

International Treaties

The Foundations of Colonial Rule in Southeast Asia

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Historical treaties have long been a subject of great interest in the colonial history of North America and New Zealand, where they have often been at the centre of claims and demands by Indigenous nations for justice and the restitution of land rights. In most parts of Asia, by contrast, treaties concluded during the colonial period have not been invoked for such purposes to any great extent. There the history of treaties and treaty-making has instead been approached mainly from the perspective of the history of international law or through the lens of so-called unequal treaties.

Asian treaties and the history of international law

The prominence of Southeast Asia in the history of international law can be traced to the beginning of the 17th century, when the Dutch East India Company called on the jurist and scholar Hugo Grotius to provide a legal justification for its seizure of a Portuguese vessel in the Malacca Strait. Around the same time, and in order to extend and justify its presence in Asia, particularly against the Portuguese and other European rivals, the company began to make written treaties or contracts with local rulers which regulated commercial matters as well as issues relating to politics and security.¹ Some of the treaties were negotiated on relatively peaceful terms, whereas others were made under threat of violence or following devastating wars or massacres of local populations by the Dutch. To this day, researchers disagree about whether treaty-making in Southeast Asia in the 17th and 18th centuries should be characterised mainly as equal and mutually beneficial or as unequal and rigged in favour of the Dutch and other European treaty parties.²

Regardless of the difficult questions about equality and voluntariness, a consensus has emerged in recent decades among historians and jurists on the importance of treaty-making between Europeans and non-Europeans for the development of international law during the early modern period. This insight has provided a much-needed correction of previous Eurocentric assumptions, according to which international law was believed to have originated in Europe and then spread across the world.

Unequal treaties

After the turn of the 19th century, the influence of non-European treaty-making practices and actors seemed to become increasingly irrelevant due to the greater economic, political, and military superiority of the European colonial powers and the shift from natural to positivist law in Europe. Treaties with supposedly 'backward' or 'uncivilized' nations came to be seen as a separate category, and from the beginning of the 20th century, such treaties began to be referred to as 'unequal treaties' or 'colonial treaties' in order to distinguish them from international treaties proper.³

For East and Southeast Asia, the notion of unequal treaties has been particularly influential as a framework for analysing treaty-making and imperial relations during the 19th and 20th centuries. In this context, unequal treaties are generally understood as characterised by non-reciprocity;

From the early 17th to the mid-20th century, international treaties were a key instrument of imperialism in Asia and elsewhere, providing the legal and moral justification for European colonial rule and domination. Among the regions of the world that were affected by Western imperialism, Southeast Asia stands out for its long history of prolific treaty-making between indigenous rulers and colonial powers. In recent years, researchers have begun to explore many hitherto unknown facets of this history, thereby throwing new light on how colonial rule was established and implemented through a myriad of treaties and other written agreements.

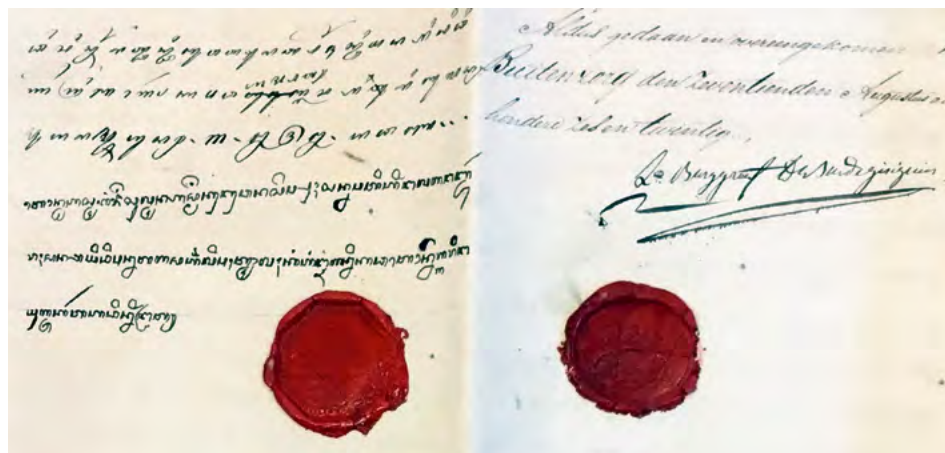


Fig. 1: Signatures and seals of a treaty between Sultan Hamengkubuwono II of Yogyakarta and the Governor of the Dutch East Indies (Indonesia), Leonard du Bus de Gisignies, from 1826. The left column is written in Javanese and the right in Dutch. (Nationaal Archief, The Hague. Photo by the author.)

restrictions on the autonomy or sovereignty of the Asian treaty party; economic, social, and political concessions on the part of the Asian party; the granting of extra-territorial rights to Europeans; and sometimes the cession of territory. Often, unequal treaties were the result of threats in the form of so-called gunboat diplomacy or followed a war imposing European dominance.

