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## ‘Parity with all nations’: The ‘coolie’ trade and the quest for recognition by China and Japan

Ginevra Le Moli\*

Leiden University Law School, Steenschuur 25, 2311 ES Leiden, The Netherlands  
Email: [g.le.moli@law.leidenuniv.nl](mailto:g.le.moli@law.leidenuniv.nl)

### Abstract

This article explores the quest for sovereign equality by China and Japan as it unfolded in a specific historical moment, the third quarter of the nineteenth century. It does so by focusing on the debate around the ‘coolie trade’, i.e., the traffic of Chinese indentured labourers, which offered an opportunity for non-Western countries such as China and Japan to position themselves with respect to Western conceptions of ‘modernity’ or ‘civilization’ and thereby advance their quest for ‘parity with all nations’. Through a study of the *Maria Luz* case, decided in the early 1870s by Czar Alexander II and drafted by de Martens, the article sheds light on the different approaches of Japan and China with respect to international law at this critical historical juncture. Specifically, it shows that, although the coolie trade mostly affected China, it was Japan who first managed to reap a parity dividend by firmly condemning the practice, whereas China’s action was steered by the circumstances. Eventually, however, China’s growing interest in Chinese populations abroad paved the way for the establishment of its first permanent diplomatic representations overseas. For both countries, the events encapsulated by the *Maria Luz* case unveil an important, yet overlooked, moment in their quest for parity with all nations and, more generally, in their engagement with international law.

**Keywords:** China; Japan; *Maria Luz*; sovereign equality; unequal treaties

*Actuellement les États civilisés reconnaissent à tout individu, en sa qualité d’homme, et indépendamment de sa nationalité, certains droits fondamentaux qui sont indissolublement attachés à la personne humaine.<sup>1</sup>*

(Fyodor Fyodorovich de Martens, *Traité de droit international*, 1883)

### 1. Introduction

As the abolition of slavery gained traction in the second half of the nineteenth century,<sup>2</sup> other forms of submission developed. One of them was the odious trade in indentured Asian migrants

\*Assistant Professor of Public International Law, Grotius Centre for International Legal Studies, Leiden University. From September 2020, Dr Le Moli is conducting a full-time 18-month Swiss National Science Foundation-funded research project on ‘Who Owns Natural Resources?’ at the Universities of Cambridge and Geneva.

<sup>1</sup>See F. F. de Martens, *Traité de droit international* (1883), vol. I, at 440.

<sup>2</sup>See J. S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (2014). For first expressions see, in Great Britain, The British Slave Trade Act, An Act for the Abolition of the Slave Trade (47 Geo. III, Sess. 1, cap. 36), s. 1 (1807) as well as the abolition of slave trade also in Sweden (1813), The Netherlands (1814), France (1815), and Portugal (1819). C. D. Kaufmann and

that brought over two million people, mostly Chinese labourers, to plantations in the Americas, Australia, Africa, and other parts of Asia.<sup>3</sup> Such practice, known at the time as the ‘coolie trade’,<sup>4</sup> consisted in the trafficking of poor labourers under contractual arrangements that effectively reduced them to slavery.<sup>5</sup> The coolie trade had grown at a high pace during the third quarter of the nineteenth century.<sup>6</sup> Almost every European country was involved in this practice, principally Great Britain, Spain, Portugal, and France, and various countries in the Americas, including the United States and Peru.<sup>7</sup> Chinese labourers were sent to work in sugar plantations of Cuba and Brazil, and in the cotton plantations and guano beds of Peru.<sup>8</sup>

Frequent stories about the high mortality rates of Chinese labourers on ships to Cuba and Peru, together with a series of well-publicized mutinies,<sup>9</sup> led to British and American diplomatic and public outcries against the coolie trade.<sup>10</sup> The contestation of this practice became increasingly widespread in the public opinions of Western countries, and condemnation of such trade thus became a way for non-Western countries and former colonies of signalling modernity<sup>11</sup> or portraying themselves as equally civilized.<sup>12</sup> This urge was strong in countries with a long imperial tradition, such as China and Japan, who had been forced to accept humiliating ‘unequal treaties’<sup>13</sup> providing for extraterritoriality in both the competent court and the applicable law to Western operators.<sup>14</sup> The quest for

R. A. Pape, ‘Explaining Costly International Moral Action: Britain’s Sixty-Year Campaign against the Atlantic Slave Trade’, (1999) 53(4) *International Organization* 631.

<sup>3</sup>B. Ibhwahoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (2007), at 34; D. Northrup, *Indentured Labour in the Age of Imperialism, 1834–1922* (1995), at 159–60.

<sup>4</sup>The word ‘coolie’ can be traced back to the Hindi *kuli*, *quli*, meaning, ‘hired labourer’. See, in particular, H. Tinker, *A New System of Slavery: The Export of Indian Labour Overseas 1830–1920* (1993); F. M. Farley, ‘The Chinese Coolie Trade 1845–1875’, (1968) 3(1) *Journal of Asian and African Studies* 257.

<sup>5</sup>C. Gareis, *Das heutige Völkerrecht und der Menschenhandel* (1879), at 5–8.

<sup>6</sup>E. Jenkins, *The Coolie, His Rights and Wrongs* (1871), at 1–54, 162–200; M-H. Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (2006), at 5–6, 11–19; A. J. Meagher, *The Coolie Trade: The Traffic in Chinese Labourers to Latin America, 1847–1874* (2008), at 27–48.

<sup>7</sup>Meagher, *supra* note 6, at 190.

<sup>8</sup>On the coolie trade see D. C. Corbitt, *A Study of the Chinese in Cuba, 1847–1947* (1971); Cuba Commission, *Chinese Emigration: Report of the Commission Sent by China to Ascertain the Condition of Chinese Coolies in Cuba* (1876), at 6–34; W. Stewart, *Chinese Bondage in Peru: A History of the Chinese Coolie in Peru, 1849–1874* (1951), at 25–54; M. G. Triana and P. E. Herrera, *The Chinese in Cuba, 1847–Now* (edited and translated by G. Benton) (2009), at 141–84; Yen Ching-hwang, *Coolies and Mandarins: China’s Protection of Overseas Chinese during the Late Ch’ing Period (1851–1911)* (1985), at 36–71.

<sup>9</sup>Northrup, *supra* note 3, at 56, 63, 89–90, 108–10; Meagher, *supra* note 6, at 171.

<sup>10</sup>E. Young, ‘Chinese Coolies, Universal Rights and the Limits of Liberalism in an Age of Empire’, (2015) 227(1) *Past & Present* 121, at 132.

<sup>11</sup>The critics of the coolie trade first debated the recruitment method and shipment conditions. Victor Schoelcher and Paul Leroy-Beaulieu (1843–1916) later branded it as a form of slavery; see J. Weber, ‘L’émigration indienne à la Réunion: “contraire à la morale” ou “utile à l’humanité”?’ (1829–1860), in E. Maestri (ed.), *Esclavage et abolitions dans l’océan Indien (1723–1860)* (2006), at 327–8.

<sup>12</sup>On the role of the standard of civilization in the late nineteenth century see L. Obregón Tarazona, ‘The Civilized and the Uncivilized’, in B. Fassbender and A. Peters, *The Oxford Handbook of the History of International Law* (2012), at 918–40; G. W. Gong, *The Standard of ‘Civilization’ in International Society* (1984); M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2002).

<sup>13</sup>The literature on the topic is vast. See, among others, A. Peters, ‘Unequal Treaties’, (2018) *Max Planck Encyclopedias of International Law*; L. Caflisch, ‘Unequal Treaties’, (1992) 35 *German Yearbook of International Law* 52; H. Chiu ‘Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties’, in J. A. Cohen (ed.), *China’s Practice of International Law: Some Case Studies* (1972), at 239–67; F. Nozari, *Unequal Treaties in International Law* (1971); C. F. Murphy, ‘Economic Duress and Unequal Treaties’, (1970) 11 *Virginia Journal of International Law* 51; I. Detter, ‘The Problem of Unequal Treaties’, (1966) 15 *International and Comparative Law Quarterly* 1069.

<sup>14</sup>See X. Ma, ‘China, Japan, and the United States in World War II: The Relinquishment of Unequal Treaties in 1943’, (2015) 1 *Contemporary Chinese Political Economy and Strategic Relations: An International Journal* 451; P. K. Cassel, *Grounds of Judgments, Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (2012); D. Wang, *China’s Unequal Treaties: Narrating National History* (2005); H. Chiu, *The People’s Republic of China and the Law of Treaties* (2001); P. Wesley-Smith, *Unequal Treaty 1898–1997: China, Great Britain and Hong Kong’s New Territories*

parity, indeed of equal dignity as aspiring members of the select group of civilized countries, raised the need for countries like China and Japan to strike a delicate balance between being accepted as peers by Western powers and upholding their own historical and cultural specificities.

This article explores the variations in the processes followed by China and Japan in their quest for parity focusing on the issue of coolie trade and, more specifically, on the events surrounding what became known as the *Maria Luz* case.<sup>15</sup> The case arose from a legal dispute between Japan and Peru, after a Chinese coolie escaped from a ship in its way to Peru – the *Maria Luz* – during a scale near the port of Yokohama. The servile status of coolies attracted a Japanese investigation and led to a subsequent decision of a Japanese magistrate court to free the Chinese labourers from their contracts. The governments of Japan and Peru later agreed to initiate international arbitration to settle their difference.<sup>16</sup> The case, which has largely fallen into oblivion, was decided by the Russian Czar and effectively drafted by one of the most distinguished international lawyers of the time, F. de Martens. At the time, it was a well-known reference in the debates on slavery occurring throughout the late nineteenth-century world, mostly because it related to the international coolie labour trade and the national regulation of Japanese *yūjo* (women of pleasure).<sup>17</sup> From a contemporary perspective, it is worth revisiting because of the insights it offers into the legal arguments relating to the coolie trade, the role of European international legal concepts in such arguments and, more generally, the broader motives underpinning reference to such concepts in the overall quest for recognition as equals. It thus opens a window on this complex historical context through which to investigate the differing use of international law in the wider processes of modernization of Japan and China.

