniques of Empire: Republican China and the New Legal Framework for Managing Tibet

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### Abstract

At the end of the nineteenth century, China found itself torn between its imperial past and its nation-state future. By the time it became a Republic in 1911, China had to redefine its territory in new national sovereign terms. Until then its territory had been inscribed in more malleable frontiers and boundaries within the normative framework of the so-called ‘tribute system’. The article shows how, applying the new legal techniques of empire learned from the West, the Chinese central government, wherever possible, attempted to expand its new sovereign domain in territories like Tibet, Xinjiang, and Mongolia, where, according to international law, all the prerequisites existed for national self-determination and independence. In the context of opposing British and Tibetan claims, the Chinese appropriation of international law in the Republican period (1911–1949) helped China not only to assert itself in the international domain as a sovereign state, defending itself against Western imperialism, but also to pursue its own fictional imperial claims over Tibet, without which the Communists’ ‘liberation’ of Tibet would have not been possible. The paper highlights the interplay of imperial techniques based on international law, the relativity of this legal language, and how the strategies of empire are not only a prerogative of the West, but can be quickly adopted by those who have been subjected to them, resulting in a vicious circle.

### Key words

China; imperial techniques; sovereignty; suzerainty; Tibet

## INTRODUCTION

Empires have a longer history than sovereign states. Controlling, or making claims over vast territories and peoples has not been the sole prerogative of Western imperial powers.<sup>1</sup> Multiple polities used a variety of imperial techniques and different normative, linguistic, military, and political instruments to subjugate others.

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<sup>1</sup> International law was certainly more like an organizing myth, a principle rather than reality. See A. Oslander, ‘Sovereignty, International Relations, and the Westphalian Myth’, (2001) 55 *International Organization* 251, at 284; J. Burbank and F. Cooper, *Empires in World History: Power and the Politics of Difference* (2010); M. Hardt and A. Negri, *Empire* (2001). With regard to the international law myth and China see L. Chen, ‘Universalism and Equal Sovereignty as Contested Myths of International Law in the Sino-Western Encounter’, (2011) 131 *Journal of the History of International Law* 75.

Western powers used international law and legal language to rule over their empires. They justified their rule as a civilizing mission, legitimized by a divine, moral superiority. The Chinese empire, before it became a sovereign Republic in 1911, was also grounded on the assumption of civilizational superiority. The Middle Kingdom was understood as the civilized center; the outlying areas were the less civilized or barbarian periphery, which would eventually be brought under the command of the center. The fundamentally unequal and hierarchical Chinese empire was predicated on the grounds of morality; with ritual and tribute providing the normative framework.<sup>2</sup>

Over the nineteenth and twentieth centuries, the Chinese empire configured into a unitary sovereign state, as the ‘China’ ‘*Zhongguo* 中国’, that we know today.<sup>3</sup> China did not claim to be a sovereign state in the modern sense and was not a member of the Western family of nations until the very end of the nineteenth century, when a transformation of the framework within which China pursued its territorial goals occurred: from a traditional empire to a more modern polity; from a relatively Asian regional context to an international, global context; from the ritual and tribute system to international law.

The article examines this transformation of normative framework. It addresses the following questions: how did this transformation affect China’s imperial behavior? How, and making what differences in the process, did Chinese scholars and diplomats appropriate, hybridize, and use international law in order to claim Chinese rule over its tributary states? And how did the same imperial technique, international law, differently affect and justify claims over territories and people?

In order to answer these questions, the article focuses on the treatment and status of Tibet, one of the former empire’s outlying territories, in the Republican period (1911–1949). It looks at how Chinese diplomats and scholars’ claims of Chinese sovereignty over Tibet clashed with British support for the principle of Chinese *suzerainty* over Tibet, and with the Tibetan quest for independence. Besides secondary literature, which is often biased either towards a historical reconstruction that supports current Tibetan independence or Chinese sovereignty, the material used is mainly diplomatic correspondence, official documents, biographies, and international treaties and agreements. The article proceeds chronologically; after providing a brief introduction to Sino-Tibetan relations prior to internationalization of the Sino-British relations at the end of the nineteenth century (Section 1), it looks how these had been transformed and constrained within the international legal

<sup>2</sup> S. Harrell, ‘Civilizing Projects and the Reaction to Them’, in S. Harrell (ed.), *Cultural Encounters on China’s Ethnic Frontiers* (1994), 3 at 18. Although the analytical framework provided by the tribute system, *chaogong tixi* 朝贡体系, is not fully satisfying in its description of the complex set of rules that regulated the relations between the Middle Kingdom and its neighbouring countries, it is still helpful in highlighting how pre-modern China adopted a different normative system from the West. For more recent re-interpretations of the tribute system see D.C. Kang, *East Asia Before the West: Five Centuries of Trade and Tribute* (2010); D.C. Wright, *From War to Diplomatic Parity in Eleventh-century China, Sung’s Foreign Relations with Kitan Liao* (2005); S. Suzuki, *Civilization and Empire: China and Japan’s encounter with European international society* (2009); T. Hamashita, *China, East Asia and the global economy: Regional and historical perspectives* (2008).

<sup>3</sup> A. Dirlik, ‘Born in Translation: “China” in the Making of “Zhongguo”’, *Boundary 2*, 29 July 2015, available at [www.boundary2.org/2015/07/born-in-translation-china-in-the-making-of-zhongguo/](http://www.boundary2.org/2015/07/born-in-translation-china-in-the-making-of-zhongguo/) (accessed 2 July 2017).

framework through foreign encroachment in the course of the Nineteenth Century (Section 2). The later sections focus on the Republican Period: Section 3 looks at the first period of the Republican era (1911–1927), with a special focus on the Simla Convention (1913–1914), while Section 4 deals with the Nationalist government and its attempts to reestablish its authority over Tibet, and Section 5 with the PRC vindicating the claimed sovereign status over Tibet.

In the various attempts to write global or postcolonial histories of international law, there is a risk that the current fear of Eurocentrism, which seems the new devil to be fought, becomes itself a doctrinal pre-concept that sees only Europe or the West as the evil empire, and all the colonized rest as the victim.<sup>4</sup> The current critical history of international law owes much to the theoretical framework of post-colonial studies or subaltern studies that, emerging from the publication of Edward Said's *Orientalism*, examine the Empire and its historical articulation.<sup>5</sup> In this critical framework there is a tendency to read and construct the colonized 'Other' as exiled from the episteme, and struggling to have its right to signify be recognized.<sup>6</sup> These critical studies, moreover, tend to emphasize Western imperialism and its unilateral direction of expansion, from the West to the rest, and they do not focus much on the tendencies within the colonized Other to apply the same imperial strategies backward or towards other Others. The colonized are generally understood as victims, and their equally violent 'civilization' missions within or abroad are neutralized by the belief that the West was the major culprit in the history of colonialism. Certainly, the role Western powers had in shaping the modern world and expanding through their technological and military superiority cannot be underestimated, but the Other was not simply a passive recipient of Western techniques of empire. Despite the objective of critical postcolonial studies to rehabilitate the agency of the colonized Other in history, the risk is that the West becomes again the center of such a history: the history of colonialism cannot be thought without its major subject, the West. The Colonized rest is relegated to the status of the victim, a powerless colonized country or a subaltern that can only react to the imperial claims and colonial expansion of the West, but itself is not seen as an engine of colonization or imperialism. Its agency seems to rest on reaction, rather than action.

As this work will show, this vision of empire is reductive. Imperialism did not flow unidirectionally from the colonizer West to the colonized rest. The fact of

<sup>4</sup> Recent scholarship on the global history of international law seeks to be an answer to Eurocentrism. See B. Fassbender and A. Peters, 'Introduction: Toward a Global History of International Law', in B. Fassbender, A. Peters and D. Högger (eds.), *The Oxford Handbook of the History of International Law* (2012), at 1; T. Duve, 'European Legal History - Global Perspectives', (2013) 6 *Max Planck Institute for European History Research Paper Series*. Some of the anti-eurocentrism efforts end up being a-historical. Recently for instance, the Cambridge legal historian Stephen Neff, in his attempts to write a global history of international law, ascribed the origin of international law to China and the Warring States period. According to Neff, it is in this period that the first systematic writing of international relations appeared, marking the beginnings of international law as an intellectual discipline. S. Neff, *Justice among Nations: A History of International Law* (2014), 21.

<sup>5</sup> E. Said, *Orientalism* (1979); E. Said, *Culture and Imperialism* (1992); R. Guha and G.C. Spival (eds.), *Selected Subaltern Studies* (1988); G. Prakash, *After Colonialism: Imperial Histories and Postcolonial Displacements* (1995); D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2000); H.K. Bhabha, *Nation and Narration* (1990).

