

A CHINESE CALL FROM THE EAST INDIES: THE ROLE OF THE DUTCH EAST INDIES' INDO-CHINESE COMMUNITY IN THE BELATED ABOLITION OF DUTCH EXTRATERRITORIAL RIGHTS IN REPUBLICAN CHINA

BY JURRIAN HOENDERDOS¹

ABSTRACT

The judicial system of the late Qing empire (1644–1912) was heavily challenged in the second half of the nineteenth century, when a series of Unequal Treaties stipulated foreign powers' rights on extraterritoriality. As a consequence, a large part of the foreign community in China was excluded from Chinese law. Although in the early days of the Republic of China (1912–1949) most foreign powers lost this legal privilege due to increased assertiveness from the Nationalist government, a small group of Treaty Powers remained, including the Netherlands. When the Second World War erupted, these remaining powers agreed to end the extraterritoriality system. However, the Netherlands remained the last power to negotiate a new, equal treaty. This paper argues that crucial in this development was the increasing connection between the motherland and the Indo-Chinese community in the Dutch East Indies. Although no matter of concern before, Chinese negotiators now tried to improve living conditions for these overseas Chinese, thus complicating the bilateral negotiations and making the Dutch an unexpectedly difficult negotiation partner.

KEYWORDS: extraterritoriality, Sino-Dutch relations, bilateral negotiations, Indo-Chinese community, Republican China

1 Jurriaan Hoenderdos is a BA student China Studies at Leiden University, the Netherlands. This paper is based on his bachelor thesis, written in the course 'Understanding Republican China' and supervised by dr. L.M. Teh. E-mail: jurriaanhoenderdos@hotmail.com.

INTRODUCTION

In 1842, the Qing empire suffered its first defeat in the Opium Wars, as it was forced by the British to sign the Treaty of Nanjing, the first of many Unequal Treaties that were concluded in the last few decades of the Chinese empire. The war was a culmination of increasing Western presence in China, and its outcomes would only stimulate the ever-growing influence of Western nations on Qing society.

Although Qing negotiators did not attach much importance to it at the time, in the Treaty of Nanjing it was agreed to grant the British the right of extraterritoriality. This privilege, also called ‘consular jurisdiction’, meant that foreigners were to be tried according to their native country’s laws, and not according to the laws of China. In this practice, consuls had jurisdiction over their countries’ subjects. This was in contrast with the situation prior to the extraterritoriality system, when foreigners were *de facto* subjugated to Chinese law.

The decision to include an extraterritoriality article in the treaty had great consequences on both the Chinese judicial system and the foreign community in China. As many of the Unequal Treaties that followed contained the ‘most favoured’ clause, the privileges granted to the British were directly granted to the other foreign powers. In a few years, not only British subjects in China were excluded from Chinese law, but also Americans, Russians, French, Japanese, and others.

The Netherlands was not excluded from the new system of extraterritoriality. Representatives of the Dutch and Chinese governments signed a new bilateral treaty in the 1860s, stipulating the rights on consular jurisdiction. The treaty was quite similar to the treaties signed by similar countries from Western Europe, most notably Belgium and Denmark. These two countries later abolished consular jurisdiction as early as the late 1920s. The Netherlands, however, remained a Treaty Power for a significantly longer period of time, as in 1945 a renewed bilateral treaty stating the abolition of extraterritoriality was signed. In this, the Netherlands followed the example of the biggest foreign powers active in China, including Great Britain, France, and the United States. The Netherlands was by far the smallest country that remained at the negotiation table in the 1940s – not only in size, but also in population and influence in world politics.

This raises the question why the Netherlands did not abolish its extraterritorial rights in 1929, alongside its neighbour Belgium, and it instead

took sixteen years before the Dutch joined Great Britain, the United States and others to do so. To answer this question, it is necessary to consider the bilateral relationship between the Netherlands and China up until the mid-twentieth century, as well as to analyse in depth the negotiations on the abolition of extraterritoriality between the two countries in the 1940s.