The article follows a threefold structure from the broader to the more specific context of the analysis. The first section provides some broad but necessary background regarding the trade-off faced by China and Japan focusing on how they dealt with ‘unequal treaties’ and interacted with Western powers, adopting distinct approaches to modernization. Against this broad background, the article then moves to the proximate context of the *Maria Luz* case, namely the debates between 1866 and 1872 regarding the Chinese coolie trade. This debate is a useful vantage point to observe the positioning of China and Japan with respect to the Western language of international law.<sup>18</sup> The stage is thus set to present in detail the factual and legal circumstances of the 1872 *Maria Luz* case and then rely on it to analyse the role of international law in the broader modernization processes of China and Japan. The article shows that, although the coolie trade mostly affected China, it was Japan who first managed to reap a parity dividend by firmly condemning the practice, whereas China’s action was steered by the circumstances. Eventually, however, China’s growing interest in Chinese populations abroad paved the way for the establishment of its first permanent diplomatic representations overseas.

(1998); E. S. K. Fung, ‘The Chinese Nationalists and the Unequal Treaties 1924–1931’, (1987) 21 *Modern Asian Studies* 793; K-h. Kim, *The Last phase of the East Asian World Order: Korea, Japan and the Chinese Empire, 1860–1882* (1980); R. Y. Gilbert, *The Unequal Treaties: China and the Foreigner* (1976); J. H. Chow, *China and Japan: The History of Chinese Diplomatic Missions in Japan 1877–1911* (1975); G. W. Keeton, *The Development of Extraterritoriality in China* (1928).

<sup>15</sup>G. W. Hill, although he is not credited as author: *The Peruvian Barque ‘Maria Luz’: A Short Account of the Cases Tried in the Kanagawa Kench* (1874); a copy is included in FO 84/1442: 220–6; see A. M. Stuyt, *Survey of International Arbitrations 1794–1938*, n. 68, n. 104 (1939), at 110.

<sup>16</sup>See Stuyt, *ibid.*, at 110.

<sup>17</sup>See S. J. Crawford, ‘The *Maria Luz* Affair’, (1984) 46(4) *The Historian* 583; C. H. Gardiner, *The Japanese and Peru, 1873–1973* (1975), at 7–17; H. Mitani, *Maria Luz Affair and Public Opinion in the World* (1985); R. L. Irick, *Ching Policy toward the Coolie Trade, 1847–1878* (1982), at 221–31.

<sup>18</sup>D. R. Howland, ‘The *Maria Luz* Incident, Personal Rights and International Justice for Chinese Coolies and Japanese Prostitutes’, in S. L. Burns and B. J. Brooks (eds.), *Gender and Law in the Japanese Imperium* (2014), at 37.

## 2. A Quest for ‘parity with all nations’

Prior to the arrival of Western gunboats, Qing China and Tokugawa Japan had maintained long-matured legal traditions, which have been characterized ‘as two discrete plural legal orders’.<sup>19</sup> However, in the mid nineteenth century, both countries faced an existential threat from Western powers, and the urgency to respond to it pushed for (and accelerated) a modernization process in their domestic and foreign policy.

Different scholarly works have studied these processes in great detail, sometimes making reference to the role of international law. Within the English School of international relations,<sup>20</sup> the transformation of China and Japan in the late nineteenth Century and the relevance of international law within it have been studied from the perspective of how each state adopted the ‘standard of civilization’,<sup>21</sup> a social criterion to be fulfilled in order to be considered a ‘civilized’ country. From this perspective, Japan is seen as working ‘diligently’ to reach with great speed the requirements for the standard of ‘civilization’.<sup>22</sup> Extraterritoriality is seen as a marker of inequality, and the attitude of European states with respect to Japan in this regard signals an openness towards greater recognition of its equal status.<sup>23</sup> These views, however, have been criticized for their narrow, ‘overly structuralist’,<sup>24</sup> top-down, Eurocentric standpoint.<sup>25</sup> In the social sciences, the concept of ‘multiple modernities’ has emerged to challenge the uni-linearity of traditional theories of convergence,<sup>26</sup> criticized for their two fundamental assumptions, namely that modernity is a single homogenizing process and that the West is the yardstick by which success is measured.<sup>27</sup> In this view, forms of modernity are contingent on culture and historical context that the term must be used in the plural. However, there is broad consensus across these different accounts on the view that Japan integrated international law in its own process of transformation more rapidly than China, and that it made more visible efforts to showcase it.

Another analytical framing of these processes, although not focusing specifically on China and Japan, focuses on the relation between the concept of state sovereignty and the ambiguity of the standard of civilization<sup>28</sup> as well as the wider effects of the so-called ‘clash of empires’.<sup>29</sup> In

<sup>19</sup>Cassel, *supra* note 14, Ch. 1.

<sup>20</sup>R. Jones, ‘The English School of International Relations: A Case for Closure’, (1981) 7(1) *Review of International Studies* 1; H. Bull, *The Anarchical Society: A Study of Order in World Politics* (1977); H. Bull and A. Watson (eds.), *The Expansion of International Society* (1984); T. Dunne, *Inventing International Society: A History of the English School* (1998); B. Vigezzi, *The British Committee on the Theory of International Politics (1954–1985): The Rediscovery of History* (2005); A. Linklater and H. Suganami, *The English School of International Relations: A Contemporary Reassessment* (2006).

<sup>21</sup>H. Suganami, ‘Japan’s Entry into International Society’, in Bull and Watson, *ibid.*, at 192; Gong, *supra* note 12; A. Watson, *The Evolution of International Society: A Comparative Historical Analysis* (1992); see also B. Buzan and R. Little, *International Systems in World History: Remaking the Study of International Relations* (2000), 20–1; R. Little, ‘The English School’s Contribution to the Study of International Relations’, (2000) 6(3) *European Journal of International Relations* 369; Y. Zhang, *China in International Society since 1949: Alienation and Beyond* (1998); see also *ibid.*, ‘System, Empire and State in Chinese International Relations’, (2001) 27 *Review of International Studies* 43.

<sup>22</sup>Gong, *ibid.*, at 164–5.

<sup>23</sup>Suganami, *supra* note 21, at 197.

<sup>24</sup>S. Suzuki, *Civilization and Empire. China and Japan’s Encounter with European International Society* (2011), at 15.

<sup>25</sup>E. Keene, *Beyond the Anarchical Society* (2009), Ch. 3, 4.

<sup>26</sup>T. Parsons, *Societies: Evolutionary and comparative perspectives* (1966).

<sup>27</sup>S. N. Eisenstadt, ‘Multiple modernities’, in S. N. Eisenstadt (ed.), *Multiple Modernities* (2005), at 1–30; S. Kaviraj, ‘Modernity and politics in India’, in *ibid.*, at 137–61; B. Wittrock, ‘Modernity: One, none or many? European origins and modernity as a global condition’, in *ibid.*, at 31–60.

<sup>28</sup>See *supra* note 12.

<sup>29</sup>H. C. d’Encausse and M. Rodinson, *Islam and the Russian Empire: Reform and Revolution in Central Asia* (2009); C. S. Maier, *Among Empires: American Ascendancy and its Predecessors* (2006); L. H. Liu, *The Clash of Empires: The Invention of China in Modern World Making* (2004); R. Terrill, *The New Chinese Empire* (2003); Y. Zhang, ‘System, Empire and State in Chinese International Relations’, (2001) 27 *Review of International Studies* 43; E. H. Pritchard, *The Crucial Years of Early Anglo-Chinese Relations, 1750–1800* (2000); A. Peyrefitte, *The Immobile Empire* (1992); J. A. Hobson, *Imperialism: A Study* (1902), 182.

particular, the standard of civilization ‘is not just a historical curiosity, but forms an important thread in the social, legal, and institutional fabric of contemporary international society’.<sup>30</sup> In the nineteenth century, the Western prevailing view considered, like the ancient Chinese zoning theory,<sup>31</sup> that ‘humanity in its present condition divides itself into three concentric zones or spheres—that of civilized humanity, that of barbarous humanity and that of savage humanity’.<sup>32</sup> To these three spheres, the civilized nations accorded three distinct types of recognitions: ‘plenary political recognition, partial political recognition and natural or mere human recognition’.<sup>33</sup> The mid-sphere of partial political recognition was granted to Turkey, Persia, China, Siam, and Japan.<sup>34</sup> In this view, international law, and its core principles, among which state sovereignty, could have been extended to countries with partial political recognition, i.e., not fully considered participants to the ‘family of nations’,<sup>35</sup> only after ‘completely recasting all non-Western political entities into the mould of modern European states, which in turn required the irreparable destruction of all traditional forms of polity in existence’.<sup>36</sup>

The limited political recognition of China and Japan in this conception of international relations was all too painfully reminded by the imposition by Western powers of so-called unequal treaties, as a result *inter alia* of their provisions on extraterritoriality in both the competent court and the applicable law to Western operators. There is a substantial body of literature on these unequal treaties,<sup>37</sup> which sometimes examines the historical interactions of specific countries, such as China,<sup>38</sup> Japan<sup>39</sup> or other East-Asian countries,<sup>40</sup> with international law as a body of rules and practices. China and Japan offer fertile ground for a comparative analysis for several reasons: not only they had a long and mature cultural heritage, but also were both forced to open to the West at almost the same period of time. Moreover, despite external restrictions, both the Chinese and Japanese governments, with different levels of success, maintained a significant degree of freedom to design their own, clearly different, policies on how to confront and manage the problem of extraterritoriality. Extraterritoriality was in fact not implanted into East Asia as a ready-made product but rather developed in a dialogue with local institutions.<sup>41</sup> In order to understand the different approaches followed by China and Japan, it is worth recalling the two distinct political contexts.

<sup>30</sup>Gong, *supra* note 12, at 93.

<sup>31</sup>J. L. Zhaojie, ‘The Impact of International Law on the Transformation of China’s Perception of the World: A Lesson from History’, (2012) 27 *Maryland Journal of International Law* 128, at 150.

<sup>32</sup>J. Lorimer, *Institutes of Law of Nations: A Treatise of Jural Relations of Separate Political Communities* (1883), 101.