<sup>6</sup> See T. Mahmud, 'Geography and International Law: Towards a Postcolonial Mapping', (2007) 5 *Santa Clara Journal of International Law* 525, at 527.

being a victim of Western imperialism in the nineteenth century did not certainly reduce China's appetite for territory, and the same happened for Tibet, the victim per excellence, which quickly used and manipulated the language of international law in order not only to establish its independence, but at times, when it could project its power more broadly, to express its own imperial claims in Asia. Indeed, 'victimization' itself can be considered as a technique of empire. As some new international relations (IR) studies show, colonial and imperial pasts have shaped in some 'victim' countries the so-called Post-Imperial Ideology. This is the case for instance, for both India and China, where such ideology is present in their new assertive attempts to maximize territorial sovereignty and status. This, justified by their colonial past, in reality has very much in common with imperialism.<sup>7</sup>

## I. CONTEXTUALIZING SINO-TIBETAN RELATIONS BEFORE THEIR INTERNATIONALIZATION

The earliest records of the relations between China and Tibet date back to the seventh century, during the Tang Dynasty (AD 618–907), when eight treaties for military assistance and two matrimonial alliances were signed between the two.<sup>8</sup> It is difficult to qualify in modern terms the kind of relationship that existed at that time between the Chinese Empire and Tibet; some scholars regard it as already under Chinese suzerainty, while for others Tibet was an independent nation.<sup>9</sup> In the thirteenth century the Mongols conquered Tibet; their leader Kublai accepted Phags-pa, master of the Tibetan Sakya Sect and ruler of the Tibetan Buddhist theocracy at that time, as his religious mentor in 1254. This implied the recognition by Kublai of the religious superiority of his teacher, and when, in 1259, Kublai proclaimed himself as the Great Khan of the Mongolian Empire and emperor of the Yuan Dynasty (1260–1368), Phags-pa became an Imperial Preceptor, while Kublai and his successors became secular patrons of Tibetan Buddhism. This kind of relationship, religious in nature, is known as *cho-yon* (patron-priest).<sup>10</sup> It does not have a counterpart in current IR, and through it the classical relationship of invader and invaded was transformed into the idealized one of patron and priest. Contrary to what some scholars have asserted, the *cho-yon* relationship did not prevent the political subservience of Tibet to China. Tibet was integrated in the tribute system, and continued to pay tribute to China until the end of the nineteenth century.<sup>11</sup>

<sup>7</sup> M.C. Miller, 'Re-collecting Empire: "Victimhood" and the 1962 Sino-Indian War', (2009) 5 *Asian Security* 216.

<sup>8</sup> T. Li, *The Historical Status of Tibet* (1956), 3–12.

<sup>9</sup> For instance, for Tsepon Wangchuk Deden Shakabpa, Tibet was independent. See T.W.D. Shakabpa and D. Maher, *One hundred thousand moons* (2009). On the contrary, for Li Tiezheng, Tibet was a vassal of China, *supra* note 8.

<sup>10</sup> Such relationship should be understood not only culturally or religiously, but also militarily, to serve the Yuan strategy. See W. Smith, *Tibetan Nation: A history of Tibetan Nationalism and Sino-Tibetan Relations* (1998), 108–13.

<sup>11</sup> The scholar Elliott Sperling in particular notices how there was a political submission of Tibet to China. E. Sperling, 'The Tibet-China Conflict: History and Polemics', (2004) 7 *Policy Studies* xi, at 30; T. Wylie, *Lama Tribute in the Ming Dynasty* (1980).

During the Qing Dynasty (1644–1912) Tibet entered within the administrative domain of the Qing. By the year 1636 the name for the Office for Mongolian Affairs (*Menggu Yamen* 蒙古衙門), a sort of Foreign Minister, had changed in order to include other outlying regions such as Tibet; it became Lifan Yuan (理藩院), Board for the Administration of Outlying Regions.<sup>12</sup> The Manchu, the ruling group of the Qing Dynasty, conquered as far as the city of Kokonor, and in 1648 they invited the 5<sup>th</sup> Dalai Lama, Ngawang Lobsang Gyatso, to Beijing. When he reached Beijing, in 1653, the Dalai Lama was welcomed by the then Emperor Shunzhi, who gave him an honorific title. The fact that the Emperor was able to summon another political potentate to his court has been interpreted as a sign of nominal submission on the part of the Dalai Lama to Shunzhi's sovereign authority, and within the perspective of the Chinese civilizational mission, as a sign of symbolic surrender to the moral and cultural superiority of the Qing Emperor.<sup>13</sup>

The authority of the Qing was further consolidated militarily with three successful expeditions to Tibet in the course of the eighteenth century. In particular, the defeat of the Dzungars tribe, who occupied Tibet in 1720, established Qing administrative rule over Tibetan territory. This was controlled through the Lhasa government, which was brought under Qing rule, and through the appointments of Ambans, imperial residents to Tibet, who commanded troops based in Lhasa and kept the Lifan Yuan informed about the situation in Tibet. Two permanent Qing Ambans were installed in Lhasa in 1727, while the presence of a Manchu garrison force was reinforced.<sup>14</sup> Until the transformation of the Qing policies toward Tibet at the beginning of the twentieth century, the Ambans were generally Manchu or Mongol and not ethnically Chinese.<sup>15</sup> This contributed to the lack of direct knowledge of Tibet and the imperial periphery at the Qing court. (The first Chinese civil official to serve in Tibet was Zhang Yitang in 1906 as a way to assert Chinese sovereignty against British encroachment.<sup>16</sup>)

In 1792, after successfully repelling the invasion of the Gurkha tribe into Tibet, the Qing launched a series of reforms to secure their protectorate over Tibet. An imperial decree known as the Twenty-Nine Article Imperial Ordinance (*Qinding cang nei shanhou zhangcheng* 欽定藏內善後章程 or *Qinding cang nei shanhou zhangcheng*

<sup>12</sup> J.K. Fairbank and S. Têng, 'On the Ch'ing Tributary System', (1941) 6 *Harvard Journal of Asiatic Studies* 135, at 193; Zhao Yuntian dian jiao, *Qianlong chao nei fu chao ben 'Li fan yuan ze li'* (2006).

<sup>13</sup> H. Lin, *Tibet and Nationalist China's Frontiers, Intrigues and Ethnopolitics, 1928-49* (2006).

<sup>14</sup> J. Kolmaš, *The Ambans and Assistant Ambans of Tibet* (1994).

<sup>15</sup> The notion of race was introduced in China at the end of the nineteenth century, with the popularization of Johann Friedrich Blumenbach's Five Race Theory. The notion of Manchu, Han, Mongolian, Hui, Tibetan races, were conceptual constructions that helped to create a narrative for the national unification of China at the beginning of the twentieth century. The First Republic was precisely envisioned as the unification of the Chinese five races: Han, Manchu, Mongols, Hui and Tibetan. The original flag was five-coloured, and represented the five races of China that had to unify to create one country. What it meant to be Chinese was a question that is still hard to answer today. Usually, however, Chinese are identified with Han nationality. But this was much more blurred back then, when the leading dynasties were not Chinese, like in the cases of the rule of Mongols and the Manchu. See E. Brindley, 'Barbarians or Not? Ethnicity and Changing Conceptions of the Ancient Yue (Viet) Peoples, ca. 400–50 bc', (2003) 16(1) *Asia Major* 1, at 29; F. Dikotter, *The Discourse of Race in Modern China* (1992); see J. Sun, 'Blumenbach in East Asia: The Dissemination of the "Five-Race theory" in East Asia and a Textual Comparison', 51 (2012) *Oriens-Extremus* 107.

<sup>16</sup> M. Mosca, *From Frontier Policy to Foreign Policy, The Question of India and the Transformation of Geopolitics in Qing China* (2013), Chapters 6–7; G. Tuttle, *Tibetan Buddhist in the making of Modern China* (2005), at 29, 43.

*ershijiu tiao* 欽定藏內善後章程二十九條), was promulgated in 1793.<sup>17</sup> This legal document established imperial rule over Tibet in many different areas. From the administrative point of view, it elevated the status of the Ambans over the Dalai Lama and the Panchen Lama: the Ambans not only took control over Tibetan frontier defence and foreign affairs, but they were also put in command of the Qing garrison and the Tibetan Army. The Qing also required that the incarnation of the Panchen and Dalai Lamas be chosen with the supervision of the Ambans. This meant that the final authority over the selection of reincarnations, and thus over political succession in the Tibetan system of combined temporal and spiritual rule, would belong to Qing central government. Tibetan foreign affairs were also to be administered by the Ambans, who had the right and duty to review all the correspondence between foreign countries and the Dalai Lama.<sup>18</sup> The ordinance resulted in the highest control of Qing over Tibet, which established Chinese military, religious, economic, jurisdictional, and administrative rule. Tibet became a Qing protectorate in the full sense.

By the second half of the nineteenth century Qing power was weakening, and the Ambans could do little more than exercise a symbolic and nominal influence. Internal issues and external pressures occupied the Emperor's mind. For instance, in 1855 when the Gurkhas of Nepal again attacked Tibet, the Qing court was already too preoccupied with the internal Taiping rebellion and could not intervene. The Dalai Lama was then forced to pay tribute to Nepal and grant judicial extraterritoriality to Nepalese subjects in Tibet. In the 1880s, the Qing Yadong customs house in Tibet collected no customs duty, but it nevertheless remained in place as a symbolic assertion of Qing rule over Tibet at a time when Great Britain was trying to build up its influence in the area.<sup>19</sup> Despite the fact that the Chinese gradually lost their control over Tibet in the course of the nineteenth century, Tibet formally remained a protectorate of China until the twentieth century. The Qing managed to maintain a symbolic projection of authority, through the rituals of the tribute and, by maintaining an imperial physical presence through the Ambans.

To be sure, neither at the peak of its administrative control over Tibet, at the end of the eighteenth century, or during the last century of the Qing Empire, did the Manchu inscribe their relationship with Tibet within the international legal system. This happened only in the course of the nineteenth and the twentieth centuries, when the Western powers altered the balance of power in Asia, forcing China to define its relations with Tibet within the conceptual framework of modern international law. In the nineteenth century, from a Chinese or Tibetan perspective, the Sino-Tibetan relations were not understood in terms of either sovereignty or suzerainty, and China was not yet a sovereign nation until the very beginning of the twentieth

<sup>17</sup> D. Huang, 'Qingchao xizang "qinding cang nei shanhou zhangcheng" lifa yanjiu', (2012) 11 *Zuguo jiansheban*; Z. Liao, Y. Li and P. Li. 'Qinding can nei shanhou zhangcheng ershijiu tiao ban ben kaolue', (2004) 2 *Zhongguo zang xue*.

<sup>18</sup> Z. Liao and Y. Li, *Qin ding Zang nei shan hou zhang cheng er shi jiu tiao' ban ben kao lue* (2006).

