An Examination of the Treaties Governing the Far-Eastern Sino-Soviet Border in Light of the Unequal Treaties Doctrine

Jesse A. Finkelstein
An Examination of the Treaties Governing The Far-Eastern Sino-Soviet Border in light of The Unequal Treaties Doctrine

I. INTRODUCTION

The boundary between the Union of Soviet Socialist Republics and the People's Republic of China, spanning over 4,150 miles, is the longest two-nation border in existence.\(^1\) It is also the most heavily fortified.\(^2\) Despite the area's originally sparse population, the border has served as the backdrop for confrontation between Russia and China since the seventeenth century.\(^3\) In contrast, for a brief period immediately following the Communist Chinese Revolution,\(^4\) Manchuria was cited as an example of Sino-Soviet cooperation.\(^5\)

1. T.S. AN, THE SINO-SOVIET TERRITORIAL DISPUTE 13 (1973) [hereinafter cited as AN]; D. WHITAKER & R.S. SHINN, AREA HANDBOOK FOR THE PEOPLE'S REPUBLIC OF CHINA 12 (1972) [hereinafter cited as AREA HANDBOOK]. A map of the Sino-Soviet border appears in the Appendix to this article.
2. About twenty-five percent of the Soviet Union's military strength has been deployed along the Sino-Soviet border. See U.S. NEWS & WORLD REPORT, Dec. 25, 1978-Jan. 1, 1979, at 47, 49 (Interview with Richard Holbrooke, Assistant Secretary of State for East Asian and Pacific Affairs); Heighten Our Vigilance and Get Prepared to Fight a War, PEKING REV., Aug. 11, 1978, at 5, 8. U.S. recognition of the People's Republic of China and the gradual relaxation of European reluctance to sell China military hardware may serve to equalize the presently overwhelming Soviet superiority along the frontier. Chinese Vice Premier Teng Hsiao-ping's January 1979 visit to the United States following normalization was to have included consideration of comparative Sino-Soviet military strength. See China's Military Problems on Two Fronts, N.Y. Times, Jan. 28, 1979, § 1, at 12, col. 1; Russia vs. China: Struggle for Asia, U.S. NEWS & WORLD REPORT, Feb. 27, 1979, at 27, 30. China has exhibited an historic concern for the defense of the far-eastern border. See M. LOEWE, IMPERIAL CHINA 23, 255 (1965).
3. AN, supra note 1, at 13. This Comment will deal specifically with the far-eastern or "Manchurian" section of the border between the Soviet Union (U.S.S.R.) and the People's Republic of China (P.R.C.)
On March 8, 1963, the People's Republic of China charged that the two major treaties governing the far-eastern Sino-Soviet border were "unequal treaties" and that a renegotiation of the frontier was necessary. Six years later Chinese and Soviet soldiers engaged in armed conflict over Chenpao (Daman) Island on the frozen Ussuri River. The border issue resurfaced again in 1978, further illuminating the vast schism between the two nations. Nearly a decade after the Ussuri River incidents, the February 17, 1979 Chinese invasion of Vietnam dramatically heightened tension along the entire Sino-Soviet border. The "far-eastern" or "Manchurian" section of the Sino-Soviet


7. Several clashes between Chinese and Soviet troops occurred in March 1969 over one of the hundreds of islands in the Ussuri River. The gradual shifting of the thalweg has served to change the territorial status of certain river islands over time. AN, supra note 1, at 93. For the Chinese version of the border incidents, see Chinese People's Institute of Foreign Affairs, Down With The New Tsars (1969). A Soviet view is contained in BORISOV, supra note 5, at 327-32.