<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*, at 102.

<sup>35</sup>P. C. W. Chan, ‘China’s approaches to International Law since the Opium War’, 2014 27(4) *Leiden Journal of International Law* 859, at 868.

<sup>36</sup>E. Jouannet, ‘Universalism and Imperialism: The True–False Paradox of International Law?’, (2007) 18 *European Journal of International Law* 379, at 382.

<sup>37</sup>See *supra* notes 13, 14.

<sup>38</sup>By way of illustration see Chan, *supra* note 35; Zhaojie, *supra* note 31; Y. Zewei, ‘Western International Law and China’s Confucianism in the 19th Century. Collision and Integration’, (2011) 13 *Journal of the History of International Law* 285; T. Wang, ‘International Law in China: Historical and Contemporary Perspectives’, (1990) 221 *Recueil des Cours* 195, at 205–13; J. K. Fairbank (ed.), *The Chinese World Order: Traditional China’s Foreign Relations* (1968).

<sup>39</sup>See, for instance, M. R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (2004); L. G. Perez, *Japan Comes of Age: Mutsu Munemitsu and the Revision of the Unequal Treaties* (1999); Howland, *supra* note 18; Chan, *supra* note 35, at 861.

<sup>40</sup>See F. B. Sayre, ‘The Passing of Extraterritoriality in Siam’, (1928) 22(1) *American Journal of International Law* 70; M. Deuchler, *Confucian Gentlemen and Barbarian Envoys: The Opening of Korea, 1875–1885* (1977).

<sup>41</sup>See Cassel, *supra* note 14, Introduction; Keeton, *supra* note 14.

The ruling Qing dynasty at the time Western powers forced their way into China was left in a vulnerable position, mostly after the adoption of the unequal treaties.<sup>42</sup> Although China faced, throughout its history, some periods where the distribution of powers was comparable to post-Westphalian Europe, calling for regulated intercourse,<sup>43</sup> its exposure to the European set of practices embodied by classical international law entered into a whole new chapter after 1842, with ‘the opening of China to Western commercial exploitation’.<sup>44</sup> Several provisions of the unequal treaties, such as extraterritoriality, customs regulation, and the right to station foreign warships in Chinese waters, including its navigable rivers, indeed triggered long-standing bitterness among the Chinese.<sup>45</sup> In order to preserve ‘the sanctity of the unequal treaties’,<sup>46</sup> China however justified them ‘as an expression of the emperor’s traditional benevolence toward all men from afar, regardless of their culture or nationality’.<sup>47</sup> However, as one of the doyens of Chinese studies, J. K. Fairbank, notes: ‘the early treaties in themselves did not remake the Chinese view of the world. To China they represented the supremacy of Western power’.<sup>48</sup> Indeed, faced with the existential threat posed by Western intervention, ‘the Chinese Government had found no other way of surviving than to honour’<sup>49</sup> unequal treaties, which were at the basis of all foreign relations with Western countries.

From the 1860s onward, the Chinese government undertook reform efforts to facilitate the military and political challenge posed by the West. China searched for ways to adapt Western learning and technology while preserving Chinese values. However, both reformers and conservatives struggled to find the right formula to make China strong enough to provide protection against foreign influence. Changes in the use of key terms eloquently show significant improvements in the understanding of the West: affairs related to the West were called ‘barbarian affairs’ (*i-wu*) before 1860, ‘Western affairs’ (*yang-wu*) and ‘Western learning’ (*Hsi-hsueh*) from 1870–1880, and ‘new learning’ (*hsin-hsueh*) in the 1890s.<sup>50</sup> The first expression was Sinocentric, the second and third of neutral character, while the last term implied acceptance of the need to learn new knowledge.<sup>51</sup> In spite of all these changes, conservatism kept the introduction of Western approaches, values or markets into China within the bounds set by their compatibility with Chinese tradition. Thus, if the armament industry was easily accepted, this was not the case for the mining and railway construction, which undermined the geomantic practices. Christianity, representing a direct challenge to Confucianism, was strongly countered. Some reform-minded gentry members defined China’s cultural relations with the West with an

<sup>42</sup> After China was defeated in the First Opium War, the first unequal treaty was the 1842 Treaty of Nanking, considered ‘Treaty of Eternal Peace’ [see Gong, *supra* note 12, at 144], followed by the 1843 Treaty of Bogue, both with Great Britain, and by the 1844 Treaty of Wang Hiya with the United States and the 1844 Treaty of Whampoa with France; after the Second Opium War and a second defeat, China was forced to conclude the 1858 Treaty of Tientsin, which opened ports to trade, allowed Christian missions the right to propagate their religion and foreigners to travel in China. The United States and Russia later obtained the same prerogatives in separate treaties, such as the Treaty of Aigun in 1858. Between 1842 and 1949, China concluded 1,000 ‘unequal treaties’ with foreign states. See Wang, *supra* note 14; Chow, *supra* note 14; K.-h. Kim, *supra* note 14; see also Peters, *supra* note 13, para. 10.

<sup>43</sup> During the Spring and Autumn (BC 722–476) and Warring States periods (BC 476–221). See Wang, *supra* note 38, at 205–13; Y. Zhang, *supra* note 29; Chan, *supra* note 38, at 859–92; see, however, also X. Zhang, ‘China in the Conception of International Society: The English School’s Engagements with China’, (2011) 37 *Review of International Studies* 763, at 765–8.

<sup>44</sup> See J. K. Fairbank, *Trade and Diplomacy on the China Coast: The Opening of The Treaty Ports, 1842–1854* (1953), at 3.

<sup>45</sup> Keeton, *supra* note 14.

<sup>46</sup> See Gong, *supra* note 28, at 155–6; Zewei, *supra* note 38, at 303.

<sup>47</sup> Gong, *supra* note 12, at 145.

<sup>48</sup> Fairbank, *supra* note 38, at 262. However, as Wright observes, the Chinese government knew that such treaties also restrained Western powers’ demands, see M. C. Wright, *The Last Stand of Chinese Conservatism: The T’ung-Chih Restoration, 1862–1874* (1962), 243.

<sup>49</sup> T. Wang, *supra* note 38, at 258; see also T. Wang, *An Introduction of International Law* (1998), at 397.

<sup>50</sup> D. Twitchett and J. K. Fairbank, *The Cambridge History of China, 1800–1911* (2008), vol. II, at 200.

<sup>51</sup> *Ibid.*

ambivalent attitude. For them, there was value in China's learning from the West,<sup>52</sup> yet Western knowledge was not essential in a fundamental way. A similar approach was to find the sanction for modernization within Chinese tradition. Thus, the more China changed, the closer – it was thought – she might come to her own tradition.<sup>53</sup>

With time, the Chinese government made 'serious efforts to bring international law into full play in their struggle to shake off the yoke of the unequal treaty regime and to create and maintain a strong and unified China'.<sup>54</sup> The development of the Chinese attitude toward international law was not a passive reply to the 'onslaught of the West',<sup>55</sup> but rather the effect of an 'active struggle of the Chinese to meet the foreign and domestic challenges in an effort to regenerate and transform their country from an outdated Confucian universal empire to a modern national state, with a rightful place in the family of nations'.<sup>56</sup> This struggle led to transform a Sino-centric outlook based on Confucianism into 'a modern Chinese nationalism, which embraces the idea of sovereign equality and independence'.<sup>57</sup>

Similarly, in 1853, Japan faced the arrival of Commodore Matthew Perry and a squadron of the US navy demanding that the country open commerce with the West. The result was the adoption of a series of unequal treaties in which Japan was forced to provide special economic and legal privileges to the Western powers.<sup>58</sup> Determined to save Japan from sharing China's fate, and convinced that modernization relied on the abolition of the existing feudal order, a middle-ranking samurai overthrew the military government of the Shōgun in 1868 and set Japan peacefully on the path towards radical modernization, carried out in the name of restoring rule to the emperor.

The Meiji (meaning 'enlightened rule') Restoration led to a profound revolution. In its quest for 'parity with all nations' (*bankoku-taiji*),<sup>59</sup> it looked for ways to soon restructure its society and renegotiate the 'unequal treaties' imposed by the West.<sup>60</sup> Importantly, although Meiji leaders failed to revise the unequal treaties, they focused on domestic reforms in order to keep independence and equality with the West.<sup>61</sup> Japan was in fact capable of rapid adaptation to the power of the West, through structural reforms resulting in fast modernization, militarization and imperialism modelled after the imperialistic Western powers. Meiji leaders studied the political, economic, and social institutions of the Western powers and selectively adopted those best suited to their purpose:<sup>62</sup> they adopted a constitution in 1889 which established a parliamentary government, accountable to the emperor rather than to the people; the administrative power was also centralized in a national bureaucracy, which also ruled in the emperor's name; all the classes were declared equal, so that samurai and their lords lost their feudal privileges. Furthermore, the

<sup>52</sup>See also J. D. Spence, *To Change China: Western Advisers in China, 1620–1960* (1980).

<sup>53</sup>Twitchett and Fairbank, *supra* note 50, at 201; see also J. E. Elliott, *Some did it for civilisation, some did it for their country: a revised view of the boxer war* (2002), 143.

<sup>54</sup>L. Zhaojie, 'Legacy of Modern Chinese History: Its Relevance to the Chinese Perspective of the Contemporary International Legal Order', (2001) 5 *Singapore Journal of International & Comparative Law* 314, at 317.

<sup>55</sup>Zhaojie, *supra* note 31, at 129.

<sup>56</sup>I. C. Y. Hsü, *The Rise of Modern China* (1975), 14. See also Zewei, *supra* note 38, at 299–306, on the integration (and collision) of international law and Confucianism in China.

<sup>57</sup>Zhaojie, *supra* note 31, at 129. See also J. K. Fairbank, *supra* note 38, at 2–5; W. Franke, *China and the West: The Cultural Encounter, 13th to 20th Centuries* (1967), at 109, on the role of Kang Youwei, the leader of the 1898 radical reform movement, who believed that different nations should possess equal rights in their relations and that the Qing court should follow international law.

