

## BUCHBESPRECHUNGEN / BOOK REVIEWS

*Stefan Kroll*

### **Normgenese durch Reinterpretation.**

### **China und das Europäische Völkerrecht im 19. und 20. Jahrhundert**

Nomos, Baden-Baden, 2012, 230 pages, 59.00 €, ISBN 978-3-8329-6980-6

The US Deputy Secretary of State Robert Zoellick's 2005 coinage of China as a "responsible stakeholder" emblematically marked China's considerably increased international stature and her newly acquired weight in an international system the country was (re-)joining and to whose future shape it could be expected to contribute substantially. The new label – part description, part ascription, part invitation, part incantation, and itself an expression of evolving US China policy – sparked a lively debate, in the US, China and beyond, on the supposed standards of the 'responsibility' China was expected to assume and the nature of the 'stake' she was supposed to be coming to hold.

China's new role in the dynamics of international relations and the attempt to present her position as that of a "responsible stakeholder" reflect a development of the international system in which, roughly a century and a half earlier, China – then still an imperial dynasty – had already found herself involved, although under radically different auspices.

A legal element of this earlier involvement forms the subject of the book under review.

After defeat in the Opium War of 1840-42 against Britain and the subsequent opening of five 'treaty ports' along China's coast, conceded to the victor in addition to cession of the island of Hong Kong, the Qing Dynasty found itself increasingly beleaguered by Western powers demanding trade, access and diplomatic intercourse and who in the course of all this intruded upon China's sovereignty through foreign-governed concession areas in the treaty ports, consular jurisdiction removing foreign nationals from the ambit of China's laws, and spheres of influence designed to stake out preferential positions vis-a-vis imperialist competitors.

Foreigners' insistent demand for contacts on an equal footing, backed by their "stout ships and mighty cannon" (*jian ting li pao*), challenged traditional imperial-era ideologised concepts of the Chinese rulers, of a world centred on the civilising magnetism of a Middle Kingdom surrounded by neighbours who, in their dealings with China, partook of the nurturing grace and bounty of a superior civilisation.

Attempting to counter the advances of these overseas strangers, the Chinese examined their ways and their wiles – and one of the latter appeared to be public international law. Initial efforts to translate eminent Western treatises on international law (eg, Vattel's "*Le droit des gens*") were prompted by a regional governor in southern China, Lin Zexu, whose unyielding resistance to opium imports by the British had triggered the eponymous 1840-42 hostilities. Expanding their efforts to explore the cultural arsenal of the West, through the establishment of a government agency charged with training translators and translating foreign works of interest, systematic translation of Western textbooks on international law was conducted with

decisive assistance from Western experts who, in their turn, saw such contribution – through the Western prism of the age – as their personal part in a 'civilising mission'. The Chinese at first sought to study elements of Western international law from purely instrumental motives, as tools to be wielded in the tussle with the aggressive Westerners, much as a piece of imported Krupp ordnance would in later years be installed on a gun emplacement in a Chinese coastal city. Chinese tradition, hard-pressed as it was by the onslaught of the overseas barbarians, would still remain whole because the better defended by weapons borrowed from the adversary's armoury.

This selective borrowing of foreign cultural utensils was soon regarded as insufficient for staving off Western encroachment. Instead, preference was given to larger-scale reforms, especially in education and the training of government officials. The traumatic discomfiture of the imperial regime after the military intervention of the eight-power expeditionary corps in Tientsin (Tianjin) and Peking in the wake of the Boxer Rebellion in 1900 hastened this process, not least through study abroad, chiefly in the US, of large numbers of Chinese students who benefitted from the US decision to make Chinese Boxer indemnity payments to the US available for scholarships to Chinese students. Reforms during the final phase of the Qing dynasty proved too little too late to preserve the old regime which was toppled in 1911 by the republican revolution of Dr Sun Yat-sen, but the massive infusion of Western learning through those returning from their studies overseas also strongly boosted growing original contributions by Chinese scholars to international law. In the subsequent early years of Republican China, Western-trained Chinese legal scholars and diplomats left their mark on international law and international relations. An eminent representative of this group, V K Wellington Koo (Gu Weijun, 1888-1985), obtained a doctorate in international law from Columbia University and served as a diplomat for the Republic of China at the peace conferences at Paris in 1919 and San Francisco in 1945. From 1956 to 1967 he was a judge at the International Court of Justice in The Hague.