<sup>19</sup> H. Van de Ven, *Breaking with the Past: The Maritime Customs Service and the Global Origins of Modernity in China* (2014), 119.



century.<sup>20</sup> China was an empire, and defined its relationship with other countries through the ritual tributary system within an order characterized by formal and substantial hierarchies. Although, at the end of the Qing Dynasty, China went through a modernization process that included the introduction of international law, the re-conceptualization of century-long religious relations between China and Tibet were hard to fit immediately into the new national sovereign categories. This could be seen in the difficulties the British had in accessing Tibet in the nineteenth century, which were related to the complex Sino-Tibetan relationship. For instance, given the fact that Tibet has for long banned the entry of European and Westerners, Lord Curzon, Viceroy of India, eager to establish direct contact with Lhasa, sought and obtained for his British overland mission to Tibet in 1876 a passport from China, which was considered in the early accounts of the British visitors to Tibet a 'sovereign' or a 'master-nation' in relation to Tibet.<sup>21</sup> However, both the mission attempts in 1876 and 1886 failed, as the Tibetan border guards denied entrance to the British despite their presenting the Chinese passport. Further, Tibet did not recognize the Treaty on trade regulations signed by Great Britain and China in 1893. This deeply frustrated the British, who, came to realize the incapacity of China to assert real control over Tibet, and began, as will be discussed later, a real campaign toward Tibet, which culminated with the Younghusband expedition in 1904. Tibet started then to become an international legal issue, and China quickly adopted the international law language, and in particular sovereignty, in order to promote its interests and control over Tibet.

## 2. FOREIGN ENCROACHMENT: SINO-TIBETAN RELATIONS BECOME AN INTERNATIONAL LEGAL ISSUE

The abdication of the great Emperor Qianlong in 1796 and his death three years later, followed by the Western powers' encroachment and internal dissent and rebellions, marked the beginning of Qing decline; affecting Qing imperial authority over Tibet. The rivalry between Russia and Great Britain over Tibet transformed it into a buffer zone of global significance. If until the 1840s the Manchu had managed to maintain some sort of jurisdiction over Tibet – for instance, the decrees of the Qing emperor were still enforced for the punishment of Tibetans – the First Opium War (1839–1842) challenged this state of affairs.<sup>22</sup> The Emperor's authority, although still recognized, became increasingly nominal.

<sup>20</sup> Scholars have different opinions about when China became a sovereign nation. See for instance I.C.Y. Hsu, *China's Entrance into the Family of Nations. The Diplomatic Phase 1858-1880* (1960); R. Karl, 'China in the World at the Beginning of the Twentieth Century', (1998) 103 *The American Historical Review* 1096, at 1099; G. Xu, *The Age of innocence: The First World War and China's quest for national identity* (1999).

<sup>21</sup> P. Hopkirk, *Trespassers on the roof of the World: The Race to Lhasa* (1983), at Chapters 5–8. See how George Bogle and Thomas Manning referred to Tibet: C.R. Markham, *Narratives of the mission of George Bogle to Tibet: and of the journey of Thomas Manning to Lhasa* (1879), at 130, 273, 278.

<sup>22</sup> In this context, a quite remarkable memorandum was sent to the Emperor by Ting Paochen, the governor of Sichuan, a key region for the contact between the Chinese central Government and Tibet, in the period between 1876 and 1885, stating that the Tibetan administration had been relaxed since the last years of the Xuantong Reign (1821–1850) and that the Tibetan civil service had become a separate body, no longer subordinate to imperial institutions. See Li, *supra* note 8, at 63.

Since the First Opium War, China had faced foreign encroachment that, by the end of the nineteenth century, led to the possibility of partitioning China, ‘slicing it like a melon’ among the Western powers;<sup>23</sup> China was ill-prepared to face superior Western military techniques. Especially after the Second Opium War (1856–1860), new institutions were created, which aimed to strengthen China in accordance with Western learning. In 1861 a new Foreign Affairs Body was created, the *Zongli Waiguo Shiwu Yamen* (总理外国事务衙门) and the following year the *Tongwenquan* (同文馆) were instituted in Beijing for Western learning and the translation of Western texts.<sup>24</sup> The establishment of these new institutions, together with those for the strengthening of Chinese military capacity – like the Jiangnan Arsenal (*Jiangnan zaochuan chang*, 江南造船厂) of Shanghai created in 1865 under the direction of the British missionary John Fryer for manufacturing modern arms and studying Western technical knowledge – were part of a broader reform, the Tongzhi restoration, which began in 1862.<sup>25</sup> It is interesting to see how, in the Jiangnan Arsenal, international law was treated in the same manner as military technology: cannons, guns and international law went hand in hand.

The systematic introduction of international law, through the American protestant missionary W.A.P. Martin’s famous translation of Wheaton’s *Elements of International Law* in 1864, was essential for appropriating the language of the Western technique of empire.<sup>26</sup> Not only was the concept of sovereignty promptly appropriated in order to defend China from Western imperial claims, but the Qing court also adopted it in order to incorporate in its new sovereign domain what used to be part of its imperial territory.<sup>27</sup> This contributed to an increase in the number of contradictions of what was believed to be a science: international law, in fact, was thought of as a perfectly ordered and rational system.<sup>28</sup> However, the hybrid sovereignty of China on the one hand was encroached on by Western powers and their claims to extra-territoriality and concessions, and on the other hand Chinese attempts to fit its past empire within the rationality of the framework provided by international law, created a monstrosity that could hardly be called ‘science’.<sup>29</sup>

<sup>23</sup> R.G. Wagner, ‘China Asleep and Awakening. A Study in Conceptualizing Asymmetry and Coping with It’, (2011) 1 *Transcultural Studies* 4.

<sup>24</sup> This was a significant moment: in the past the superiority of China was shown in the expectation that foreign ministers coming to China would learn Chinese, the Chinese ruling elite was not interested in learning foreign languages. See F. Casalin, *Linguistic Exchanges between Europe, China and Japan* (2008), 153; J.K. Fairbank and S. Têng, *China’s Response to the West: A Documentary Survey* (1979).

<sup>25</sup> The Tongzhi Restoration constituted the ‘last great effort to reassert the validity of Chinese traditional institutions’, and it was the indirect result of the Self-Strengthening Movement formed by those Confucian intellectuals and officials like Feng Guifen 馮桂芬 (1809–1874) Prince Gong 恭親王 (1833–1898), Zeng Guofang 曾國藩 (1811–1872), Li Hongzhang 李鴻章 (1823–1901) and Zuo Zongtang 左宗棠 (1812–1885) who, while aware of and intrigued by Western science, were still dedicated to the restoration of the imperial universal authority, understood as the sole form of coherence and order. M.C. Wright, *The last stand of Chinese conservatism: The Tung-chih restoration, 1862-1874* (1966), ix; S.C. Chu and K. Liu (eds.), *Li Hung-chang and China’s Early Modernisation* (1994), 5–6.

<sup>26</sup> R. Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911* (2007); H. Wheaton and W.A.P. Martin, *Wan guo gong fa* (1998).

<sup>27</sup> For some new perspectives on the introduction of international law in China see L. Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice and Transcultural Politics* (2016); S. Kawashima, ‘China’, in Fassbender, Peters and Högger *supra* note 4; C. Tang, ‘China – Europe’, *ibid.*

<sup>28</sup> L. Nuzzo, *Origini di una Scienza. Diritto internazionale e colonialismo nel XIX secolo* (2012).

<sup>29</sup> *Ibid.*



The first technique of empire used by Western powers to coerce China within the Western international legal framework was to use international treaties, agreements, and conventions.<sup>30</sup> Chinese international weakness, and inferior position, although predicated in terms of formal equality, was inscribed within the so-called 'unequal treaties'. and the foreign powers, in particular the British, were crucial in the inscription of Sino-Tibetan relations within the international legal framework.<sup>31</sup> The British, in fact, brought under their own orbit territories from Burma to Ladakh, along the Southern part of the Himalayas, including Bhutan and Nepal, which in the past used to be loyal tributaries of the Chinese Court. Russian influence that extended in the arc of Manchuria, Mongolia, and Xinjiang was also a source of concern for China, which increasingly realized the strategic importance of Tibet as its back door to Central and Southern Asia. The Qing Court started then to assert through new policies, its sovereignty over Tibet. In order to strengthen its administrative control over the territory, it sent to Tibet, officers Zhang Yintang (张荫棠) and Lian Yu (联豫), and later, in 1908, the successful mission of Zhao Erfeng. The discourse of Chinese sovereignty over Tibet, was expressed in official texts with the words *zhuquan* (主权) and *zhuguo* (主国), and it opposed the British discourse of Chinese suzerainty over Tibet (expressed in Chinese official texts with the terms *zongzhuquan* (宗主权) and *shangguo* (上国)).<sup>32</sup> The British intentionally tended to translate the term *zhuguo* (which in Chinese meant sovereign country) present in official translations of Chinese documents from the Chinese Minister of Foreign affairs, as suzerainty.<sup>33</sup> This seemed to be a way to remove Chinese sovereignty even from the official text, mystifying Chinese intentions and diminishing their claims. This strategy was certainly successful with the US that, as will be discussed later, kept using in the official documents 'suzerainty' to refer to Sino-Tibetan relations, even when they were in good terms with China.

After the failed British attempts to open Tibet before the First Opium War, in a separate article of the Chefoo Convention of 1876, Great Britain made its first 'entrance into Thibet' giving itself the right to send a mission of exploration through Tibet.<sup>34</sup> However, the real turn with regard to the 'internationalization' of Sino-Tibetan relations took place in the last decade of the Qing Dynasty, in particular between the years 1900 and 1912. The author that promoted this transformation was Lord Curzon, who tried to develop a policy for the establishment of a direct

<sup>30</sup> D. Wang, *China's Unequal Treaties, Narrating National History* (2008), 25.