<sup>58</sup>See F. C. Jones, *Extraterritoriality in Japan* (1931); E. T. Sheppard, *Extra-territoriality in Japan, an Inquiry with Particular Reference Territory, by Virtue of Existing Treaty Stipulations* (1879).

<sup>59</sup>D. R. Howland, 'International Law, State Will, and the Standard of Civilization in Japan's Assertion of Sovereign Equality', in R. J. Beck (ed.), *Law and Disciplinarity: Thinking Beyond Borders* (2013), at 183–205.

<sup>60</sup>See Auslin, *supra* note 39; Perez, *supra* note 39; Howland, *supra* note 18; see also E. O. Reischauer, *Japan, The Story of a Nation* (1989); W. G. Beasley, *The Meiji Restoration* (1972), especially Ch. 7–8.

<sup>61</sup>Auslin, *ibid.*

<sup>62</sup>Beasley, *supra* note 60, especially Ch. 7–8; see also Reischauer, *supra* note 60, Part Two, Modernizing Japan.

enthusiastic introduction of new Western technologies triggered modernization in industrial productivity and an explosion of diversification. During the 1870s and early 1880s, there was a virtual craze for almost everything Western, which was formulated in the expression *bunmeikaika*, ‘enlightened civilization’.<sup>63</sup> The new leaders had recognized that an extensive system of public education was essential for a modern state and, in 1871, they established a ministry of education, which set up a program of universal education. It was in 1873 that, in one of its most revolutionary reforms, the Japanese government decreed universal conscription, ending the concept of a privileged military class.<sup>64</sup>

The adoption of Western law was perceived as ‘a sign of civilization’<sup>65</sup> and Japan was aware that international law had to be relied upon in its policies in order to pursue its own interests.<sup>66</sup> Japanese authorities thus employed Western international lawyers to assist them with legal advice, teach international law as well as take part in the translation process of the main textbooks. In particular, the Italian Alessandro Paternostro was hired by the Japanese government to draft an essay in favour and support of Japan’s full admission into the international legal community.<sup>67</sup> The introduction of international law in Japan was a period characterized by the passive assimilation of Western legal approaches,<sup>68</sup> ‘which reflected the predominant ethos of the “wholesale Westernization” of Japanese society’.<sup>69</sup>

In the process of adapting to the Western world, as Suzuki points out, there were two possible paths that China and Japan could have chosen: ‘one was to continue to build up military power. Another possibility was to join the “family of nations” by attaining the same “civilized” identity as the European powers, and thus be subjected to the more cooperative mode of interaction’.<sup>70</sup> Whereas China followed the former approach, Japan opted for the latter. China sought to introduce Western industry, but it did not perceive the need to fully stand by Western’s social norms, thus refusing its demands for homogeneity. The reforms were not meant to impress or to model the institutions as a reflection of the civilized states. During the period examined in this study, the Chinese elites considered themselves, and quite justifiably so, as no less civilized than the Western powers.<sup>71</sup> This is not to say that China remained impervious to Western legal concepts. There are various scholarly works that deal critically but indirectly with Chinese appropriations of the concept of sovereignty and of international law.<sup>72</sup> Carrai conducts a genealogy of the concept of sovereignty in China and looks ‘at China as a legitimate shaper and breaker of international norms

<sup>63</sup> See D. R. Howland, *Translating the West: Language and Political Reason in Nineteenth-Century Japan* (2002), 31–60.

<sup>64</sup> Reischauer, *supra* note 60, at 103–7.

<sup>65</sup> A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2016), 109.

<sup>66</sup> *Ibid.*, at 113.

<sup>67</sup> A. Paternostro, ‘La revision des traités avec le Japon au point de vue du droit international’, (1891) RDI 23, 176, at 193–200.

<sup>68</sup> See Y. Onuma, ‘Japanese international law in the prewar period: perspectives on the teaching and research of international law in prewar Japan’, (1986) 29 *Japanese Annual of International Law*, at 23; S. Yamamoto, ‘Japanese approaches and attitudes towards international law’, (1991) 34 *Japanese Annual of International Law* 115, at 118; H. Otsuka, ‘Japan’s early encounter with the concept of the “law of nations”’, (1969) *Japanese Annual of International Law* 13, at 35–65.

<sup>69</sup> Becker Lorca, *supra* note 65, at 110. The latter also narrates that, in 1897, Sakuyé Takahashi was sent by Japan to study international law in Europe, representing an example of ‘intellectual agency in the appropriation of international law’, at 112.

<sup>70</sup> Suzuki, *supra* note 24, at 9.

<sup>71</sup> See P. A. Cohen, ‘Wang T’ao’s Perspective on a Changing World’, in A. Feuerwerker, R. Murphrey and M. C. Wright (eds.), *Approaches to Modern Chinese History* (1967), 153–4.

<sup>72</sup> T. Kayaoğlu, *Legal Imperialism: Sovereignty and Extra-Territoriality in Japan, the Ottoman Empire and China* (2010); Chih-yu Shih, *Navigating Sovereignty: World Politics Lost in China* (2003); T. Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (2013); A. Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era* (2005); R. Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847–1911* (2007); P. C. W. Chan, *China, State Sovereignty and International Legal Order* (2014); Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (2015). In particular, Kayaoğlu, Carlson, Becker Lorca (*supra* note 65), Chen, and Ruskola remain critical of a Eurocentric history of international law.

and concepts in order to narrate a history of the formation and emergence of a new Chinese international identity through discourses of sovereignty'.<sup>73</sup> She aptly concludes that:

early translations of international law codes, new modern geographical representations of the world, and increased interaction with Western powers all contributed to China's appropriation of international law and its fundamental notion of sovereignty by the time of the Sino-Meiji War.<sup>74</sup>

In contrast, Japan sought to transform its identity into a civilized state by emulating the civilized members of this exclusive community 'engaging in imperialist policies designed to demonstrate that it had attained a level of (European) "civilization" high enough for it to qualify to play a part in its forcible dissemination in Asia'.<sup>75</sup> Gerrit W. Gong also noted that the Japanese used international law to further their imperialistic ambitions in East Asia as 'Japan seems to have felt that part of its mission was to lead the rest of Asia in becoming strong enough through reform and modernization to hold off the predatory Western powers'.<sup>76</sup> Historians have also attributed the changes in China and Japan's bilateral relations to Japan's modernization and to its entry into the international order.<sup>77</sup>

The heightened tension between 1866 and 1872 on the coolie trade provided Japan, thanks to its handling of the *Maria Luz* incident in 1872, with a major window of opportunity to further advance its quest for parity with all nations. China, by contrast, precisely due to its attachment of its traditional values, paid less attention to the tactical use of its condemnation of the coolie trade, although it did address the problem as such. This historical development will be examined in the following sections.

### 3. The Chinese coolie trade

Starting in the 1840s, three main conditions paved the way for an increase of the coolie trade in subsequent decades: first, in order to facilitate a large inflow of workers from China, Peru and Spain approved modifications to their immigration laws;<sup>78</sup> second, emigration of Chinese labourers was 'unregulated because illegal, and unrestricted because unregulated';<sup>79</sup> third, the conditions of extraterritoriality under the unequal treaties adopted after the first Opium War between China and Great Britain boosted the coolie trade in the treaty ports on China's southern coast. Thus, the asymmetry imposed by the unequal treaties was indeed a significant factor in the rise of the coolie trade in the decades following the Opium War. As for the victims, although reports vary somewhat,<sup>80</sup> they mainly came from three categories of people: prisoners of clan fights taken in Guangdong province and given to Chinese or Portuguese crimps (or procurers of labourers);

<sup>73</sup>M. A. Carrai, *Sovereignty in China. A Genealogy of a Concept since 1840* (2019), 8.

<sup>74</sup>Ibid., at 81, 220. See also, on the problem of translation, L. H. Liu, 'Legislating the Universal: The Circulation of International Law in the Nineteenth Century', in L. H. Liu (ed.), *Tokens of Exchange: The Problem of Translation in Global Circulations* (1999), 127–64.

<sup>75</sup>Suzuki, *supra* note 24, at 2.

<sup>76</sup>Gong, *supra* note 12, at 184.

<sup>77</sup>See C. Howe, 'Introduction: The Changing Political Economy of Sino-Japanese Relations: A Long Term View', in C. Howe (ed.), *China and Japan: History, Trends and Prospects* (1996), at 6; P. Duus, *The Abacus and the Sword: The Japanese Penetration of Korea, 1895–1910* (1995), at 2–3; A. Iriye, *Across the Pacific: An Inner History of American–East Asian Relations* (1967), at 65–6.

<sup>78</sup>Corbett, *supra* note 8, at 1–17; Stewart, *supra* note 8, at 8.

<sup>79</sup>H. B. Morse, *The international relations of the Chinese Empire. The Period of Submission (1861–1893)* (1900), vol. II, at 164; see also Irick, *supra* note 17, at 11–15, 148–50, 389–414; H. Farnsworth MacNair, *The Chinese Abroad: Their Position and Protection, A Study in International Law and Relations* (1933), 1–27, 104–50, 211; Yen Ching-hwang, *supra* note 8, at 19–31.

<sup>80</sup>Cuba Commission, *supra* note 8, at 8; Morse, *supra* note 79, at 179; S. W. Williams, *Chinese Immigration: A Paper Read before the Social Science Association of Saratoga, September 10, 1879* (1879), 9.

villagers taken by kidnappers in the southern coast; and, lastly, those who, having lost at gambling, were forced to pay their debts by contracting with the crimps.<sup>81</sup>

The trade of Chinese labourers was mostly connected to the shipments to Peru and Cuba in the third quarter of the nineteenth century: from 1847 to 1875 between 250,000 and 500,000 Chinese labourers were sent from southern ports, bound predominantly for Peru and Cuba.<sup>82</sup> The estimates inevitably change, both because of lack of ships' records and because of the mortality rates in transit.<sup>83</sup> Sailing conditions were reportedly very poor, such that the ships were commonly defined as 'floating hells'.<sup>84</sup> It has been estimated that almost 100,000 Chinese labourers reached Peru between 1849 and 1875, with an average mortality rate of 10.74 per cent between 1860 and 1870.<sup>85</sup> In Peru, the coolie trade was considered by many a national disgrace.<sup>86</sup> Labourers lacked basic needs and were subjected to harsh punishments in case of misbehaviour.<sup>87</sup> Yet, after the emancipation of slaves in 1854, Chinese labourers had become the substitute cheap workforce in sugar and cotton plantations of which Peru was a major producer. Thus, for Peru, supporting these agricultural industries as well as the guano boom was a major economic consideration, which explains the adoption of the so-called 'Ley China' enabling the use of Chinese indentured labourers.<sup>88</sup> The fact that the *Maria Luz* case concerns Peru is therefore not a casual occurrence. In the third quarter of the nineteenth century, Peru was clearly one of the major importers of Chinese indentured labourers.