Dr Kroll's dissertation presents the different phases of China's reception of Western international law, from selective and defensive borrowing to large-scale adoption and, eventually, active participation and contribution. Use made by China of Western international law in confrontations with Western foreigners on specific occasions is thoroughly analysed. The role of Japan, then ahead of China in adopting Western knowledge and technology, in transmitting Western international law through Japanese translation of Western works is traced, including Japan's addition to the legal vocabulary of both Japan and China by producing terminology in Chinese ideograms used to this day in the written languages of either country. The study's approach is a sociological one, examining the convoluted process of China's insertion into an initially Western-centred system of international law which both validated and transformed the original system.

The trajectory, from China's first wary approaches to the overseas import of international law to the call for the country to be a "responsible stakeholder", is not without ironic twists.

The demand by the British monarch, through the Macartney mission of 1793, for relations on equal terms was famously rebuffed by a disdainful emperor. Once the Opium War guns

had forced open the first gates into China, Westerners proved quick to deny the equality that had previously been sought, by palisading their growing presence in the country behind the exclusionary contrivances of concessionary areas and consular jurisdictions. The Chinese, beginning to be disabused of Celestial hauteur by that same war, acquainted themselves, through their study of Western international law, with the concept of sovereign equality which they increasingly sought to turn to good account vis-a-vis a West still reluctant to count Qing China among the 'civilised nations'. China's contact with international law in the course of encountering the West on her shores has included the experience of relations thrust upon oneself by outside pressure, and it is for this reason that the topic of 'unequal treaties' looms large in Chinese legal discourse even today. Post-Mao China, engaged in "Reform and Opening", is now part and parcel of a globalised world. Dr Kroll's study of that earlier Chinese emergence on the international scene is likely to be instructive for the country's present-day reappearance on the international stage: China will contribute, in this renewed round of joining the "world-system", to future international relations including international law, and her input is likely to be significant.

*Wolfgang Kessler, Canton*

*Sonia Morano-Foadi / Micaela Malena (eds.)*

### **Integration for Third-Country Nationals in the European Union.**

#### **The Equality Challenge**

Edward Elgar Publishing, Inc., Cheltenham/UK, Northampton, MA/USA, 2012, 432 Seiten, 110 £ / 169,99 €, ISBN 978-0-85793-681-3

Die Integration und Gleichbehandlung drittstaatsangehöriger Personen ist seit dem Tampere-Programm des Europäischen Rates 1999 ein Ziel der Europäischen Union im Bereich des Raumes der Freiheit, der Sicherheit und des Rechts. Dies greift der Sammelband auf, stellt neue Rechtsentwicklungen vor und kontextualisiert diese unter kritischer Betrachtung. Er entstand aus einem Workshop vom 28.-30. Juni 2010 der *European Science Foundation* und wurde im Lichte der aktuellen Integrationsforschung der Autoren und in den Forschungs- und Arbeitsfeldern der Herausgeberinnen konzipiert. Die Herausgeberin Dr. *Sonia Morani-Foadi* ist neben ihrer Lehrtätigkeit im Europarecht Direktorin des „Centre for Legal Research and Policy Studies“ an der Oxford Brookes Universität und forscht im Bereich des Verhältnisses von Unionsbürgerschaft und Migration unter Bezugnahme auf Grundrechte. Die Herausgeberin Dr. *Micaela Malena* ist neben ihrer Lehrtätigkeit an der Oxford Brookes Universität entsprechend ihrem Forschungsschwerpunkt im Asylrecht „Protection Associate“ des UN-HCR.

Formell sind 17 Beiträge vorhanden, die sich in einer objektiv bekannten Einteilung zwischen Asyl- und Flüchtlingsrecht, Wirtschaftsmigration und Daueraufenthaltsrecht sowie Familienzusammenführung als drittem Themenbereich untergliedern. Den drei Themenbere-