8. On February 24, 1978 the Presidium of the U.S.S.R. Supreme Soviet sent a letter to the Standing Committee of the Chinese People's Congress suggesting that the Soviet Union and the P.R.C. issue a "Joint Statement of Mutual Relations." The Chinese Foreign Ministry's reply, dated March 9, 1978, rejected this proposal, asserting that the Soviets had failed to implement a September, 1969 understanding between Chinese Premier Chou En-lai and Alexei Kosygin, Chairman of the Council of Ministers of the U.S.S.R. According to Peking, the understanding contained three elements: (a) an agreement that neither side would resort to armed conflict; (b) an agreement to maintain the status quo on the border; (c) an agreement on the withdrawal of armed forces from the immediate border area. Chinese Foreign Ministry's Note to the Soviet Embassy in China, PEKING REV., Mar. 31, 1978, at 17; see also Resolution on the Report of the Work of the Government Delivered at the Fifth National People's Congress, adopted March 5, 1978, id., Mar. 10, 1978, at 8, 39. The Soviets deny that this understanding represents anything more than a documentation of the Chinese position. "The Soviet side is in favor of the status quo, which it understands as the maintenance of the present border as fixed by the Russian-Chinese treaty documents, while not denying — as already noted — the need for some adjustments. But the Chinese side links the status quo to the recognition of 'disputed areas' and a redrawing of the historically established border. Naturally, the Soviet Union cannot agree with this interpretation of the status quo." Pravda editorial, April 1, 1978, at 4-5, translated in CURRENT DIGEST OF THE SOVIET PRESS [C.D.S.P.], April 26, 1978, at 1, 4. For the texts of both letters, see PEKING REV., Mar. 31, 1978, at 17, 18. See generally R. TERRILL, THE FUTURE OF CHINA 210, 211 (1978). The Soviet Union has admitted to Peking's accusation that on May 9, 1978 Soviet troops penetrated four kilometers into Chinese territory. See Chinese Foreign Ministry's Oral Statement to the Soviet Ambassador, PEKING REV., May 26, 1978, at 20.

9. China's February 17, 1979 attack against Vietnamese provinces along the Sino-Vietnamese border "raised the possibility of the first clash between Soviet and Chinese forces since border fighting along their frontier a decade ago." Shipler, Soviet Tense in Invasion Report, Implying No Decision on Action, N.Y. Times, Feb. 18, 1979, § 1, at 10, col. 5. The P.R.C. has consistently denied
border consists of approximately two-thousand miles of extremely varied terrain. Although the entire far-eastern frontier has never been specifically delineated, the northeast corner of the Mongolian People's Republic marks the mountainous beginning of a natural line which terminates at the Pacific Ocean. The frontier is generally defined by the Amur and its tributaries, running from the Argun to the Amur River and eventually following the Ussuri upstream.

At the peak of the Han Dynasty (202 B.C.E.-220 C.E.) and several centuries later during the T'ang Dynasty (618-906 C.E.), the Chinese Empire controlled Southern Manchuria, Mongolia, Indo-China, Tibet, and Turkestan. During the period of Mongol rule (1260-1368) Peking was established as the Chinese capital and Mongol influence spread across Asia into Russia. Internal political disorders and natural disasters led to the disintegration of the Mongol Yuan Dynasty and the founding of the Ming Dynasty in the middle of the fourteenth century. The Ming Dynasty was afflicted with similar problems, and in 1644 the Manchurian warriors captured Peking and established the Manchu (Ch'ing) Dynasty.

In the early seventeenth century, Russian forces swept across Siberia encountering little resistance from the various tribal inhabitants of the region.
While Russia’s territorial ambitions in Asia were held in check by the Manchu Dynasty until the nineteenth century, the Chinese were unable to prevent Russian expeditions into the region and the establishment of numerous settlements along the Lena, Kamchatka, Amur, and Ussuri Rivers. In 1643 Russians reached the Amur basin. Six years later an ambitious advance down the Amur River precipitated a major confrontation with Manchurian soldiers. The Russian-Manchu conflict continued for several decades as the Tsarist forces established several major Amur fortifications including Nercinsky (1656-58). Emperor K’ang-hsi finally crushed the anti-Manchu revolts plaguing South China in 1681 and proceeded to challenge the Russian subjugation of the Tungu frontier peoples. It soon became apparent that the Tsarist forces had expanded the outposts far beyond the limited Russian supply capability. As a result, the Manchus were able to stop the Russian advance at Nercinsky in 1689.