Officials in the British and US diplomatic service were the first to actually start working towards the abolition of the coolie trade,<sup>89</sup> through an initial attempt to restrict transport.<sup>90</sup> In 1856, the US Congress issued a declaration condemning the Chinese coolie trade as 'replete with illegalities, immoralities and revolting and inhuman atrocities' and, in 1862, issued a bill prohibiting the coolie trade,<sup>91</sup> adopting the same wording used in the US Constitution to refer to slaves.<sup>92</sup> Britain, however, 'was both the leader of the anti-coolie trade movement and at the forefront of establishing indentured labour as a replacement for African slaves in their Caribbean colonies'.<sup>93</sup> In 1866, China, Great Britain, and France concluded the Convention to Regulate the Engagement of Chinese Emigrants by British and French Subjects<sup>94</sup> (so-called 'Coolie Convention'), with which they set specific standards for each phase of the trade, namely recruitment, retention in depot, transport, conditions of work and payment, and repatriation of contract immigrants. The

<sup>81</sup>Cuba Commission, *supra* note 8, 6–11; MacNair, *supra* note 79, at 210–11; Morse, *supra* note 79, at 178.

<sup>82</sup>MacNair, *ibid.*, at 210; Williams, *supra* note 80, at 9.

<sup>83</sup>See Stewart, *supra* note 8, at 62–75.

<sup>84</sup>Stewart, *ibid.*, at 18; Meagher, *supra* note 6, at 153–68.

<sup>85</sup>Stewart, *ibid.*, at 62–75.

<sup>86</sup>*Ibid.*, at 104–5, 120–4.

<sup>87</sup>*Ibid.*, at 118–19; see also MacNair, *supra* note 79, at 214, 221; Morse, *supra* note 79, at 176; J. Davids (ed.), *American Diplomatic and Public Papers: The United States and China, 1861–1893*, series II. *The United States, China, and Imperial Rivalries, 1861–1893*, vol. XII, *The Coolie Trade and Outrages against the Chinese* (1979), 92–3.

<sup>88</sup>See I. Lausent-Herrera, 'Tusans (tusheng) and the Changing Chinese Community in Peru', (2009) 5 *Journal of Chinese Overseas* 115.

<sup>89</sup>On British and US policy see E. Griffin, *Clippers and Consuls: American Consular and Commercial Relations with Eastern Asia, 1845–1860* (1938), 98–100, 194–9; Irick, *supra* note 17, at 15–20, 47–57, 60–8, 81–101; A. Michie, *The Englishman in China* (1900), vol. II, at 168–74.

<sup>90</sup>See Stewart, *supra* note 8, at 19; Davids, *supra* note 87, Ser. II, vol. XII, at 92; Great Britain, House of Commons, Hong Kong: Copies or extracts of correspondence between the Colonial Department and the governor of Hong Kong (1858), at 24–30.

<sup>91</sup>Act to Prohibit the 'Coolie Trade' by American Citizens in American Vessels, 18 February 1862, 68 BFSP (1876–1877), at 441–3.

<sup>92</sup>United States, Constitution, signed at Philadelphia on 17 September 1787, Article IV, Sect. 2, para. 3.

<sup>93</sup>Young, *supra* note 10, at 132; Northrup, *supra* note 3, at 47–8. See also M.-H. Jung, *Coolies and cane: race, labor, and sugar in the age of emancipation* (2006); W. Look Lai, *Indentured labor, Caribbean sugar: Chinese and Indian migrants to the British West Indies, 1838–1918* (1993).

<sup>94</sup>Convention to Regulate the Engagement of Chinese Emigrants by British and French Subjects, 5 March 1866.

American and Prussian ministers agreed to respect the Convention, though they had not participated in the negotiations, while Spain, Portugal, and Peru stayed out.

Importantly, however, the British and French governments refused to ratify the Convention and instead proposed a revised text which excluded all references to the length of the service (five years in the original version of 1866) as well as to specific rights of indentured labourers and to the free passage of workers who wished to return home at the end of their contract.<sup>95</sup> The Chinese government's policy was, instead, that indentured labour could only be contracted under the 1866 Convention.<sup>96</sup> Meanwhile, indentured labourers continued to be shipped illegally from Chinese ports southward to plantations in the Dutch East Indies, the Straits Settlements, and the Malay States, even after the formal end of coolies' shipments in 1875.<sup>97</sup>

The contradictions and tensions arising from the coolie trade reached a paroxysm between 1866 and 1872, embodied in a number of international incidents. Three of them deserve particular mention because they bring us closer to the historical context of the *Maria Luz* case. The first case was the 1868 Peruvian incident of the so-called 'branded 48': forty-eight Chinese labourers had been branded by their Peruvian master to facilitate their identification in case of escape. The incident was condemned by Britain to the point that Macao had to suspend the emigration of Chinese labourers from Macao in November 1868. The trade resumed, however, only six months later.<sup>98</sup> Second, on 4 May 1870, the coolie ship *Don Juan* left Macao with 665 labourers and, only two days later, caught fire, causing the death of 500 of them who were trapped on the lower deck.<sup>99</sup> The third case, which occurred in September 1870, was the incident of the *Nouvelle Penelope*, a French-registered ship carrying labourers from Macao.<sup>100</sup> It was illustrative of the wretched conditions that victims of the coolie trade had to endure. Shortly after the departure of the ship, the labourers took control of the ship and directed it back to China, after killing the captain and eight members of the crew. Most of the labourers escaped, although 16 were executed at the request of the French consul in Canton. One of those who had managed to escape, Kwok-a-sing, sought a trial in his defence. An investigation conducted by his English attorney and the governor of Hong Kong showed that the labourers had been victims of serious maltreatment on the ship. Kwok was therefore released and the court magistrate concluded: first, that the commerce in coolies was a slave trade and that, had the captain been alive, he would have been considered responsible for piracy; and, second, that in case of forced emigration, one could lawfully exercise force for 'self-preservation'.<sup>101</sup>

The latter judgment triggered various responses: first, the US Minister to China, Frederick Low, suggested using the self-preservation argument against Portugal and Macao to put an end to the trade;<sup>102</sup> moreover, in February 1872, Peru and Portugal adopted a consular convention in order

<sup>95</sup>See, for further details, P. Campbell, *Chinese Coolies Emigration to Countries within the British Empire* (2012), 146–7.

<sup>96</sup>De Martens, *supra* note 1, at 440. Davids, *supra* note 87, Ser. II, vol. XII, at 124; Great Britain, House of Commons, *Coolie Emigration* (1868), at 5; Irick, *supra* note 17, at 137–40, 151–81, 167–71; MacNair, *supra* note 79, at 213–14; Morse, *supra* note 79, at 177.

<sup>97</sup>Meagher, *supra* note 6, at 92–128, 245–73.

<sup>98</sup>Irick, *supra* note 17, at 213–14; Stewart, *supra* note 8, at 148–50.

<sup>99</sup>Yen Ching-hwang, 'Chinese coolie emigration 1845–1874', in T. Chee-Beng (ed.), *Routledge Handbook of the Chinese Diaspora* (2013), 85.

<sup>100</sup>Consul Brookes Robertson, Canton, to Thomas Wade, British Minister in Peking, 17 November 1870, in 'Correspondence and Returns relating to the Emigration of Chinese Coolies, 1858–1892', (1971) 4 *Irish University Press Series of British Parliamentary Papers: Area Studies – China*, at 253–5.

<sup>101</sup>Supreme Court, Hong Kong, 25 March 1871—Judge Chambers Before the Hon. Chief Justice Smale, in the Matter of Kwok-a-sing on Habeas Corpus—Judgment, at 201. See also 'The Coolie Trade', *Japan Weekly Mail*, 7 December 1872, at 786; 'Important Legal Decision on the Coolie Question', *New York Times*, 7 August 1871. See also P. Wesley-Smith, *Kwok A-Sing, Sir John Smale, and the Macao Coolie Trade: And Address by Peter Wesley-Smith to the Law Lectures for Practitioners Seminar* (1993); Young, *supra* note 10, at 121–49.

<sup>102</sup>D. R. Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19<sup>th</sup> Century* (2016), 34.

to set their rights in maritime transports.<sup>103</sup> Thus, the positions of states as well as the legal arguments underpinning them, were already taking form when, only a few months later, the outrage caused by the *Maria Luz* incident escalated the matter to the level of international adjudication.