SINO-DUTCH RELATIONS IN THE NINETEENTH AND EARLY TWENTIETH CENTURY

Large parts of the bilateral relationship between the Netherlands and China up until the early twentieth century can be best described as superficial. Amidst the warfare in China in the mid-nineteenth century, the Netherlands remained deliberately in the background, and invoked its neutral position. The decision to not wage war against China was not necessarily based on altruistic motives; it was mainly due to the Netherlands' lack of interest in China and the custom of Dutch foreign policy at the time to take a neutral position in international conflicts.

This, of course, did not stop the Dutch government from taking advantage of the outcome of the two Opium Wars. With the ratification of the Sino-Dutch Treaty of Tientsin in 1865, which among other things stipulated the right of extraterritorial jurisdiction, a new period of formal diplomatic relations between the two countries had begun; accordingly, a Dutch consul general in Shanghai was appointed in 1872. From the 1870s to the late 1910s, Dutch foreign policy regarding China remained passive, and mostly focused on the issue of trade. Indeed, the consul general took part in very little bilateral discussions with China or multilateral discussions with other Treaty Powers, and when he did, caution was considered of utmost importance (Van Dongen 1966: 68–69).

In the 1920s, as Chinese protest against the extraterritoriality system increased, the Netherlands had to express whether it would support abolition of extraterritoriality or not, and could no longer simply invoke its neutrality or stand aloof. The first two occasions for this were the Washington Conference and the subsequent Commission on Extraterritoriality. In 1921 and 1922, a conference took place in Washington D.C., the United States. Nine nations, including the Republic of China, Belgium, and the Netherlands, attended, and discussed their objectives and interests in East Asia. At the conference, the Chinese delegation made a formal request for the abolition of extraterritoriality. The other nations agreed, and decided to

set up a commission to investigate the contemporary practice of consular jurisdiction and the state of the Chinese law system (Fishel 1952: 51–68).

The Commission on Extraterritoriality convened twenty-one times in total over the course of nine months, starting in January 1926. Members of the commission visited a considerable number of prisons and courts throughout China to witness the state of the legal system with their own eyes, and in their work they did not ignore the flaws and cases of abuse of the extraterritoriality system. The final report, published in 1927, made several recommendations with regards to the Chinese legal system and the extraterritorial rights of foreigners. For example, the Commission urged China to prevent branches of government, civil or military, of interfering in the legal system (prim. 1). However, the most important message of the non-Chinese members of the Commission, including a Dutch representative, was simple: the political and military situation in China was too chaotic and unstable to expose foreigners to Chinese law.

The final report did not cause the Nationalist government in Nanjing to back down, however. Instead, it decided to take action, and started to unilaterally abrogate treaties with foreign powers, beginning with Belgium. There was no clear reason to specifically target Belgium first, but it belonged to a group of smaller nations not able to prevent China from taking away its legal privilege. The Chinese government did not abrogate its treaty with the Netherlands. Apparently, the Chinese government regarded the Netherlands as a relatively important treaty power that needed to be handled with greater care. The reason for this can be found in a Dutch colony, a few thousand kilometers from the Chinese capital.

THE CHINESE COMMUNITY IN THE DUTCH EAST INDIES

The relationship of the Netherlands with China, although largely superficial, always had been different from its neighbouring countries' relationships with China. It had always been intertwined with the presence of the Dutch East Indies, the Netherlands' largest colony, not too far from Southern China. This intertwining for example applied to the scientific field of Sinology. Sinology in the Netherlands did not stem from a need of knowledge on China to be applied on diplomacy, missionary work or commerce. Moreover, Dutch Sinology in its essence was not even used for China: instead, it was used to train officials of the Dutch East Indies' colonial government in order

to deal with the Indo-Chinese community properly (Kuiper 2017: 1).

The development of Dutch Sinology shows that the Dutch did not underestimate the significance of the Indo-Chinese community in the East Indies. They understood that it was a community that could be very useful, but also a community that had to be observed sharply and perhaps even had to be restrained.