Any study of contemporary Sino-Soviet border relations must consider the fact that the present far-eastern frontier differs greatly from that of earlier times. In the years of the initial treaties governing this area, few ethnic Russians or Han Chinese were found on either side of the border. Since then the Chinese Amur frontier, once inhabited by Tungusic tribes, has undergone extensive development. On the Soviet side, major cities inhabited by non-indigenous peoples have been developed.

This Comment will examine the four boundary treaties relating to the Manchurian Sino-Soviet frontier in light of the unequal treaties doctrine as enunciated by Soviet and Chinese jurists. Initially the author will discuss the role of the “unequal treaties” concept in customary international law and the emergence of the socialist unequal treaties doctrine. Following a comparison

18. JACKSON, supra note 10, at 39.
20. JACKSON, supra note 10, at 40-41. Recall that the Manchus gained control of China only five years earlier in 1644. See note 16 supra and accompanying text.
21. A. LAMB, ASIAN FRONTIERS 205 (1968) [hereinafter cited as LAMB].
22. JACKSON, supra note 10, at 41.
25. LAMB, supra note 21, at 212; see Mironenko, Population and Territorial Division, in HANDBOOK ISSUE ON SIBERIA AND THE SOVIET FAR EAST: INTERNATIONAL STUDIES OF THE SOVIET UNION 62 (1962); E.S. KIRBY, THE SOVIET FAR EAST (1971); THIEL, supra note 19.
26. References and citations in this Comment have been limited to English-language sources and translations. It should be noted that the rapidly changing character of Sino-Soviet relations necessarily renders this Comment an ephemeral quality.
of the Western and socialist concepts, the Sino-Russian treaties of Nerchinsk (1689), Kiakhta (1727), Aigun (1858), and Peking (1860) will be analyzed in an effort to determine the applicability of the unequal treaties doctrine according to the available Soviet and Chinese criteria. The author proposes: (1) that the treaties of Aigun and Peking meet both the Soviet and Chinese criteria for invocation of the unequal treaties doctrine; (2) that the Treaty of Nerchinsk satisfies at least one of the two major elements of the doctrine; and (3) that the Treaty of Kiakhta cannot realistically be characterized as unequal. An examination of the Soviet and Chinese positions regarding the validity of the border treaties will conclude with an assessment of the prospects for resolution of the Sino-Soviet dispute over the far-eastern frontier.

II. THE UNEQUAL TREATIES CONCEPT IN CUSTOMARY INTERNATIONAL LAW

A. Inequality and Duress in Customary Treaty Law

The classical theorists of international law discussed the notion of unequal treaties only in passing. Interest in the theory of unequal treaties in international law appeared to lapse for over a century and has only recently been revived with the emergence of the Soviet State. Although the unequal treaties concept is not considered a formal doctrine of customary international law, a number of classical writers have differentiated between equal and unequal treaties. According to Wolff:

Those treaties are unequal in which the same things or equivalents are not promised by each of the contracting parties. . . . Therefore, moreover, it follows that the condition of one of the contracting parties is made worse by the treaty, or the conditions of those entering into an unequal treaty are not equal.