The most well-known unequal treaty is the 1842 Treaty of Nanjing, which ended the Opium War between China and Great Britain and in which China, among other things, was forced to give commercial privileges and cede the island of Hong Kong to Britain. It was the first of a series of unequal treaties concluded between China and various European and other foreign powers during the following century. However, the use of the term unequal treaties to characterise China's compacts with imperial powers only emerged in the 1920s as part of a Chinese nationalist discourse aimed at strengthening China's national unity and international standing. As such, the concept of unequal treaties, like the notion of China's hundred years of national humiliation between 1842 and 1949, is at least as much political and ideological as historical or analytical.⁴

The concept of unequal treaties thus originated in East Asia but has also been extensively applied to Southeast Asia. However, characterising all treaties between European and Southeast Asian parties before the mid-20th century as unequal or colonial risks imposing a false homogeneity on the thousands of treaties that were concluded in the region between the early 17th and mid-20th century. In fact, the treaties varied greatly in form, purpose, and content – not only between different colonial powers, but also within each colony or region and over time. In contrast to the claims of European imperial propaganda, colonial rule was a patchwork of local agreements and relations between colonial and indigenous actors.

After most countries in Southeast Asia became independent around the mid-20th century, interest in the treaties made during the colonial period declined as the treaties came to be seen as more or less obsolete. Still, many treaties continued to be of fundamental importance. Most obviously, the national borders of present-day states in the region are for the most part the result of treaties made during the colonial era. Some provisions of the historical treaties have also led to overlapping territorial and maritime claims, with the long-standing dispute between Malaysia and the Philippines over north Borneo (Sabah) being the most well-known example. The fact that Malaysia is a federated state with a rotating monarchy whereas neighbouring Indonesia is a unitary republic can also be traced to the treaties that the British and Dutch signed with the indigenous rulers in their respective colonies.

Historians rediscover treaties

Colonial officials put great emphasis on treaties with indigenous rulers and the documents were copied and kept in different parts of the administration, both in the colonies and in the metropolises. During the 19th and early 20th centuries, collections of treaties were also printed for the use of colonial administrators. However, whereas the original treaties generally were drawn up in two or three languages – those of the Asian and the European treaty-parties as well as, frequently, a lingua franca, such as Malay in maritime Southeast Asia – it was almost invariably only the European versions that were copied and printed [Fig. 1]. This bias in favour of the European texts is still visible in the colonial archives and in published and digitized collections of treaties. An important task for historians is thus to consult the original treaty



Fig. 2: Front cover of the so-called Bowring Treaty, concluded between Siam (Thailand) and the United Kingdom in 1855, with the royal seal of King Mongkut, Rama IV. (The National Archives, Kew, Richmond. Photo courtesy of Pipad Krajaejun.)

documents, which often are preserved in Asian archives, and compare the translations and different versions of the texts. Sometimes these differed significantly, indicating that the involved treaty parties understood their agreement disparately.

Encouragingly, since the early 2000s, historians have begun to rediscover the importance of treaties for understanding the colonial period in Southeast Asia, as well as other parts of the world that were affected by European imperialism. The importance of Southeast Asian and other non-European actors and practices for the development of international law has become more widely recognised. Moreover, historians have begun to turn to treaties and treaty-making as sources for understanding the heterogeneous, complex, and contingent nature of colonialism and imperial expansion and to move beyond the homogenising discourses of both imperial propaganda and much post-colonial history-writing. These research efforts promise to yield many interesting and unexpected results in the coming years and to throw new light on how colonial rule was constituted and maintained in Southeast Asia and elsewhere.⁵

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Notes

- 1 Charles H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967); Martine van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615* (Leiden: Brill, 2006); Peter Borschberg, *Hugo Grotius, the Portuguese, and Free Trade in the East Indies* (Singapore: NUS Press, 2011).
- 2 Saliha Belmessous, "The Paradox of an Empire by Treaty", in idem (ed.), *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford: Oxford University Press, 2014), 1–18; Martine van Ittersum, "Empire by Treaty?", in Adam Clulow and Tristan Mostert (eds.), *The Dutch and English East India Companies: Diplomacy, Trade and Violence in Early Modern Asia* (Amsterdam: Amsterdam University Press, 2018), 153–177.
- 3 Dong Wang, *China's Unequal Treaties: Narrating National History* (Lanham: Lexington Books, 2005); Saliha Belmessous, "What is a Colonial Treaty? Questioning the Visible and the Invisible in European and Non-European Legal Negotiations", *Comparative Legal History*, 2022, DOI: 10.1080/2049677X.2022.2131525.
- 4 Wang.
- 5 Thanks to Hans Hägerdal, Maarten Manse and Birgit Tremml-Werner for valuable input and comments.