The Chinese in the East Indies had always outnumbered the Dutch significantly. When Governor-General of the Dutch East Indies J.P. Coen founded Batavia in the early seventeenth century, it already had hundreds of Chinese inhabitants. In the nineteenth century, due to large-scale labour migration, there were already well over one million Chinese living in the Dutch colony. This situation was not new to the Dutch, however. The Dutch colonial government from its inception had to deal with an even larger indigenous Indonesian population, and had done so effectively through indirect rule. Only a few hundred Dutchmen ruled the entire colony. They fulfilled the most important government positions, and let a large number of local regents and village heads do the rest. As such, a rather small community of Dutch colonists governed a large Indo-Chinese and even larger Indonesian population reasonably successfully until the mid-twentieth century.

Two policy changes by the colonial government around the turn of the century had a major impact on the Indonesian Chinese community. In the first years of the twentieth century, the government of the Dutch East Indies implemented new policy on Chinese migration which would greatly affect the Chinese community. For the first time, Chinese women were allowed to settle in the East Indies. As early as the 1910s, a new and strong Chinese society emerged, consisting of only full-blooded Chinese. This *totok* society differed from the Indo-Chinese *peranakan* community, which consisted of Chinese men, their indigenous women, and offspring (Govaars 2005: 15, 20–21).

The end of the monopoly concession system in the East Indies, which was also announced around the turn of the century, gravely changed the position of the Indo-Chinese community. The monopoly concession system, also known as ‘revenue farming’, had existed for centuries and had always greatly benefited the Chinese. In this system, the Dutch outsourced taxation: taxes on resources like salt and opium were controlled by the highest bidder, often Chinese people. The Chinese thus functioned as ‘intermediary’ between the Dutch colonial government and the indigenous population, and made an important contribution to the colonial state treasury. This led both to

relative wealth among the Indo-Chinese community and the negative image a large part of the indigenous population had of them. When the system was abandoned by the East Indies government, the financial position of the Indo-Chinese deteriorated gravely, as a crucial source of income and job security was lost.

The unfortunate position the Indo-Chinese found themselves in early in the twentieth century made it attractive to look to the motherland for support. Consciousness of a Chinese heritage and identity had increased with the emergence of the *totok* society, and increased further after the 1911 republican revolution, just as the revolution had led to an increase in nationalist sentiment in China (Harrison 2001: 169–176). Indeed, Chinese support would eventually come for the overseas population. This was not as a matter of course: for a long time, the Chinese government had not been involved with the overseas Chinese, and had not shown any sign of support. This changed in the first decades of the twentieth century, as the republican government saw the value of the overseas population and, simultaneously, saw the need to stand up for them. A striking example was the Sino-Dutch consular convention of 1911, which was concluded after the Manchu government expressed its clear wish to establish a consulate in the Dutch East Indies, as to take better care of the Indo-Chinese community.

The increasing interest of China in the Indo-Chinese community to a high degree altered the relations between China and the Netherlands. Interestingly, it coincided with the development of the Chinese discourse on extraterritoriality and the efforts to abolish it, both part of the larger nationalist movement that had been growing for decades. It thus was inevitable that, when the Sino-Dutch negotiations on abolishing extraterritoriality began, a large part of the discussion would involve the Indo-Chinese community in the Dutch East Indies. The Dutch Minister of Foreign Affairs saw this as early as 1911. In a letter commenting on the progress of the consular convention talks in February 1911, the Minister wrote that he “cannot exclude the possibility that the Chinese government [in the negotiations on the consular convention] (...) hopes to open the door that leads to the abolition of extraterritoriality” (prim. 2). In this, he already made a connection between the question of extraterritoriality in China on the one hand, and concerns about the welfare of the Chinese community in the Dutch East Indies on the other.

SINO-DUTCH NEGOTIATIONS ON THE ABOLITION OF EXTRATERRITORIALITY

As has been explained above, living conditions in the Dutch East Indies were generally considered poor by both the Indo-Chinese community in the East Indies and Chinese in China who were aware of the situation. Although the Dutch East Indies government had seriously attempted to take away some sorrows of the Indo-Chinese community in the 1910s and 1920s, it did not prove enough. There most notably was a demand for improvement of the legal position of the Indo-Chinese, which was too complicated and thus problematic. This proved to be an important part of the bilateral negotiations on revision of the Sino-Dutch treaty on extraterritoriality, which began in 1943.