#### 4. The coolie trade on trial

##### 4.1 The *Maria Luz* case

As noted earlier, Japan had started a policy around 1850 to modernize the country and seek parity with Western powers. In this context, the *Maria Luz* affair offered a key opportunity for Japan to show that it professed common values and principles, and it could therefore claim to be a civilized country.<sup>104</sup>

On 9 July 1872,<sup>105</sup> the *Maria Luz*, a Peruvian cargo ship carrying 230 bonded Chinese labourers from Macao, docked in the Japanese port of Yokohama, after being damaged in a storm.<sup>106</sup> The ship needed to refit before proceeding to its destination in Peru.<sup>107</sup> A few days later, while the ship was anchored in the port, one of the Chinese labourers leaped overboard and sought refuge on a British ship, HMS *Iron Duke*. The Chinese man, Mok-hing, claimed that he and his fellow labourers were being held in captivity on the *Maria Luz* and mistreated. After a consultation between the captain of the *Iron Duke* and Robert Grant Watson, the British *chargé d'affaires*, the man was assigned to the Japanese authorities and returned to the ship. The following night, however, another man escaped from the ship. Watson, together with the *chargé d'affaires* for the United States, Charles O. Shepard, was convinced that the *Maria Luz* was involved in the coolie trade. On 3 August, following a few more such incidents, they urged Japanese foreign minister Soejima Taneomi to investigate the ship. Two reasons were advanced: first, the barbarity of the coolie trade, which Britain, France, and the United States had been professing to eradicate (albeit not without contradictions); and second, the possible opportunity for Japan to bolster good relations with China.<sup>108</sup>

Japanese leaders showed initial reluctance towards interfering with Peru, a foreign power with whom Japan had no treaty. Whereas Soejima claimed that the *Maria Luz* was in Japanese territorial waters and Japan had jurisdiction, the minister of justice, Etō Shinpei, argued instead that it was a foreign ship and not under Japanese jurisdiction. Soejima ultimately secured support from the Prime Minister Sanjō Sanetomi, and, subsequently, officials of the Kanagawa prefectural government authorized an investigation into the *Maria Luz* on 7 August. The Japanese investigators further decided to specifically question some of the Chinese passengers from the ship. The investigation was conducted for seven days under the authority of the Kanagawa government and of an assistant governor, Ōe Taku. Many of the Chinese labourers interviewed claimed to have been victims of abuses by Captain Ricardo Herrera, such as cruel treatments, including beatings, forced starvation, and space restrictions.<sup>109</sup> Some had also been kidnapped and forced to sign their

<sup>103</sup>Irick, *supra* note 17, at 214–18; Stewart, *supra* note 8, at 48–52; Meagher, *supra* note 6, at 174–92; Morse, *supra* note 79, at 179–80.

<sup>104</sup>Crawford, *supra* note 17, at 583.

<sup>105</sup>In the Sabansho, before his Excellency Ōe Taku, Governor, this day, 18 September 1872, Foreign Relations of the United States [hereafter FRUS], 1873–1874, vol. I, at 544.

<sup>106</sup>Mr. Watson to Soyeshima Tane-omi, 3 August 1872, *ibid.*, at 529.

<sup>107</sup>See Hill, *supra* note 15. Official documents are gathered in Gaimushō [The Japanese Foreign Ministry], *Nihon gaikō monjo*, vol. VIII [1872], (1955), at 412–540, vol. IX [1873], at 479–553, vol. X [1874], at 494–537, and vol. XI [1875], at 374–81; República del Perú, *Colección de los tratados, convenciones capitulaciones, armisticios, y otros actos diplomáticos y olíticos celebrados desde la independencia hasta el día, precedida de una introducción que comprende la época colonial*, R. Aranda (ed.) (1890–1911), vol. X. See also Great Britain, Foreign Office Archives, F.O. 84/1442 ('Slave Trade—Fugitive Slave Commission. No. 29. Escape of Coolie Emigrants from the Peruvian Ship 'Maria Luz' on Board Her Majesty's Ship 'Iron Duke' in Japan in 1872'); and Foreign Relations of the United States, 1873, vol. 1 (1874), at 524–630.

<sup>108</sup>See *supra* note 17. See also P. J. Treat, *Diplomatic Relations between the United States and Japan, 1853–1895* (1932), vol. I, at 455–63.

<sup>109</sup>Several of the coolies lamented the lack of food and constant physical abuses. In addition, 'Coolie No. 8' reported that the captain ordered the beating of 'Coolie No. 5' with a stick, forcing him 'to sign [his own indenture] by a foreigner'. 'Translation

contracts after the ship had left Macao. Ōe considered that the contracts set up a relationship of personal servitude, which, with the exception of the eight-year time limit, was analogous to slavery. Moreover, most of the labourers did not have valid contracts. Some were missing and some were found with no order, attracting Ōe's suspicion that the Chinese passengers aboard the *Maria Luz* were most likely not willing emigrants. These passengers were totally unaware of the Portuguese or Peruvian law governing their contracts and whether the latter would have provided them with any form of redress. In court, neither Captain Herrera nor his legal counsel could produce a copy of the law. This finding left Ōe disconcerted and made him realize that, upon entering the barracoon, the labourer was simply a free contractor no more, due to a system of payments that extended the labourer's work beyond the contracted eight years.<sup>110</sup>

Herrera argued in his defence<sup>111</sup> that Japan had no jurisdiction in Macao or China, or in the high seas; that his actions did not constitute acts of piracy according to the law of nations; that slavery and the coolie trade were neither prohibited by the law of nations nor by Japan, and such contracts between the Chinese and Peruvians were common. Herrera also claimed that the *Maria Luz* had to be allowed to depart.<sup>112</sup> On 26 August, Ōe made his conclusions public. He considered Captain Herrera liable for cruel treatment, occurred in Japanese waters and within the jurisdiction of Kanagawa prefecture. The Kanagawa court held that the long-term indentures of the labourers aboard the *Maria Luz* had reduced them '[s]ubstantially' to the 'practical status' of 'slavery', leaving them completely ignorant of the law governing their indentures – as was also the court. Thus, implementing these contracts – which, in any case, were void due to the abuses which subsequently occurred on the ship – would have been against Japanese public policy.<sup>113</sup>

Meanwhile, however, various foreign consuls from Germany, Denmark, Poland, and Italy, led by Eduard Zappe, acting consul-general for Prussia (and the North German Confederation), challenged the outcome and claimed that Japan was not competent to punish offenses committed on the high seas by Peru nor to assess the validity of a contract made between foreigners abroad.<sup>114</sup> Underpinning this challenge were some of the broader implications of the judgment, not on the coolie trade as such, but with regard to the perceived meddling by Japan in the affairs of civilized nations. Thus, a second, civil lawsuit started on 18 September. Herrera was plaintiff, while the Kanagawa prefectoral government acted as defendant, with Ōe Taku as president. In this second instance, Herrera argued the validity of the contracts for his Chinese labourers under the law of nations and Chinese law and claimed that they were enforceable under Japanese custom – in the same manner as prostitution contracts. On 27 September, a final judgment was rendered once again in favour of the Kanagawa government. Ōe noted that the contracts forced Chinese labourers out of their native jurisdiction without their consent and, therefore, they were neither duly executed, nor valid or enforceable. He also concluded that, since the contracts were *contra bonos mores*, Japan was not required to enforce them. Herrera's conduct and treatment of his passengers made the contract void.<sup>115</sup> Ōe therefore ruled that the Chinese labourers had to be freed from their contracts.

from Japanese minutes of visit to the ship, return, and report of Hayashi Gontenji and Geo. Hill', 15 August 1872, FRUS, 1873–1874, vol. I, at 594–5.

<sup>110</sup>MacNair, *supra* note 79, at 211; Meagher, *supra* note 6, at 71–81; Hill, *supra* note 15, at 45–8, 55–6; Stewart, *supra* note 8, at 108–10.

<sup>111</sup>FRUS, *supra* note 105, at 535–9.

<sup>112</sup>On F. V. Dickins see P. F. Kornicki, 'Frederick Victor Dickins (1838–1915)', in J. E. Hoare (ed.) *Britain and Japan: Biographical Portraits*, vol. III, (1999), 66–77; P. F. Kornicki, *Frederick Victor Dickins, Collected Works of Frederick Victor Dickins* (1999), vol. I, at ix–xxxi.

<sup>113</sup>FRUS, *supra* note 105, at 548–52.

<sup>114</sup>See Foreign Relations of the United States, 1873, vol. 1, at 599–600. British authorities insisted that Japan had jurisdiction over the ship; see Robertson to Watson, 17 July 1872, in F.O. 84/1442: (4–6).

<sup>115</sup>Hill, *supra* note 15.

After the decision was rendered, Herrera emptied his ship and the *Maria Luz* was sold at auction. The proceeds were sent to the ship's owner in Peru.<sup>116</sup> The Chinese labourers were returned to China and, as British diplomats hoped, the Chinese government declared its strong gratitude for Japan's kindness toward China's labourers.<sup>117</sup> However, Peru's dissatisfaction prompted the government to send a mission to Japan to try to obtain reparations before establishing formal treaty relations with Japan.<sup>118</sup> The posturing of Peru in this context was that of a country having achieved recognition as civilized on the international plane and, although it could not pretend to be part of the select group of European powers, its entering into formal relations with Japan would yield a parity dividend for the latter.

The Peruvian envoy argued that the Kanagawa court lacked impartiality in its assessment of the matter, as the 'so-called coolie trade' was in fact 'nothing else but the free and spontaneous emigration of a very small part of the exuberant population of the celestial empire, which is frequently subject to the horrors of hunger, wars, and pestilence'.<sup>119</sup> Following this argument, the labourers' attempts to escape from the ship had been simply caused by 'the *ennui* which life on board always causes to those who are not accustomed to it'.<sup>120</sup> The *Maria Luz* passengers were not slaves, as 'slaves [could] not exist' in Peru, which had abolished slavery in 1854.<sup>121</sup> Thinly veiled in these representations was the claim that Peru was a civilized country whereas neither Japan nor China, scarred by 'the horrors of hunger, wars, and pestilence', could claim the same.

In response, the Japanese Minister of Foreign Affairs clarified that Japan's investigation on the *Maria Luz* had been caused by 'the beating, maiming, and imprisonment of persons whom to the last hour, Captain Herrera designated as passengers'. Referring to several facts reported by individual labourers, mentioning their names – rather than merely the assigned numbers, he affirmed that '[i]t was unmistakably shown that [they] were dissatisfied with their treatment, and alarmed about the prospects for their future'. Thus, Japan simply could not 'drive them outside of the protection to which they were entitled ... by the *laws of humanity* ...'.<sup>122</sup>

Japan and Peru eventually agreed to refer the matter to the arbitration to settle their differences.<sup>123</sup> The arbitrator was requested 'to decide if the claim of Peru is well founded and if it is, what indemnity should be paid by Japan'.<sup>124</sup> The Japanese government asked that Czar Alexander II of Russia arbitrate the case as a neutral party and, in March 1875, Peruvian and Japanese legal advisors presented their cases. On the basis of the result of its previous investigation, the Japanese government argued that the indentured labourers had been kidnapped, and under British common law, the conduct of Captain Herrera on his passengers represented 'continuous trespass' within the jurisdiction of Japan and thus worthy of a punitive response. It also added that Captain Herrera's request that Japan return the Chinese passengers to the *Maria Luz* ship was a question of extradition. However, lacking an extradition treaty, Japan was not obliged to extradite.