<sup>31</sup> D. Anand, 'Strategic Hypocrisy: The British Imperial Scripting of Tibet's Geopolitical Identity', (2009) 68 *The Journal of Asian Studies* 227.

<sup>32</sup> See, for instance, the compilation of historical data on Sino-Tibetan relations: *Zhongguo di er lishi dang'an guan, zhongguo zang xue yanjiu zhongxin bian. Yuan yilai xi cang defang yu zhongyang zhenafu guanxi dang'an shiliao huibian* (1995); *Xizang defang lishi ziliao xuanji* (1963).

<sup>33</sup> For instance, in the Viceroy's citation of the Waiwubu communication to the Ambans in his communication to the London Office, he quotes: 'China is a dependency of China ... Great Britain should not conclude a Treaty direct with Tibet, as by that China loses suzerainty (*zhuguo*)'. But here clearly *zhuguo* has been intentionally translated as suzerainty, *zongzhuguo*, by the author of the telegram. FO 17/1751, 13 September 1904.

<sup>34</sup> Agreement between the Ministers Plenipotentiary of the Governments of Great Britain and China, in W.F. Mayers, *Treaties between the Empire of China and Foreign Powers, together with Regulations for the conduct of foreign trade, conventions, agreements, regulations, etc.*, (1906), 44, at 48.

relationship with Tibet, a relationship until then dependent on what was considered unsuccessful and weak Chinese mediation and authority. There was in fact no direct contact between the British and Tibet, apart from the trade agreement established in Tibetan Yatung through the *Convention Between Great Britain and China Relating to Sikkim and Tibet* of 1890.<sup>35</sup> Great Britain interest was neither Tibetan independence, nor acquiring it as a protectorate or a dependency. Rather its policy toward Tibet was driven by two conflicting imperatives that explain the use of an ambiguous term such as suzerainty.<sup>36</sup> After having realized the disadvantages of Tibetan independence and of both colonization and assuming Tibet as a protectorate despite the 13<sup>th</sup> Dalai Lama's various requests when he was in exile in India (1908–11), Great Britain saw in Tibet a political and strategic value only as long as Chinese suzerainty was respected and Tibetan autonomy recognized. This could have assured the protection of both economic and security interests of Great Britain: its commerce with China could have been maintained as long as it did not push too much for Tibetan autonomy, and Tibet could have been used as a buffer zone against both Russia and China, given the latter's lack of effective control over Tibet.

Breaching international law and with the excuse of securing India's northern border, Lord Curzon ordered a British negotiating mission under Colonel Francis Younghusband, escorted by a force of around 500 men, to the Tibetan city of Khamba in 1904. The mission, killing hundreds of Tibetans in the process, on 7 September secured by force the signature of the Tibetan delegation in Lhasa of the *Convention between Tibet and the Great Britain*.<sup>37</sup> The contorted negotiations, described by Younghusband himself, were conducted in the presence of Chinese Ambans.<sup>38</sup> The final document contained nine Articles: Articles 2 to 5 secured free trade and opened trade in the cities of Gyantse, Yatung, and Gatork; Article 6 provided for the collection of an indemnity spread over 75 annual installments, which could have justified occasional interference in Tibetan affairs; according to Article 7 the British, in order to secure the payment of the indemnity, could have occupied the Chumbi Valley, a key strategic point on the frontier line from Kashmir to Burma; Article 9 provided for a restriction on Tibetan foreign relations and defense, according to which Great Britain secured the guarantee that China would exclude all other foreign powers from Tibet, preventing in particular Russian interference.<sup>39</sup>

If the nine Articles of the Conventions were to be followed literally, then Tibet would have become a protectorate of Great Britain for 75 years. Despite that, British official statements continued to strongly support the rhetoric of Chinese suzerainty

<sup>35</sup> Convention Between Great Britain and China Relating to Sikkim and Thibet. Signed at Calcutta, 17 March 1890, in E. Hertslet, *Treaties, etc., between Great Britain and China; and between China and Foreign Powers; and Orders in Council, Rules, Regulations, Acts of Parliament, Decrees, and Notifications Affecting British Interest in China* (1896), 91–7.

<sup>36</sup> See D. Norbu, "The Europeanization of Sino-Tibetan Relations, 1775–1907: The Genesis of Chinese "Suzerainty" and Tibetan "Autonomy", (1998) 15(4) *The Tibetan Journal* 28, at 39–49, 61–4.

<sup>37</sup> W.L. Tung, *China and the Foreign Powers. The Impact of and Reaction to Unequal Treaties* (1970), 78.

<sup>38</sup> Sir F. Younghusband, *India and Tibet. A History of the Relations which have subsisted between the Two Countries from the time of Warren Hastings to 1910; with a particular account of the Mission to Lhasa of 1904* (1910), 223–306.

<sup>39</sup> Convention Between Great Britain and Tibet. Signed at Lhasa, 7 September 1904, in R.W. Brant, *British and Foreign State Papers, 1904–1905* (1909), 148.

over Tibet. Younghusband noted that in Lhasa ‘Chinese suzerainty was definitely recognized in the Treaty . . . [and that] it was not part of our policy to supplant the Chinese. We had no idea of annexing Tibet or establishing a protectorate over it’.<sup>40</sup> But in reality, British officials, including Younghusband, continued to be sceptical of any real control of the Qing over Tibet, as Lord Curzon again stated with regard to the Dalai Lama, who ‘was a *de facto* as well as *de jure* sovereign of the country’.<sup>41</sup> Probably the famous statement of Lord Curzon in a letter to the secretary of state for India on 8 January 1903, where he stated that ‘We regard Chinese suzerainty over Tibet as a constitutional fiction’, was an exaggeration, as there were still Ambans in the negotiations for the Convention of 1904, and its original text was also in Chinese.<sup>42</sup>

The Convention, while bringing Tibet within the international legal sphere, made in fact its legal situation very unclear. Its ambiguous status was addressed by covering it with even more ambiguity, and the year after, the British, due to Chinese discontent, sought to negotiate a treaty with China in Calcutta. Zhang Yitang, who was appointed High Commissioner for Tibet in 1906, led the negotiations under orders to seek restoration of full Chinese sovereignty over Tibet.<sup>43</sup> He tried to implement some innovative reforms to actively safeguard Chinese sovereignty. His new policies included reformation of the Tibetan bureaucracy, creation of new economic areas for mining and new coinage, training of a new Tibetan army under Chinese control, and foundation of new schools and a new Education Bureau for spreading Chinese culture.<sup>44</sup> These policies failed due to the lack of government financial support, but left a lasting influence on Chinese policies toward Tibet.<sup>45</sup>

In the negotiations in Calcutta while the British were trying to force the idea of Chinese suzerainty, Zhang argued that Tibet historically belonged to China, and it could have not been separated from its sovereignty.<sup>46</sup> He successfully managed to replace Tibet in the payment of the indemnity, and insisted on the recognition of China’s sovereign rights.<sup>47</sup> Zhang’s confidence in the negotiations in India created a certain antipathy among the British, including Younghusband. They criticized his new assertive policies vis-à-vis Tibet, his attempt to interpose the Chinese between the British and the Tibetans, including in the payment of the indemnity, and his belittling of British influence over Tibet by appointing in 1906 a Chinese Official named Gow as Chinese Commissioner in charge of the Chinese Trade and Diplomatic Agency, under which authorization of all the transactions between the British and Tibet had to be conducted.<sup>48</sup> Younghusband noted that Zhang was determined ‘to upset the status quo and destroy the position secured to us by the Mission.

<sup>40</sup> IOR/L/PS/10 37; IOR/L/PS/10 340-343.

<sup>41</sup> Quoted in R. Gopal, *India-China-Tibet Triangle* (1964), 12.

<sup>42</sup> IOR 1904, 154-5.

<sup>43</sup> *Tang Shaoyi yan jiu lun wen ji* (1989); X. Zhang and Y. Su, *Tangshaoyi zhuan, Zhongguo renminguo diyi ren neige congli* (2004), 45-53.

<sup>44</sup> G. Xu, ‘Zhang Yitang chaban Zangshi shimo’, (1988) 2 *Xizang yanjiu* 48.

<sup>45</sup> Z. Tian, ‘Qingmo Xizang xinzheng ji qi qishi’, (1997) 12 *Zhongguo yanjiu*.

<sup>46</sup> Xu, *supra* note 44.

<sup>47</sup> IOR/L/PS/10/344: 1914-1916. See also the description of the negotiations in Younghusband, *supra* note 38.

<sup>48</sup> Younghusband, *supra* note 38, at 343-4. Z. Steiner, ‘The Foreign Office under Sir Edward Grey, 1905-1914’, in F.H. Hinsley (ed.), *British Foreign Policy Under Sir Edward Grey* (1977), 22-69.