By then, it was already clear that both the Netherlands and the other remaining Treaty Powers would renounce their rights on consular jurisdiction, as it was not any longer of great practical benefit and would be a fine tool to win over Chinese support in the ongoing World War (Fishel 1952: 208–209). The Americans and British took the lead in negotiating abrogation of the extraterritorial treaties, and it would take a while before the Netherlands got involved in bilateral negotiations. Even more, for some time, the Chinese government did not communicate its wish of abolishing Dutch extraterritorial rights to the Dutch government. In October 1942, Minister of Foreign Affairs Van Kleffens stated that “the Dutch government towards China has the most friendly feelings. However, it has been asked nothing with regards to the abrogation of extraterritorial treaties.” (prim. 3).

A few weeks later, the Dutch government contacted Chiang Kai-shek, leader of the Republic. In its letter, the government reminded Chiang that as early as 1931, “the Netherlands government recognized the principle that Dutch subjects in China are subject to Chinese law and jurisdiction,” a mostly symbolic gesture back then, and that it had closely followed the activity of the Americans and British. Later on, the letter reveals again why it was important at this time to negotiate a new treaty: “As a proof of sympathy and esteem for the Chinese people, with whom the Netherlands deem it an honour to fight against the common enemy (...)”. Both the 1931 declaration of goodwill and the mention of a ‘common enemy’, the Axis powers, repeatedly come forward in Dutch correspondence with the Chinese government (prim. 4).

In January 1943, the Dutch government handed the Chinese a draft treaty, thus starting the substantive discussions. In this draft, the abolition of extraterritoriality rights obviously stood out; the Indo-Chinese community

in the Dutch colony, however, was not mentioned (prim. 5). This was not accepted by the Chinese government, which had become invested in the welfare of the Indo-Chinese people and was aware of their grievances.

Over the course of almost a year, the Dutch and Chinese negotiated a new, equal treaty, based on the new Sino-American and Sino-British treaties. At the end of the year, the Chinese Ministry of Foreign Affairs concluded that there were two points in particular where the negotiations had stalled: freedom of travel in both Chinese and Dutch territories and the admission of migrants in each other's territories (prim. 6). The first point referred back to the Indo-Chinese community, which had virtually no freedom of movement; China requested a 'most favoured' clause in the new Sino-Dutch treaty, which was intended to end the legal inequality between Chinese and others in the East Indies. The second referred to strict immigration policies for Chinese migrants in the East Indies.

The fact that the negotiations with the Netherlands were still in progress at the beginning of 1944 was quite exceptional: all other countries were already done negotiating, except Norway, which was about to sign its new treaty as well. But the language used by the Chinese Ministry in its communications revealed, again, its new attitude towards the overseas Chinese: repeatedly, it claimed to only "have the interests of the Indo-Chinese at heart" and battle for better rights for their "overseas brothers". Moreover, the Chinese negotiators explained that when they achieved no results, their disappointed overseas brothers would ask them for clarification, a situation they tried to avoid (prim. 7). This understandably made the bilateral negotiations tougher than before, when there was no such connection between China and the overseas Chinese community.

The negotiations continued in 1944. For the Netherlands, the official reason to reject China's demands was that it was in a state of occupation by Germany and Japan, and until this situation changed, it did not want to "enter into commitments in the field of the country's national or international affairs" (prim. 8). Unofficially, the Netherlands also saw antipathy towards the Indo-Chinese community by the indigenous population, the wish of the indigenous population of limiting Chinese migration, and the increasingly strong bond between China and overseas Chinese as reasons to not agree with the two main demands. The two countries were in full agreement on the abolition of extraterritoriality, which was the ultimate reason for concluding a new bilateral treaty. The newly introduced demands of the Chinese with regards to the Indo-Chinese community caused these difficulties.