<sup>116</sup>Foreign Relations of the United States, 1873, vol. I, at 548–52.

<sup>117</sup>See W. C. McWilliams, 'East Meets West: The Soejima Mission to China, 1873', (1975) 30(3) *Monumenta Nipponica* 237.

<sup>118</sup>Preliminary treaty of peace, friendship, commerce, and navigation between Peru and Japan, signed at Yedo, 21 August 1873, 146 CTS 337. On the García y García mission to Japan and China, see Stewart, *supra* note 8, at 160–205; Treat, *supra* note 108, at 487–93. See J. E. Viñuales, 'Experiments in International Adjudication. Past and Present', in I. de la Rasilla and J. E. Viñuales (eds.), *Experiments in International Adjudication. Historical Accounts* (2019), at 23.

<sup>119</sup>Minister of Peru to Minister of Foreign Affairs, 31 March 1873, FRUS, 1873–1874, vol. I, 586–94, cited in M. Erpelding, 'Evidence requirements before 19th century anti-slave trade jurisdictions and slavery as a standard of treatment', in H. Ruiz Fabri (ed.), *International Law and Litigation* (2018), at 230–1.

<sup>120</sup>*Ibid.*

<sup>121</sup>*Ibid.*

<sup>122</sup>Mr. De Long to Mr. Fish, 19 June 1873, FRUS, 1873–1874, vol. I, at 607–16.

<sup>123</sup>On the two protocols signed by the parties on 19 and 25 June 1873, as well as the award of the Russian Czar, rendered on 17 (29) May 1873, see H. La Fontaine, *Pasicrisie internationale* (1902), no. LIX, at 197–9; see also Stuyt, *supra* note 15, at 110.

<sup>124</sup>*Ibid.*, Protocol June 25, 1873.

On June 1875, Czar Alexander II rendered his award in favour of Japan.<sup>125</sup> The text of the award, which is very brief, was drafted by his assistant Fyodor Fyodorovich de Martens since Japan, a ‘non-Christian countr[y] of the East’, by refusing to return Chinese indentured labourers, conformed itself to the rule of international law.<sup>126</sup> The case was ostensibly closed, becoming a diplomatic milestone. But its implications and legacy are significant.

#### 4.2 Showcasing ‘human principles’

Importantly, a few years later, the same drafter of the 1875 award, Martens, noted in his 1883 international law manual<sup>127</sup> that slavery was, in his view, first and foremost a question relating to ‘human rights’ (*droits de l’homme*), because ‘[all] civilized states agree that man is a person’, endowed with ‘impermissible rights [which states] must respect in their relations with each other’.<sup>128</sup> Fighting slavery did not merely mean to abolish it as a legal status, but to guarantee ‘the absolute respect of the human person’ (*le respect absolu de la personne humaine*), which had now become the ‘guiding principle for European nations in their external relations’.<sup>129</sup> Martens subsequently defined the coolie trade as ‘a new form of slavery’ (*nouveau genre d’esclavage*), also mentioning some contemporaneous bilateral regulations adopted by various countries to address the system of recruitment of labourers.<sup>130</sup>

Although the award did not specify the reasons for its conclusion, various scholars of the time acknowledged the final award in the *Maria Luz* case as a fundamental legal development, mainly with regard to the notion of public policy in private international law.<sup>131</sup> More specifically, the outcome of the case, when considered together with the views expressed by Martens in 1882, sheds an unexpected light on the connection between embracing human dignity and professing the values of civilized countries. Japan, more than China, understood the value of portraying itself as a defender of humanity in its quest for parity with Western powers.

First, for its handling of the *Maria Luz* incident in 1872, Japan acquired international recognition as a humanitarian supporter of international law. As the condemnation of the coolie trade gained ground in public opinion, mostly in Britain and the United States, the Japanese contestation and judgment in the case became a significant symbolic asset. More specifically, in the case of the *Maria Luz*, Japan, by considering the contracts of the Chinese indentured labourers *contra bonos mores*, portrayed itself as adhering to Western ‘human principles’,<sup>132</sup> refusing against international pressure to restore victims of coolie trade to their victimizers. Ōe Taku has been described as a ‘humanitarian’ for his commitment to the sub-classes of Japanese society, such as prostitutes, declassed samurai, and burakumin and also for serving a prison sentence for his assistance to

<sup>125</sup>For the official English translation of the czar’s judgment, see J. B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party* (1898), vol. V, at 5034–6. See De Martens, *supra* note 1, vol. II, 339–40.

<sup>126</sup>See De Martens, *supra* note 1, vol. II, 339 f. See also Howland, *supra* note 102, at 37; Howland, *supra* note 18, at 21–47.

<sup>127</sup>Ibid., at 339 f. As Howland noted, ‘No standard of civilization conditioned Japan’s involvement, for the matter was simply that Japan shared the values of Britain and the United States in wanting to end the coolie trade … because the Japanese government from 1869 was itself committed to interests of Japanese labourers bound for Hawai‘i - their legal immigration, free status, and fair treatment’; see also Howland, *supra* note 102, at 37; C. G. Roelofsen, ‘International Arbitration and Courts’, in Fassbender and Peters, *supra* note 12, at 163–4.

<sup>128</sup>De Martens, *supra* note 1, vol. I, at 428.

<sup>129</sup>Ibid., at 430.

<sup>130</sup>Ibid., at 440, para. 85. According to Gareis, the worst forms of coolie trade were also manifestations of slave trade (*Sklavenhandel*). He thus considered that the latter term could have been replaced by the broader expression ‘trade in human beings’ (*Menschenhandel*), see Gareis, *supra* note 5, at 5–8.

<sup>131</sup>See, in particular, L. Strisower, ‘Affaire des navires Creole et autres: note doctrinale’, in A. La Pradelle and N. Politis (eds.), *Recueil des Arbitrages Internationaux*, (1905), vol. I, at 706; A. Rivier, *Principes du droit des gens* (1896), vol. I, at 150–1; H. Bonfils and P. Fauchille, *Manuel de droit international public* (1914), 667.

<sup>132</sup>See Treat, *supra* note 108, at 487.

samurai rebels in the Satsuma Rebellion.<sup>133</sup> Thus, Ōe's decisions, adopted before and after the *Maria Luz* incident, must be understood in the light of the language and values enshrined in the Western international law of the time. Ōe's judgment against Captain Herrera was a strategic mark of alliance with Britain and the United States,<sup>134</sup> two countries that had started an open fight against the coolie trade and that were particularly influential in international affairs. Japan intended to show its partaking in the civilized family of nations.

Moreover, the *Maria Luz* incident had a positive spill over within Japan. During the civil trial of the case, Peru had insisted that the coolie trade had to be considered legal as long as prostitution, a form of domestic slavery, was allowed in Japan. Ōe Taku dismissed the analogy as inapplicable, on the basis that prostitution contracts were a purely domestic matter.<sup>135</sup> But the blatant contradiction was difficult to maintain. Under such circumstances, Japan was led to enact a series of national decrees, the so called *Yūjo Kaihō Rei* (*Yūjo Release Act*),<sup>136</sup> rejecting human trafficking and slavery. Though the *Yūjo* Release Act materialized earlier than originally intended, to the eyes of Western states, it became one of the most visible pieces of the Japanese government's modernization policy.<sup>137</sup> The adoption of the *Yūjo* Release Act represented indeed an answer to a political problem grown out of an inconsistency in domestic politics and society. This new policy showed that Japan's treatment of women was closer to the one expected of civilized nations. It was also Japan's response to the nineteenth century's development of a human rights thinking in relation to slavery.<sup>138</sup> As Ōe declared in 1911, it was a moral victory for Japan.<sup>139</sup> Japan was in fact eager to reach an international standard of civilization, for that was the measure by which unequal treaties would be revised. Thus, domestically, the *Yūjo* Release Act aimed to modernize Japan's organization, while internationally 'it was a measure to create the impression of a country with a modernized society that rejected human trafficking and slavery, in accordance with the prevailing trend of the 19th century'.<sup>140</sup>

Ultimately, the overall national objective was 'parity with all nations'. Some of the Japanese leaders went abroad several times for observation and study. From 1871 to 1873, Japanese statesman Iwakura Tomomi led a delegation which first visited the United States and then Europe.<sup>141</sup> The mission was not successful in its primary objective, which was to persuade Western powers to change the unequal treaties imposed on the Tokugawa regime, but it helped to better understand what had to be done in order to reach this outcome. As William Beasley put it, this was the period in which the 'major decisions were taken about the shaping of the Japanese state', also setting the stage for the transformation of Japanese culture.<sup>142</sup> This is why the desire and aspiration for national independence inspired Japan's commitment to both national industrial policy and international law. In fact, Ōe's strategy was defined as 'humanitarian' also for having raised Japan's actual status and image to the eyes of the civilized world.<sup>143</sup>

<sup>133</sup>See D. L. Howell, *Geographies of Identity in Nineteenth-Century Japan* (2005), 84; D. Botsman, 'Freedom without Slavery? "Coolies", Prostitutes, and Outcastes in Meiji Japan's "Emancipation Moment!"', (2011) 116 (5) *American Historical Review* 1323.

<sup>134</sup>See also Minister Charles DeLong to Secretary of State Hamilton Fish, 27 September 1872, vol. XX, n. 282 and 30 September 1872, vol. XXI, n. 286, U.S. Department of State.

<sup>135</sup>Foreign Relations of the United States, 1873, vol. I, at 549. Ōe's interpretation of the coolie trade and *yūjo* contracts was suggested by Nicholas Hannen, a British judge present at the Kanagawa court; for his account of the case hearings, as an attachment to Hannen to Watson, 9 September 1872, in F.O. 84/1442: 112-113.