Mr. Zhang's assumption seems to have been that virtual recognition of Chinese sovereignty over Tibet was involved in the signature of the latest Convention with China'.<sup>49</sup>

Another foreign-educated Chinese official, Tang Shaoyi, who also had a key role in the negotiations, and in the Chinese policies toward Tibet, was equally adamant about Chinese sovereignty, and critical of the British use of suzerainty to define the Sino-Tibetan relations.<sup>50</sup> In one of his reports he discussed the difference between sovereignty and suzerainty, emphasizing the risk of defining China as a suzerain power over Tibet, in that this could have easily translated Tibet as a tributary state of China, *shuguo* 属国, and being treated in the same way as Korea, Vietnam, and Liuqiu Islands, which became either independent countries or protectorate under other foreign powers.<sup>51</sup> Negotiations in Beijing between Tang Shaoyi and Sir Edward Satow resulted in the *Convention Between Great Britain and China respecting Tibet*, signed in Peking on April, 27 1906, and ratified in London on 23 July 1906. The Convention does not directly address the main issue, i.e., disputes over sovereignty and suzerainty; nor is there explicit mention of Chinese sovereignty or suzerainty, which appears for the first time in the *Convention between Great Britain and Russia* of 1907.<sup>52</sup> However, Article 2 talks about the 'Chinese administration of Tibet', and the duty of the government of China 'not to permit any other foreign State to interfere with the territory or internal administration of Tibet'.<sup>53</sup> It seems thus that the authority of the Tibetan government as ruled in Article 9 of the *Convention between Tibet and Great Britain* of 1904, was now transferred to China. Zhang Yitang, in order to obviate the discrepancies between the two conventions, argued:

The virtual recognition of Chinese sovereignty over Tibet was involved in the signature of the Adhesion Agreement, and that Chinese authority in Thibet should consequently be the interpretation placed on the phrase Tibetan Government wherever the latter occurs in the Lhasa Convention.<sup>54</sup>

The Qing continued with their attempts to consolidate their direct control over Tibet with new programs in the southwest, which provided for the elimination of local autonomous Tibetan chiefdoms in the Kham area (eastern Tibet, later renamed Xikang), and for the reduction of the number of monks in the monasteries. The provisions created unrest among Tibetans, leading to an open revolt, in which the Amban Feng-Chen was killed. In retaliation the Qing sent an army under Zhao Erfeng, which re-conquered the area in 1908. Zhao was then granted honours and was made a frontier high commissioner. He abolished the rank of native chiefs

<sup>49</sup> Younghusband, *supra* note 38, at 345.

<sup>50</sup> FO 17/1753, N. 404, Nov. 29, 1904.

<sup>51</sup> M.Z. Feng, *Zhong ying xizang jiaoshe yu chuan cang bian qing* (2007), 140–2.

<sup>52</sup> Art. 3 of the Agreement concerning Thibet of the Convention relating to Persia, Afghanistan, and Thibet, 31 August 1907, in J.V.A. MacMurray, *Treaties and Agreements with and concerning China 1894-1919* (1921), Vol. 1, at 677.

<sup>53</sup> See Arts. 2 and 3 of the Convention between Great Britain and China respecting Tibet. Signed at Peking, 27 April 1906, in G.E.P. Hertslet, *Treaties, &c., between Great Britain and China; and between China and Foreign Powers; and Orders in Council, Rules, Regulations, Acts of Parliament, Decrees, &c., Affecting British Interests in China* (3d. ed., rev.) (1908), 202.

<sup>54</sup> See Li, *supra* note 8, at 114.

and replaced them with Chinese magistrates; introduced new laws limiting the number of lamas and depriving monasteries of their temporal power; and inaugurated schemes for Chinese immigrants to cultivate the land.<sup>55</sup> He planned to reorganize East Tibet into 33 districts of a new province named Xikang, and a new scheme for development of Tibet, which covered military reclamation work, education, encouragement of trade, and the improvement of the administration.<sup>56</sup> His work was so memorable and so impressive that his endeavours were recorded and praised in various British documents.<sup>57</sup> In November of the same year under the influence of Zhao's innovations, the Chinese Government issued an Imperial Decree that conferred additional honour titles to the Dalai Lama as the 'Great, Good, Self-existent Buddha of Heaven', marking in reality his inferior position as a 'Loyally Submissive Vice-regent'. According to Sir John Jordan it constituted 'the first unequivocal declaration on the part of China that she regarded Tibet as within its sovereignty, be it noted not, suzerainty'.<sup>58</sup> The series of reforms launched by Zhao Erfeng in the final days of the Qing can be considered as modern China's first state-building attempt in its border regions. His endeavour ended with the collapse of the Qing and the failed Qing expedition in Tibet in 1910. After the outbreak of the Xinhai Revolution in 1911–1912, Qing rule essentially ended. Taking advantage of the situation, the Tibetans signed the *Agreement Between the Chinese and Tibetans* of August 1913 and the *Agreement of the Chinese and Tibetans of December 1912*, which ruled that all the last remnants of the Chinese garrisons and officials had to be removed. This was followed by the *Proclamation of Independence of Tibet* issued by the 13<sup>th</sup> Dalai Lama the following year.<sup>59</sup>

### 3. A CLASH OF IMPERIAL TECHNIQUES: THE SIMLA CONFERENCE 1913–1914

After the collapse of the Qing, the Tibetan Government acted independently of China for the following decades, with the limited political and military support of the British government. Chinese premier Yuan Shikai was not able to restore authority in the outlying areas, and in the Republican years, the sovereignty Chinese diplomats claimed and defended over Tibet was mainly imagined, it did not correspond to reality. China was increasingly nationalistic and eager to become a modern sovereign state and maintained that Tibet was an essential part of it, asserting its sovereignty whenever it could. Immediately after 1912 there were official pronouncements that expressed the willingness to transform inner-Asian dependencies of the Qing into integral parts of the Chinese state: Yuan Shikai in 1912 stated that Tibet, Mongolia, and Xingjiang would be considered provinces of China on an equal footing with

<sup>55</sup> See Li, *supra* note 8, at 66; see also W. Tian, *Zhao Erfeng: xue yu jiang xing meng* (1997).

<sup>56</sup> A.T. Grunfeld, *The Making of Modern Tibet* (1987), 60, 63.

<sup>57</sup> FO 228/2570; FO 228/2571.

<sup>58</sup> Younghusband, *supra* note 38, at 364, 384.

<sup>59</sup> Agreement of the Chinese and Tibetans of December 1912, in R. Rahul, 'The 1912 Agreement Between the Chinese and Tibetans', (1979) *Tibetan Review*, 20–1; Proclamation Issued by His Holiness the Dalai Lama XIII (1913), in W.D. Shakabpa, *Tibet: A Political History* (1967), 246–8.

the others and as an integral part of the Chinese motherland.<sup>60</sup> Article 3 of the *Provisional Constitution* of 1912, which formed the basic government document until the Nationalists took power in 1928, divided the Republic into 22 provinces, to which were added Inner Mongolia, Tibet, and Qinghai.<sup>61</sup>

But the Dalai Lama was not willing to recognize Chinese authority over Tibet, and after Outer Mongolia declared its independence in December 1911, in December 1912 Tibet and Mongolia signed the *Treaty of Friendship and Alliance Between the Government of Mongolia and Tibet*, sealing their new independent status.<sup>62</sup> Great Britain, on its side, kept applying the principle of China's suzerainty over Tibet. For instance, in 1912 the India Office issued a document declaring that:

His Majesty's Government, while they have formally recognized the "suzerain rights" of China in Tibet, have never recognized, and are not prepared to recognize, Chinese sovereignty over that country. His Majesty's Government do not admit the right of China to intervene actively in the internal administration of Tibet.<sup>63</sup>

At the beginning of the Republic, three different legal strategies inscribed within the framework of international law clashed with each other in the definition of the Sino-Tibetan relations: sovereignty claimed by China, suzerainty promoted by Great Britain, and independence promoted by Tibet (which at the beginning claimed territory well beyond its current borders, reaching the current Chinese provinces of Yunnan, Sichuan, Gansu and Qinghai). This linguistic clash was very much reflected in the tripartite conference on Tibetan status called for by the British, which took place in Simla, India, between 1913 and 1914.

The precedent for the Simla Convention was a memorandum sent in August 1912 by John Jordan, British Prime Minister in Beijing, to the Chinese Foreign Office, in which he expressed his views about Tibet. If the British government recognized Chinese suzerainty over Tibet, it was not the right of China to intervene in Tibetan internal administration; Britain was determined to limit and control the number of Chinese troops stationed in Lhasa and in Tibet.<sup>64</sup> The Chinese considered the memorandum a violation of its sovereign rights over Tibet and against the spirit of the Anglo-Chinese Convention of 1906. In December, the then deputy chief of the Waijiaobu, Yan Huiqing, had a discussion with Jordan.<sup>65</sup> In the conversation Yan argued that according to Article 2 of the Treaty of 1906, China had the right to intervene in Tibetan internal affairs, and to administer its territory. Jordan, fearing that Tibet would have been transformed in a Chinese province, opposed the Chinese reading of the 1906 Convention. The internal and external pressures, in particular from Great Britain, forced China to give an official answer to the memorandum,

<sup>60</sup> See Li, *supra* note 8, at 130.

<sup>61</sup> A part from Qinghai that could send only one senator, Tibet and Mongolia could have sent five senators (Art. 8). *Lin shi yue fa* (1912).

<sup>62</sup> FO 535/16, No. 88, Enclosure 1, 1913.

<sup>63</sup> FO 371/1327, 29616, 11 July 1912.

<sup>64</sup> For the memorandum see A. Lamb, *The McMahon Line: A study in the Relations between India, China and Tibet, 1904-1914*, (1966), Vol. 2, at 433-5-604-5.

<sup>65</sup> FO 371/1329, 55588, 14 December 1912. See also Jordan, expressing his concern about China transforming Tibet into a Province. FO 371/1609, 9017, 508, 26 December 1912.



which arrived on 23 December 1912. The official position of the Waijiaobu clearly echoed Yan.<sup>66</sup> Jordan, who was not satisfied by the reply, thought that a new treaty was needed, and he enquired with Lu Zhengxiang, the Cabinet Minister of the Waijiaobu, in February 1913. In his comments Lu hoped to solve the Tibet issue soon, pointing out how one of the main issues of the Treaty was the word ‘suzerainty’: ‘the word “suzerain” has never been used by China and also Tang Shaoyi in all the negotiations always rejected it’.<sup>67</sup> Jordan’s reply was quite abrupt: ‘It is not possible for the British Government to recognize the “sovereign” rights of China in Tibet’.<sup>68</sup> Due to the unfruitful meeting, Jordan called for a new conference to be held in Simla and for a new treaty defining Tibetan status.<sup>69</sup> The British version of this new treaty would divide Tibet into two zones: Inner Tibet, consisting of Kham and Amdo under Chinese influence, and Outer Tibet under the autonomous government of Lhasa, in which no interference of Chinese Government was permitted.