The negotiations between China and the Netherlands were stuck, and for months basically in a deadlock. The two main issues remained, and both concerned the position and welfare of the Indo-Chinese in the Dutch East Indies. A meeting between Lovink, the Dutch ambassador in Chungking, and the acting Minister of Foreign Affairs of China on 16 April 1944 was illustrative for the difficult negotiations. A few days after the meeting, Lovink sent a letter to Minister Van Kleffens, fulminating about the behaviour of Minister Wu, who during the meeting had said that Chinese immigrants had always been living under oppression by the Dutch colonial government. After the meeting had had no prospect of a solution, Wu had burst out in an anti-Dutch tirade (prim. 9).

Towards the end of 1944, the new Chinese Minister of Foreign Affairs, T.V. Soong, became increasingly impatient. This was immediately noted by Lovink, who advised Minister Van Kleffens that “our perseverance” would be “the only way to conclude the treaty on our own terms” (prim. 10). This proved to be a most effective method. The *Waijiaobu* wanted to end the negotiations with the last Treaty Power, most notably because of the pressure of public opinion in China, which had urged to abolish the last remaining rights on extraterritoriality as soon as possible. To achieve this, the *Waijiaobu* had to give in on its hardest demands. Van Kleffens, on advice of Lovink, offered his Chinese counterpart a quick way out in April 1945. He stated that the Netherlands would never be prepared to grant Chinese migrants a privileged position, and that the treaty should only seek to abolish extraterritoriality. He stated that he would allow a Chinese statement in the treaty if his counterpart wished to declare one (prim. 11).

In May 1945, the Chinese finally conceded, as they dropped their demands on the ‘most favoured’ clause and immigration. In a for the Dutch acceptable phrase, the *Waijiaobu* stated that it reserved the right to discuss these demands at a later and more appropriate time (prim. 12). At the same time, the Netherlands reaffirmed its intention to improve the situation of the Indo-Chinese community in the Dutch East Indies. Although the Chinese had not achieved everything they asked for, extraterritoriality rights were now completely abolished, as the Netherlands was the last Treaty Power to conclude a new treaty. But something else happened as well, which would have been considered unlikely at the beginning of the century: the Chinese negotiators showed that they were concerned about the fate of the overseas Chinese in the East Indies, and went to great length to achieve some improvement in their welfare.

CONCLUSION

Using archival documents concerning the negotiations on the abolition of extraterritoriality between the Netherlands and the Republic of China, this paper has illustrated the difficulties in the bilateral relationship that emerged in the early twentieth century.

In this period of time, two important sociopolitical and sociocultural developments coincided, which had great impact on the relations between the Netherlands and China. In China, nationalist sentiment increased, and with it protest against the Unequal Treaties and the extraterritoriality system increased as well. This led to the Commission of Extraterritoriality, which in the 1920s conducted research on the practice of extraterritoriality in China and the possibility of abolishing this foreign privilege. Although the outcome of the commission was unsatisfactory to the Chinese, the new Nationalist government took action and unilaterally abrogated the Unequal Treaties with several 'Lesser Powers'.

The second important development explains why the Netherlands was not considered a 'Lesser Power'. In the Dutch East Indies, there had been a large Chinese community for centuries. Although the Indo-Chinese community was of great importance to the colonial government, its legal and financial position was insufficient, and even deteriorated when the Dutch implemented a series of reforms in the late nineteenth and twentieth century. This dissatisfied the Indo-Chinese greatly. At the same time, several factors led to a renewed interest of the Indo-Chinese community in China.

Similarly, Chinese interest in the Indo-Chinese community increased, too. In the minds of many nationalist thinkers and leaders, overseas Chinese were just as Chinese as citizens in Mainland China, whether they were *totoks* or *peranakans*, and no matter how much Indonesian blood flowed through their veins (Vandenbosch 1959: 209). The new attitude of China was expressed through the consular convention of 1911, which allowed Chinese consular representation in the Dutch East Indies. But that was only a stepping stone to the important negotiations in the 1940s. As the Second World War raged, all remaining Treaty Powers decided to relinquish their rights on consular jurisdiction and begin negotiations with the Republican government for new, equal treaties. This proved to be an excellent moment for the Chinese government to bring forward the main grievances of the Indo-Chinese people, and in this way support the overseas Chinese. This new attitude of the Chinese gravely complicated the Sino-Dutch treaty

negotiations, as new – and sometimes by the Dutch unforeseen – demands were made by the *Waijiaobu*. This led to repeated postponement of the abolition of Dutch extraterritorial rights, as it was only settled in May 1945. The Indo-Chinese community in the Dutch colony, thus, must be considered of crucial importance in altering Sino-Dutch relations and making the Netherlands the last, and very complicated, Treaty Power.