<sup>136</sup>The 'Yūjo Release Act' was composed by the Grand Council of State's Decree No. 295 of 2 October 1872 (A) and by the Ministry of Justice's Decree No. 22 of 9 October 1872 (C). For an analysis see Y. Yokoyama, 'The *Yūjo* Release Act as Emancipation of Slaves in Mid-19th-Century Japan', in H. Suzuki (ed.), *Abolitions as a Global Experience* (2016), 183-5.

<sup>137</sup>*Ibid.*, at 192.

<sup>138</sup>Yokoyama, *supra* note 136, at 194.

<sup>139</sup>Ōe Taku, 'Baido no heifū sainen semugosuru o fusegubeshi', (1911) 1(4) *Kakusei/The Purity* 18, at 18-20.

<sup>140</sup>Yokoyama, *supra* note 136, at 192.

<sup>141</sup>Reischauer, *supra* note 60, at 106.

<sup>142</sup>Auslin, *supra* note 39, at 205.

<sup>143</sup>Howland, *supra* note 18, at 38.

In parallel, since the *Maria Luz* case, China had also followed a new strategy with regard to the coolie trade, setting a humanitarian standard as part of its assessment of the legality of the labourers' working conditions. First, in 1873, China refused to allow the emigration of labourers to Cuba and insisted that Spain's request would have been taken into consideration only if Spain heeded the 1866 Convention and improved conditions for Chinese labourers in Cuba. China also took the initiative to send a commission to Cuba to investigate the labourers' conditions there. The commission's report, submitted in 1874, accused Spanish and Cuban officials of forcing Chinese labourers to live in poor conditions.<sup>144</sup> Also, after a report on the treatment of Chinese labourers in Peru reached similar conclusions, China concluded a treaty of friendship and trade with Peru that accepted Chinese requests on emigration of labourers to Peru and their working conditions. As for Portugal, in March 1874, Macao decreed the end of the coolie trade. Subsequently, only free labourers could be moved to Peru, Cuba, and other areas and ports in the Americas.<sup>145</sup> The coolie trade became illegal under the law of nations.

From a Chinese perspective, as for Japan, the coolie trade acted as a wider catalyst of China's engagement with international law. Yet, whereas Japan proactively made use of this signalling opportunity, China's action was first steered by the circumstances before turning into a proactive policy. Indeed, the coolie trade forced China to officially take an active interest in the emigration and treatment of her subjects abroad. It was in the light of the evidence that Chinese labourers were being cruelly mistreated in Cuba and Peru that the Chinese Government, supported by foreign diplomats in Peking, strongly urged the establishment of the two aforementioned commissions of inquiry in Cuba and Peru. Their reports convinced China of the need to protect its nationals abroad, and it led to the conclusion of treaties with Spain, Peru, and Brazil during the 1870s and 1880s.<sup>146</sup> Moreover, Qing China's investigations may have well represented one of the first steps of Asian abolitionism at the international level.<sup>147</sup> Furthermore, these investigations paved the way for the decision to station Chinese permanent envoys overseas.<sup>148</sup> Chen Lanbin, the head of the Cuban mission, and Yung Wing, the head of the Peruvian mission, were both appointed as the first full-fledged Chinese diplomats in the United States, Spain, and Peru.<sup>149</sup> This was followed by the establishment of Chinese diplomatic representations in France and Great Britain.<sup>150</sup>

Despite these significant steps, which helped China come out from its isolation, the government maintained a more cautious and reserved approach than Japan. The stronger reluctance of China to forego its own traditions and embrace, or at least profess to embrace, Western values may explain why, despite the common threats and ongoing modernization efforts in both countries, Japan's approach in relying on the abolition of the coolie trade to extract a parity dividend was more expeditious.

## 5. Concluding observations

The *Maria Luz* case is a window, a vantage point, into a dimension of the struggle for parity of both China and Japan with Western powers. As many other vantage points, it provides only one perspective on the modernization processes followed by Japan and, later by China, and their

<sup>144</sup>See E. Hu-DeHart, 'Chinese Coolie Labor in Cuba in the Nineteenth Century: Free Labor or Neoslavery', (1994) 12(5) *Contributions in Black Studies* 38, at 50.

<sup>145</sup>See Great Britain, House of Commons, China, no. 3 (1875); Correspondence Respecting the Macao Coolie Trade: 1874–1875 (1875); Irick, *supra* note 17, at 233–8, 257–72, 317–67 *passim*; Mitani, *supra* note 17, at 10–13; Morse, *supra* note 79, at 180–1; Stewart, *supra* note 8, at 160–205; Yen Ching-hwang, *supra* note 8, at 129–34.

<sup>146</sup>For an overview see Meagher *supra* note 6.

<sup>147</sup>S. Rimner, 'Chinese abolitionism: the Chinese Educational Mission in Connecticut, Cuba, and Peru', (2016) 11 *Journal of Global History* 344, at 362.

<sup>148</sup>Irick, *supra* note 17, at 320–72, 436–53.

<sup>149</sup>Rimner, *supra* note 147, at 363.

<sup>150</sup>K. Biggerstaff, 'The establishment of permanent Chinese diplomatic missions abroad', (1936–37) 20 *Chinese Social and Political Science Review*, at 32–4.

positioning with respect to the values and terminology ingrained in the international law of the time. But this perspective is a significant one. At stake in the *Maria Luz* case was the wider question of slavery, in its many forms, and the even deeper question of the Christian values underpinning international law, specifically human dignity.

As Martens, many contemporaneous observers and commentators unequivocally condemned the system of Chinese indenture as a 'new slavery'.<sup>151</sup> Condemnation of the traffic in indentured labourers offered both China and Japan an opportunity to transform their image abroad, but it was Japan who first managed to reap a parity dividend despite being less affected. Prior to the 1860s, the Chinese Government had turned a deaf ear to the many promptings from both its own officials and Western diplomats to intervene in the coolie traffic unfolding on its southern shores. It was because of the continued occurrence of kidnappings by crimps to supply emigrant vessels that the Chinese government was eventually driven to conclude the Coolie Convention in 1866. After this Convention was signed, the Chinese government resisted subsequent Western pressure to accept any alterations. The explanation provided was that the Chinese Emperor had approved the regulations during the time between the signing of the Convention and the request for its revision in April 1868. The regulations could therefore not be amended as they had already been promulgated throughout China as the law of the land.<sup>152</sup> Rutherford Alcock, the first British diplomatic representative to live in Japan and who had facilitated the ratification of the Convention, advised the Foreign Office that any modification of the text of the Convention would have jeopardized the Emperor's dignity and status and that the government was not strong enough to withstand such loss of prestige.<sup>153</sup> The matter was therefore quietly set aside, not as a result of China's strong views but rather due to its fragile position. No parity dividend could result from such an outcome.

The Coolie Convention and the measures that followed did not succeed in halting the flow of Chinese emigrants through Macau. Yet, because of various incidents, such as the case of the *Maria Luz*, the increasing public criticism of the coolie trade in the early 1870s created a favourable climate for a stronger stand against this practice. The first to reap this benefit was Japan. The *Maria Luz* incident occurred at time when the revision of the unequal treaties with Western powers was Japan's 'first and foremost diplomatic objective in the late nineteenth century',<sup>154</sup> and it prompted the first assertion by Japan of jurisdiction over subjects of a non-treaty nation. After Czar Alexander II sided with Japan in the award, the coolie traffic to the Americas was no longer safe from interference from either Japan or China.<sup>155</sup>

Unlike Japan's, the Chinese government's hand was somewhat forced by the circumstances before it turned proactive and decided to send commissions of inquiry to Cuba and Peru. The ultimate impact of this engagement was significant though, as it changed the attitude of the Chinese government toward emigration, drawing it out of its isolationism. As Irick has convincingly argued, it was the government's growing interest in Chinese populations abroad that served

<sup>151</sup>Crawford to Granville, September 3, 1873 (BFO 881/2598); Gibbs to Fish, November 13, 1876 (U.S. Dept. of State, Foreign Relations, 1877), at 435; F. C. Zegarra, *La Condición Jurídica de los Esteraneros en el Perú* (1872), 130–1; J. Beaumont, *The New Slavery* (1871). See also *London Times*, 21 April 1860; *Anti-Slavery Reporter*, vol. III, No. 2, February 1855, 39–41; vol. IV, No. 5, May 1856, 113; *New York Times*, 21 April 1860; 31 July 1860; 20 February 1868; 16 January 1871; 11 June 1873; *South Pacific Times*, 6 July 1872; *Rio News*, 5 August 1881, as cited in the *Anti-Slavery Reporter*, vol. 1, No. 9, Series 4, September 1811, 161.

<sup>152</sup>Kung to Alcock, 13 March 1869 (BFO 17/877), text cited in P. Campbell, *Chinese Emigration to Canada* (2012), 147.

<sup>153</sup>Alcock to the Foreign Office, 8 June 1868 (BFO 17/875); see also Murdock to Rogers, 22 December 1870 (BFO 17/879). See Meagher, *supra* note 6, Ch. 8, section 3.

<sup>154</sup>Onuma, *supra* note 68, at 29.

<sup>155</sup>See Foreign Relations of the United States, 1874 (1875), at 203–8; Irick, *supra* note 17, at 291–317; Morse, *supra* note 79, at 179–81; Stewart, *supra* note 8, at 36–7, 160–205; Triana and Herrera, *supra* note 8, at 142–4; Yen Ching-hwang, *supra* note 8, at 122–3. See also Great Britain, House of Commons, China, no. 3 (1875), Correspondence Respecting the Macao Coolie Trade: 1874–1875 (1875); Mitani, *supra* note 17, at 10–13.

as a springboard for the establishment of Chinese diplomatic representations overseas.<sup>156</sup> That was certainly a step towards parity, but more a by-product than the expected benefit of a strategy.

The *Maria Luz* case sheds light on how these two processes unfolded. Japan's engagement with international law was pro-active and strategic; China's was steered by the circumstances, but it then offered a platform to establish diplomatic representations abroad. For both countries, the events encapsulated by the *Maria Luz* case unveil an important, yet overlooked moment, in their quest for parity with all nations and, more generally, in their engagement with international law.

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<sup>156</sup>Irick, *supra* note 17, at 320–72, 436–53.