On 13 October 1913, the tripartite conference was convoked at Simla. The Chinese Government was forced to accept the participation of Tibetan delegates at the international conference on an equal footing. The Tibetan delegate, Lonchen Shatra, helped by Sir Charles Bell, submitted a proposal consisting of six demands: 1. Tibetan independence; 2. an indemnity; 3. the right to denounce the Anglo-Chinese Convention of 1906; 4. the right to amend the Trade Regulations of 1893 and 1908; 5. the return to Tibet of all land as far as Tach’ienlu; and 6. the extension of Tibetan territory so as to include Konokor. This was not only outrageous for the Chinese, even the British considered the Tibetan requests ‘unreasonable’.<sup>70</sup> The Chinese counterproposal consisted of seven parts: 1. it asked for a clear provision stating that Tibet was an integral part of China; 2. China would not convert Tibet into a province of China; 3. Great Britain would undertake not to annex Tibet or any of its parts; 4. Chinese residents could station troops in Lhasa, numbering 2600; 5. the foreign and military affairs of Tibet should be conducted under Chinese direction; 6. besides the contact with the British Trade agents as provided by Article 5 of the *Lhasa Convention* of 1904 and the *Anglo-Chinese Convention* of 1906, Tibet would undertake not to enter into any agreement or negotiations with any foreign state except through the Chinese Government; and 7. the Tibetan boundary should be established at Giamda.<sup>71</sup>

The Tibetan and Chinese positions could not have been more far apart. In February 1914, Great Britain, acting as an intermediary between the two, proposed the division of Tibet into Outer and Inner Tibet; the Tibetans tentatively agreed, but the Chinese repudiated the agreement at the last minute. In all the drafts, Great Britain persisted in the strategy of recognizing Chinese suzerainty over Tibet, but not its sovereignty. Given its ambivalent meanings, the concept of suzerainty left Great Britain much more leeway to promote its own interests in Tibet within the law, and Tibet too, when it could not affirm its independence, preferred this ambiguous status to being

<sup>66</sup> FO 371/1609, 1257, 23 December 1912.

<sup>67</sup> FO 371/1609, 9017, 4 February 1913.

<sup>68</sup> *Ibid.*

<sup>69</sup> L/PS/10 344, Li, 133–4.

<sup>70</sup> L/PS/11 58; see also Li, *supra* note 8, at 136.

<sup>71</sup> *Ibid.*

clearly under Chinese sovereignty. Suzerainty, as the naturalized British citizen Lassa Oppenheim remarked, is a term that comes from French Feudal Law, *suzeraineté*; it originally stood for feudal personal supremacy.<sup>72</sup> In the nineteenth century doctrine of international law, the term was re-employed in order to describe the different relationships of subordination characterized by the transfer of external sovereignty from the vassal state to the suzerain state. The latter thus exercised on the former only a 'limited sovereignty', allowing the vassal, after the payment of a tribute, administrative autonomy. This is partly in conflict with the principle of sovereignty, which was understood as something indivisible and exclusive.<sup>73</sup> As Oppenheim noticed in his influential treatise on international law, the only way to justify suzerainty is to understand sovereignty as a divisible concept. To him, the imperfect International Personality of a suzerain state, was 'an anomaly', in that 'the very existence of States without full sovereignty is an anomaly in itself'.<sup>74</sup>

From what can be inferred from the most influential doctrine of international law at the time, suzerainty was something very ambiguous and blurred, it varied case by case, and it thus left a lot of exceptional power to decide case by case. This was reconfirmed by another important British jurist at the time, John Westlake, whose discussion demonstrated the anomalous and undefined nature of the concept, which for him was 'a loose concept, and should be avoided', despite the fact that it was commonly used in the classification of states.<sup>75</sup>

The principle of Chinese suzerainty over Tibet promoted by the British (see also the upper left corner: 'recognizing that Tibet is under the suzerainty of China, but not the sovereignty of China' in the image below) corresponded precisely with the absence of full sovereignty to which China was relegated by Western powers when it entered international society in the mid-nineteenth century.<sup>76</sup> Given the situation, sovereignty served two very different purposes for China. On the one hand, it was used by 'victim China' to defend itself from the foreign encroachment, and to reassert its full control over its territory and its people against the unequal treaties. On the other hand, it was used as an instrument to re-incorporate its lost imperial domain of tributary states within its new sovereign domain. Here Tibet was the 'victim' of China, encroached by its rule. At the same time, Tibet, whenever it could, also tried to expand its independence well beyond its national limits. Through different legal terms, the same imperial strategy, where the roles of victim and culprit are easily overturned, is perpetuated.

In the end no consensus was reached; the Simla Conference broke up in the summer of 1914, leaving the Tibetan question open. The lack of agreement in defining a Sino-Tibetan boundary contributed to the border war between the Tibetan Army and the Chinese garrison stationed at Chamdo in 1917–1918. The Tibetans pushed the Chinese troops back, east of the upper Yangze River, and re-conquered the Khan. Britain was essential in this context; it helped to negotiate a truce, with

<sup>72</sup> L.F. Oppenheim, *International Law. A Treatise* (1912), Vol. I, at 141.

<sup>73</sup> L. Nuzzo, 'Autonomia e diritto internazionale. Una lettura storico-giuridica', (2014) 43 *Storica* 651, at 678–80.

<sup>74</sup> See Oppenheim, *supra* note 72, at 110.

<sup>75</sup> J. Westlake, *International Law, Part I, Peace* (1910), 25–7.

<sup>76</sup> From IOR/L/PS/10 340, 148.

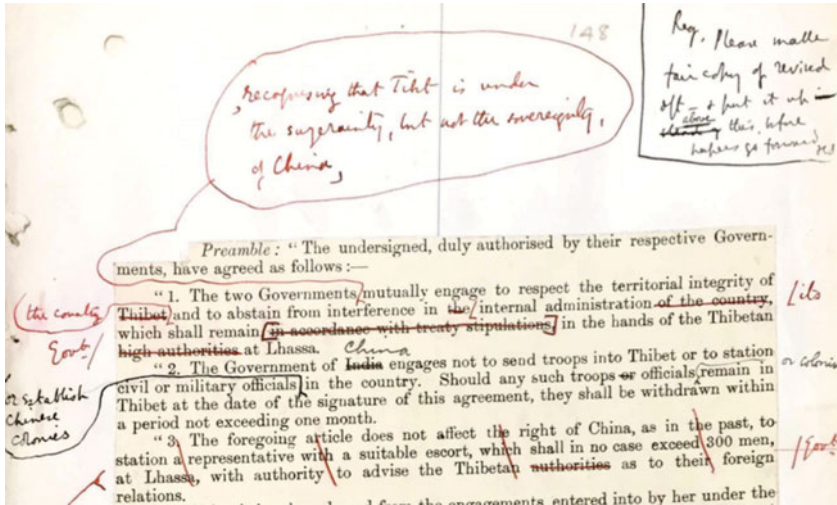


Figure 1. (Colour online) Excerpt from the official India Office Record on the British negotiations with China before the Simla Conference. In the draft the British, as part of their linguistic and imperialistic strategy, did not want to refer to Chinese 'sovereignty' but only to 'suzerainty' over Tibet. OR/L/PS/10/340: 1913

the result that the upper Yangtze River became the *de facto* Sino-Tibetan Boundary, known as the MacMahon line, at least until the early 1950s, when the People's Liberation Army crossed the river and 'liberated' it.<sup>77</sup> While Sino-Tibetan relations deteriorated, Anglo-Tibetan relations reached a new high in the 1920s, and Tibetan modernization relied much on British patronage. In the official British narratives about Sino-Tibetan relations, China continued to exercise only suzerainty over Tibet. This was the British official policy, as Lord Curzon, then Secretary of State for Foreign Affairs, informed the Chinese Minister Wellington Koo in 1921.<sup>78</sup>

#### 4. NATIONALISTS IMAGININGS OF SOVEREIGNTY AND THE HUANG MUSONG'S MISSION TO LHASA IN 1934

The unification of China under Guomindang rule in 1928 was still far from granting the Republic the sovereign unity it hoped for. The claimed sovereignty over Tibet became part of a larger Chinese struggle and its endeavours to reconstruct its international authority within the Western international legal framework and relinquish the unequal treaties. After the famous Northern Expedition, the Nationalists established six new provinces in Inner Mongolia and in the Southwest (Chahar, Rehe,

<sup>77</sup> See Agreement for the Restoration of Peaceful Relations and the Delimitation of a Provisional Frontier between China and Tibet, signed on 19 August 1918 by the British, Chinese, and Tibetan plenipotentiaries, with the Supplementary Agreement Regarding Mutual Withdrawal of Troops and Cessation of Hostilities between Chinese and Tibetans signed on 10 October 1918. India Office Records, L/PS/10/714.

<sup>78</sup> C. Bell, *Tibet, Past and Present* (1924), 52, 215, 216; H.E. Richardson, *Tibet and its History* (1962), 93, 96, 98, 101, 103, 104, 108, 109, 113, 114, 117, 118, 122. See also 893.00 Tibet/69, United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, at 638.