REFERENCES

PRIMARY SOURCES

All primary sources in this paper have been retrieved through the Dutch National Archives, The Hague, from the collection of the BuZa/Gezantschap China (Ministry of Foreign Affairs/Embassy China), number of entry 2.05.90. The consulted archival documents under this number of entry belong to the following inventory numbers:

- 264 (documents concerning and notes of the international Commission on Extraterritoriality in China, 1925–1927)
- 531 (documents concerning negotiations on a new Sino–Dutch consular treaty, 1909–1911)
- 804 (documents concerning the abolition of extraterritorial rights of foreign powers in China, 1942–1946)
- PRIM. 1 Final report from the Commission on Extraterritoriality, 1927, retrieved at the Dutch National Archives, The Hague, Ministry of Foreign Affairs: number of entrance 2.05.90, inventory number 264.
- PRIM. 2 Retrieved from the Dutch National Archives, number of entrance 2.05.90, inventory number 531, document number 346.
- PRIM. 3 Telegram from the Dutch Minister of Foreign Affairs, dated 19 October 1942, retrieved at the Dutch National Archives: number of entrance 2.05.90, inventory number 804.
- PRIM. 4 Letter from diplomat C. van Breugel Douglas to Chiang Kai-shek, dated 31 October 1942, *idem ditto*.
- PRIM. 5 Telegram from the Dutch legation in Chungking to the Chinese envoy, dated 2 January 1943, *idem ditto*.
- PRIM. 6 Letter from vice-Minister of Foreign Affairs Wu Kuo-chen to the Dutch ambassador, dated 13 March 1944, *idem ditto*.
- PRIM. 7 Official notification by the Chinese Ministry of Foreign Affairs regarding the negotiation process, dated 11 November 1943, *idem ditto*.
- PRIM. 8 Letter from Minister of Colonial Affairs Van Mook to the Dutch Minister of Foreign Affairs, dated 9 September 1944, retrieved at the Dutch National Archives: number of entrance 2.05.90, inventory number 804.
- PRIM. 9 Letter from Lovink to Van Kleffens, dated 18 April 1944, *idem ditto*.
- PRIM. 10 Telegram from Lovink to Van Kleffens, dated 10 August 1944, *idem ditto*.
- PRIM. 11 Telegram from Lovink, dated 20 April 1945, *idem ditto*.
- PRIM. 12 Telegram from E.F.M.J. Michiels, Minister of Foreign Affairs in London in absence of Van Kleffens, dated 24 May 1945, *idem ditto*.

SECONDARY SOURCES

- DONGEN, Frans van. 1966. *Tussen neutraliteit en imperialisme: de Nederlands-Chinese betrekkingen van 1863 tot 1901*. Groningen: J.B. Wolters.
- FISHEL, Wesley R. 1952. *The End of Extraterritoriality in China*. Berkeley [etc.]: University of California Press.
- GOVAARS, Ming, and TRYTTEN, Lorre Lynn (translation). 2005. *Dutch colonial education: The Chinese experience in Indonesia, 1900-1942*. Singapore: Chinese Heritage Centre.
- HARRISON, Henrietta. 2001. *China: Inventing the Nation*. London [etc.]: Bloomsbury Academic.
- KUIPER, Koos. 2017. *The Early Dutch Sinologists (1854-1900): Training in Holland and China, Functions in the Netherlands Indies* (Sinica Leidensia; vol. 135). Leiden: Brill.
- VANDEBOSCH, Amry J. 1959. *Dutch foreign policy since 1815: A study in small power politics*. The Hague: Nijhoff.