Suiyang, Ningxia, Qinghai, and Xikang). A new national defence scheme seriously reconsidered the status of Tibet and Outer Mongolia, which had to be reincorporated at all costs within China's full domain.<sup>79</sup> The Provisional Constitution (*yue fa* 約法) of the Nationalist Government, promulgated in Nanjing in 1931, included Tibet and Outer Mongolia as provinces of China (Article 1) and the same was the case of the 1934 version. Their governments were to be determined separately by law in the light of the local conditions (Article 80).<sup>80</sup> The nationalist leader Chiang Kai-shek insisted in his early speeches that Tibet was an integral part of China. What he asserted was a virtual and fictional sovereignty, as Nationalist control was so weak that he did not even know the names of the Tibetan governors.<sup>81</sup> The Nanjing government had virtually no land to administer, nor taxes or financial resources to extract from Tibet.<sup>82</sup> Tibet was basically independent of China; this was acknowledged later by the main official in charge of Tibetan and Mongolian affairs between 1943 and 1946, Shen Zonglian. In the book he wrote about Tibet, he also remarked that the emergence of the spiteful notion of Chinese suzerainty should be attributed to the British.<sup>83</sup> He noted that:

Since the year 1911, Lhasa has to all practical purposes enjoyed full independence. It has its own currency and customs; it runs its own telegraph and postal service different from that of any other part of China; and it even keeps its own army.<sup>84</sup>

Tibet continued to act as a semi-independent state under strong British influence. This was confirmed in 1934, when Huang Musong was sent to Lhasa for a mission of condolence on the death of the 13th Dalai Lama. The mission was somehow well received by the Tibetans, and constituted the most meaningful exchange between the two since the Simla Convention, although nothing was really concluded in the end. Huang, in the role of special commissioner to Tibet, symbolically gave a posthumous title and jade to Tibetan representatives, performing ancient ceremonies that ritually affirmed Chinese dominion over Tibet.<sup>85</sup> The negotiations between him and the Tibetan representative in Lhasa were conducted according to some of Huang's proposals that reaffirmed Chinese sovereignty: Tibet must be an integral part of China and it had to respect China's central government; administrative autonomy in internal affairs should be granted to Tibet, but foreign affairs and nation-wide affairs such as communications and the selection of important officials in Tibet should be under Chinese national control; and in order to exercise full sovereignty over Tibet while respecting Tibetan autonomy, Chinese central government should appoint a high commissioner to be stationed in Tibet as the representative of the Central Government, able to guide regional autonomy and carry out national ad-

<sup>79</sup> See Lin, *supra* note 13, at 19.

<sup>80</sup> X. Zhang, *Zhonghua Minguo de xianfa yu zhengzhi* (1991).

<sup>81</sup> See Lin, *supra* note 13, at 44–6.

<sup>82</sup> *Ibid.*, at 69.

<sup>83</sup> Z. Shen and S. Liu, *Tibet and the Tibetans* (1953), at 51.

<sup>84</sup> *Ibid.*, at 62.

<sup>85</sup> H. Lin, 'The 1934 Chinese Mission to Tibet: A Re-examination', (2002) 12 *Journal of the Royal Asiatic Society of Great Britain & Ireland* 327; Lin, *supra* note 13, at 80.

ministrative measures.<sup>86</sup> The Tibetan response contained ten points that showed an unwillingness to rely on the Chinese Nationalist Government: while conceding some margins to China for the administration of Tibetan foreign relations (points 1 and 4), point 3 ruled that ‘traditional laws and regulations dealing with the internal affairs of Tibet shall remain independent as at present, and the Chinese Government will not interfere with Tibetan civil and military authorities’; with regard to jurisdiction, Tibet maintained the right to it, even over Chinese people that had long resided in Tibet (point 7); military power remained independent of China, and only in the case of invasions should ‘the Chinese government be consulted on military measures to be taken’.<sup>87</sup>

Despite Huang’s mission being relatively successful, no direct Chinese administration of Tibet was established; nothing substantial changed in China’s effective rule over Tibet. Japan’s invasion of north-eastern China in 1937, and the consequent creation of the Manchu puppet state, forced the Han Chinese people to move more towards the southwestern frontier; defining the frontier became a necessity. The imaginary authority of the Guomindang in Tibet, reflected in the ill-demarcated frontiers, had to be substantiated with legally defined boundaries. However, a map of the National Shame of 1938, in which its ex-tributary states, Taiwan, Siam, Myanmar, Korea, and Ryukyu, were included in the frustrated grand ambitions of the Republic, shows how much Chinese claims were still mostly an aspiration with no equivalent in reality.<sup>88</sup>

In the Second World War, China became a precious ally in the Pacific for the US. During the war against Japan, Chiang Kai-shek attempted to reassert Chinese sovereignty over Tibet, not merely suzerainty. He contacted Indian leaders, opposed British colonialism to gain support for his Tibetan cause, and tried to establish a pro-China regency before the 14<sup>th</sup> Dalai Lama assumed office.<sup>89</sup> When, in 1942, Tibetans proclaimed their own Foreign Affairs Bureau, as a sign of the rejection of Chinese suzerainty and sovereignty, China did not recognize it, while the British happily did.<sup>90</sup> After Pearl Harbour, China was recognized as one of the Great Powers; this boosted the Nationalist state-building aspiration, also for Tibet, which was part of the so-called ‘China’s Destiny’ (*Zhongguo zhi mingyun*, 中國之命運), as Chiang Kai-shek’s influential work of 1943 suggested.<sup>91</sup> The reforms that followed included

<sup>86</sup> See Lin, *supra* note 13, at 338; Li, *supra* note 8, at 168–9.

<sup>87</sup> See text in Li, *supra* note 8, at 169–70.

<sup>88</sup> See the map of China of 1938–1939 from the Minister of Internal Affairs with enlarged borders, which included Korea, Siam, Taiwan, Myanmar, Korea, Ryukyu, in K. Shin, ‘The Chinese re-interpretation of the Chinese World Order, 1900–40s’, in A. Reid and Y. Zheng (eds.), *Negotiating Asymmetries: China’s place in the World* (2009), 139–58, at 147.

<sup>89</sup> M.C. Goldstein, *A History of Modern Tibet* (2007), 314–49; S.L. Chang, ‘A realist hypocrisy? Scripting sovereignty in Sino-Tibetan relations and the changing posture of Britain and the United States’, (2011) 26 *Asian Ethnicity* 325.

<sup>90</sup> The Chinese regarded this unilateral action as evidence of transfer of *de facto* autonomous status to an even bolder *de jure* independence. So the high-ranking authorities of Chongqing made an official announcement refusing to acknowledge the newly created office in Lhasa.

<sup>91</sup> K. Chiang, *Zhongguo zhi mingyun* (1943). The work *China’s Destiny* and the position of General Chiang Kai-shek about Tibet were well known not only in China but also abroad. For instance there is a reference to the book and Chiang’s position over Tibet in: 893.00 Tibet/63, in United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, at 663.

a reorganization of the province of Xikang; creation of a conscription programme and the recruitment of Xikang's people into the Guomindang army; reinforcement of taxation and of judicial system; strengthening of infrastructure, and posting of Chinese troops on the Qinghai-Tibetan border.<sup>92</sup>

Despite China's important contributions in the Second World War, Britain again questioned Sino-Tibetan relations after the War, and this time its Foreign Office promoted the strategy of non-recognition not only of Chinese sovereignty over Tibet, but also of Chinese suzerainty. Disregarding the position of Minister of Foreign Affairs, Song Ziwen, who argued that Tibet was an inalienable 'part of China', Anthony Eden, the British Secretary of State for Foreign Affairs, maintained a very different position. In a letter dated 10 April 1943, the British Foreign Office addressed a document titled 'Tibet and the question of Chinese Suzerainty' to the Cabinet.<sup>93</sup> Given the new Chinese ambitions of post-war leadership in the Far East, and 'in order to give effective support to Tibet's claims to complete independence', the Foreign Office suggested that 'we should abandon our previous willingness to acknowledge China's suzerain rights'.<sup>94</sup> Other reasons that justified the change of policy, on which both the British Foreign Office, India Office, and Government of India agreed, included the freedom to make treaties directly with Tibetans and the improvement of Tibet's international status, possibly to more easily solve the Sino-Indian border dispute and preserve Tibet as a buffer zone.

However, the British did not find the support they hoped for from the US. Consulted by the British in May 1943, Washington stated:

the Government of the United States has borne in mind the fact that the Chinese Government has long claimed suzerainty over Tibet and that the Chinese constitution lists Tibet among areas constituting the territory of the Republic of China. This government has at no time raised a question regarding either of these claim.<sup>95</sup>

It is interesting to notice how the US avoided using 'sovereignty', and in official documents mostly referred to Chinese 'suzerainty' over Tibet, despite being favourably disposed towards China. During the Pacific Council Meeting in Washington on 20 May, which gathered together Roosevelt, Churchill, and Song, the Tibet issue was raised again. Churchill criticized the Nationalist Government, saying that they posted troops in an independent country, Tibet. Song immediately replied, arguing that Tibet was not an independent country and that in the Sino-British Treaties, Britain had recognized Chinese sovereignty over Tibet.<sup>96</sup> The British, seeing the lack

<sup>92</sup> See 740.001 Pacific War/3465 Telegram, The Ambassador in China to the Secretary of State, Chungking, 28 September 1943, United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, at 641. See also Lin, *supra* note 13, at 118–20, 170.

<sup>93</sup> The British Embassy to the Department of State, S03.24/1594, United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, at 626–8.

<sup>94</sup> FO 371/35755, 1811/40/10, 1943. The general attitude of the British Foreign Office with regard to the Chinese suzerainty over Tibet is also dealt in the Viceroy of India's Telegram No. 864-S of 31 March 1943.

<sup>95</sup> The Department of State to the British Embassy, Aide-Memoir, Washington, 15 May 1943 (S93.24/1594), in United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, at 630.

<sup>96</sup> J. Wu, *Zong Ziwen zhu mei shiqi dianbao xuan 1940-1943* (2008), 188. Partly discussed in 893.00 Tibet/64, Memorandum of Conversation, Washington, 31 May 1943, in United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, 633–4.



of support from Roosevelt, and the stubbornness of Chinese diplomats, in particular Song, again changed their position.<sup>97</sup> This was articulated by the Foreign Office in a document entitled 'Status of Tibet' sent to the US Department of State in July 1943: 'His Majesty's Government do not feel themselves committed to regard China as the suzerain unless she in turn agrees to Tibetan autonomy. For the present, it is better the matter should be left at that'.<sup>98</sup> Chinese diplomats continued to promote their cause in the US, and Song had a conversation with the Department of State in September 1943 where he remarked how the 'Chinese regard Tibet as a part of China; regard relations with the Tibetans as an internal problem' and that 'politically and legally Chinese claims are stronger than the British ones'.<sup>99</sup>

The US position toward Sino-Tibetan relations gradually changed in the course of the 1940s, mostly in reaction to the expansion of the Communist sphere and to the weakness of the Nationalist Government. This could be observed, for instance, in the letter of George Merrel, US Chargé in India, to the Secretary of State in January 1947. After having argued for the strategic importance of Tibet from both the ideological and geographical point of view and having recognized Chinese claims of suzerainty over Tibet, he argued that:

in view of the precarious position of the present Chinese Nationalist Government, and the uncertainty regarding its future, I feel it is far more important for our Government to take advantage of its present opportunity to offer Tibet concrete evidence of its friendship than to be unduly concerned over any objections which the present Chinese Government might offer.<sup>100</sup>

Once the Communists took over China, the US attitude toward Sino-Tibetan relations changed radically, and officially it began to oppose China's sovereign claims.

The conversation in Washington still did not solve the issue of sovereignty/suzerainty. In 1944, Shen Zonglian, the main official in charge of Tibetan and Mongolian affairs in the years between 1943 and 1946, using the term sovereignty instead of suzerainty and unhappy about the discrepancies between the Chinese and the British use of the terms, asked the British Foreign Minister Sir Olaf Caroe for clarification. The British Foreign Minister then wrote that 'when a country is strong, suzerainty means sovereignty, and there is no difference between the two'. Chen then replied in a report that:

From Caroe's understanding of suzerainty, we can see how the relationship between China and Tibet depends on our efforts and power in strengthening our rule over Tibet, it seems that it would be difficult for the British to resist this. When the right opportunity comes, under the principle of "suzerainty" it does not seem impossible

<sup>97</sup> Wu, *supra* note 96, at 193.

<sup>98</sup> 893.00 Tibet/70 The British Embassy to the Department of State, in United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, 634–6.

<sup>99</sup> 740.0011 Pacific War/3272, United States Department of State/ Foreign relations of the United States: diplomatic papers, 1943, China, 641–2.

<sup>100</sup> 711. 93 Tibet/1-1347, 13 January 1947, United States Department of State/ Foreign relations of the United States: diplomatic papers, 1947, China, 589–91.

that the central government can completely recover sovereignty over Tibetan foreign affairs.<sup>101</sup>

Shen, in fact, promoted a policy that affirmed Chinese territorial sovereignty *lingtu zhuquan* 领土主权 over Tibet, rejecting the use of suzerainty.<sup>102</sup>

Chiang Kai-shek only agreed to give Tibet a high degree of autonomy (*gaodu de zizhi* 高度的自治), opposing the policy of the 13<sup>th</sup> Dalai Lama, who ruled Tibet for more than 20 years until 1933, under the principle of full autonomy (*Xizang guyou wanzheng zizhu yuanze* 西藏固有完整自主原则).<sup>103</sup> The Tibetan position was officially reconfirmed in the *Nine Point Communiqué from Tibet to China* in 1946, according to which Lhasa, was already willing to issue its own passports, so that Chinese nationals would need visas to enter Tibet.<sup>104</sup> But the Guomindang ignored the communiqué, and instead invited Tibetans to participate in the National Assembly to discuss the constitution under which Tibet was to be regarded as a self-governing, autonomous district within Chinese territory. This was reasserted in the new Constitution of 1947, in which Tibet, with its system of self-government, was considered a province of China. Chiang appointed five people to deal with the communiqué, but they came to no conclusions; in any case, time would have not been sufficient, as the Guomindang was forced to retreat to Taiwan when the Communist Party took over in 1949.<sup>105</sup>

## 5. PRC SOVEREIGNTY OVER TIBET: VINDICATING A CLAIMED STATUS

In the Republican period the Nationalist leaders used the recently transplanted language of international law to claim sovereignty over Tibet and frontier territories that were well beyond their control. Such claims clashed with those of Great Britain and Tibet; they were based upon political imagination, created in order to maintain political legitimacy within the international legal language. It was the lack of full sovereignty that pushed Chinese diplomats to symbolically reclaim Tibet: its status could be considered a prolongation of the general issue of the recognition of Chinese sovereignty, the unequal treaties, and the anxiety to become a modern nation state. When sovereignty is not threatened it 'lies dormant' to use Morgenthau's words, but when it is at stake a strong claim for it is more likely to occur.<sup>106</sup> Werner and De Wild understand sovereignty as a:

Speech act ... [aimed to] (re-)establish the claimant's position as an absolute authority, and to legitimize its exercise of power ... Sovereignty represents an existential value

<sup>101</sup> R. Zhang, 'Qinchai shiming: Shen Zonglian zai xizang', (2010) 67 *Zhongyang yanjiu yuan jindai shi yanjiu suo jikan* 59, at 69.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> M.C. Goldstein, *A History of Modern Tibet: 1913-1951* (1989), 538–43.

<sup>105</sup> See Li, *supra* note 8, at 174.

<sup>106</sup> H. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (1948), 344. Quoted in W. Werner and J. De Wilde, 'The Endurance of Sovereignty', (2001) 7 *European Journal of International Relations* 283, at 286.

that allows for extraordinary measures when it is at stake – and since it is a *claimed* status, with discursive functions, it tends to be at stake always.<sup>107</sup>

From this perspective, the pre-eminence of sovereignty in Chinese rhetoric was instrumental in its negotiations for a new political international status. Tibet was a failed attempt within the broader project of Chinese modern state re-building and the attempt through law to extend Chinese bureaucracy, state surveillance, policing, and education over Chinese territory. This temporary failure was related not only to foreign encroachment, but also to another fundamental problem for China: it was an empire that attempted to behave as a modern nation state, with all that implied, such as the twofold use of sovereignty both as an instrument to defend China against foreign powers, and as an imperial instrument towards territories that used to be part of the tribute system.<sup>108</sup>

It was the Chinese Communist Party that fulfilled the last uncompleted but effective state-building efforts of Zhao Erfeng, once it founded the Peoples' Republic of China in 1949. What was considered internationally a crime of aggression and military occupation, the Chinese expressed as a 'peaceful liberation'.<sup>109</sup> In 1950 the People's Liberation Army advanced its troops into Tibet to drive out the imperialist forces and consolidate the national defense. This, according to communist rhetoric, constituted the Chinese Government's exercise of its own domestic jurisdiction over Tibet, as Tibet was an integral part of China.<sup>110</sup> Tibet searched in vain for help at the United Nations. After the 'liberation' of Tibet, and after the imposition of the *Seventeen Point Agreement for the Peaceful Liberation of Tibet* in 1951, Chinese influence in Tibetan Affairs increased steadily in the following nine years, up until the failed Tibetan Uprising of 1959, which provoked a Chinese military crackdown that forced the 14<sup>th</sup> Dalai Lama to seek exile in India.<sup>111</sup> All this was done in the name of sovereignty, a term that was translated into Chinese only in the 1860s by a foreign missionary. Chinese diplomats were not only able to affirm their country as one of the Great Powers in the Second World War, relinquishing virtually all of the unequal treaties by the end of the Republican period, but surprisingly enough, from being cast as the victim of Western imperialism, China managed to turn into a modern imperialist, as the case of Tibet shows.

This article aims to contribute to a reflection on the imperial origin of international law, broadening its geographical roots to non-Western countries, and to relativize the notion of victim versus oppressor in the analysis of techniques of empires. In line with post-colonial scholarship, this work has attempted not only to show how the British Empire used the notion of suzerainty to promote its imperial interests over Tibet, in this way hampering the 'scientificity' of international law;

<sup>107</sup> Ibid., at 287.

<sup>108</sup> As the historian, Odd Arne Westad noticed, with regard to China today: 'the central problem for China's foreign affairs in the future is that it is an enduring empire that increasingly behaves like a modern nation state'. O.A. Westad, *Restless Empire. China and the World since 1750* (2012), 441.

<sup>109</sup> J. Wang, *The historical status of China's Tibet* (1997).

<sup>110</sup> Ibid., at 185.

<sup>111</sup> See M. Mancallan, *China at the Centre, 300 years of foreign policy* (1984), 251–4; D.C. Twitchett and J.K. Fairbank, *The Cambridge History of China* (1978), Vol. 15, at 16.

it also demonstrates how the agency of the colonized Other, in this case China and Tibet, should not be read only in terms of victimhood. Rather, in order to do justice to this agency, China should be understood also as a colonizer and imperial Self. In fact, China advanced its imperial claims over Tibet using the same techniques it had just learned from the West. And Tibet itself, whenever it had the occasion, attempted to assert its independence well beyond its historical borders. This episode allows one to move beyond the tendency of viewing imperialism as unidirectional, flowing from the West to the rest, and to see the way the colonized 'Other' appropriated imperial techniques, becoming not only a Self, but an imperial 'Self'.

In fact, the seeming fossilization of categories of the imperialist Self versus the colonized 'Other', does not allow us to see how much more complex was the interaction between different techniques of empires and different interpretations of the same techniques of empire. The disarmed victims of the past can easily acquire the arms of the culprit and become the culprits of the future. In other words, victimization can be another technique of empire.