Equality, however, is not essential to validity: "Treaties between nations are valid, if there is no inherent defect in the method of agreement, without consideration of the equity or inequity of the treaty." According to Grotius,
unequal treaties may be found not only between warring States, but also between States of greater and lesser power.\textsuperscript{32} Pufendorf's definition of unequal treaties is similar to that offered by Grotius.\textsuperscript{33}

Vattel admonished that nations "should make their treaties equal, as far as that is possible."\textsuperscript{34} The natural law requires that treaties be based on equality unless special circumstances permit departure from the rule of equality.\textsuperscript{35} Certain unequal treaties, however, may conform to natural law.\textsuperscript{36} Wheaton wrote that treaties obtained under duress are void, since freedom of consent is necessary for validity.\textsuperscript{37} It is clear that Wheaton intended only a narrow application, if any, of this exception: "On the other hand, the welfare of society requires that the engagements entered into by a nation under such duress as is implied by the defeat of its military forces, the distress of its people, and the occupation of its territories by an enemy, should be held binding. . . ."\textsuperscript{38} The twentieth century socialist writers have emphasized that inequality in treaties serves as a basis for unilateral abrogation or that unequal treaties are void ab initio. These positions have not been recognized in customary international law.\textsuperscript{39}
B. The Principle of Pacta Sunt Servanda

The general rule of international law mandating the binding effect and continued validity of treaties is established by the principle of *pacta sunt servanda*. The presumption of binding effect and the fact that treaties must be observed in good faith flows directly from the binding force of international law. The universality of the principle of *pacta sunt servanda* is reflected in Vattel’s *Le Droit des Gens, ou Principe de la Loi Naturelle, Applique à la Conduite aux Affaires des Nations et des Souverains*:

The faith of treaties, that firm and sincere determination, that invariable steadfastness in carrying out our promises, of which we make profession in a treaty, is therefore held to be sacred and inviolate by Nations whose safety and peace it secures; and if States do not wish to be lacking in their duty to themselves they should brand with infamy whoever violates his word.
Even critics of the natural law theses hold *pacta sunt servanda* to be the "source of all the law created by treaties."

The concept has been accepted by both classical Chinese and Soviet writers. In practice, the unequal treaties doctrine and *rebus sic stantibus* operate as exceptions to the principle of *pacta sunt servanda*.

III. The Socialist Unequal Treaties Doctrine in International Law

A. The Soviet Unequal Treaties Doctrine

The Soviet Union, although affording recognition to the tenets of customary international law, considers treaties to be a more significant source of international law than most Western nations. The pragmatic reason for this stance is a Soviet desire not to be bound by rules it had no voice in promulgating. The People's Republic of China and other socialist nations, also fearing constraint from "bourgeois" customary international legal norms, have generally adopted this preference for treaties as a primary source of international law. Soviet writers have offered differing views as to the origin of

44. *Id.* at 335.
45. See § III. A-C, infra.
46. See note 79 infra.
the doctrine. While I. I. Lukashuk proposes that the unequal treaties doctrine is a product of historical development,\textsuperscript{51} other Soviet jurists have implied that the principle of unequal treaties is derived from the Preamble to the United Nations Charter, which promotes equality among nations.\textsuperscript{52} Although there appears to be no precise definition of the term "unequal treaties," a number of characteristic elements are referred to in several Soviet publications concerning international law. Talalayev and Boyarshinov observed that unequal treaties infringe upon state sovereignty by submitting essentially domestic regions of the weaker party to foreign control.\textsuperscript{53}

According to a Soviet textbook on international law: "Equal treaties are treaties concluded on the basis of equality of the parties, unequal treaties are those which do not fulfill this elementary requirement."\textsuperscript{54} Soviet jurist A. N. Talalayev defines illegal treaties under international law as manifestly unequal, coercive, and colonialist in nature.\textsuperscript{55} Unequal treaties do not create reciprocal rights and obligations according to Lukashuk.\textsuperscript{56} Other Soviet writers have referred to unequal treaties in terms of duress, often defining the
coercive element in terms of military, political, or even economic factors.\textsuperscript{57} In a 1955 text on international law, Vladim I. Lissovskii characterized unequal treaties as (a) treaties creating a unilateral obligation, or (b) treaties specifically or effectively subordinating one party to an unequal status.\textsuperscript{58} Perhaps a better working definition is provided by Talalayev and Boyarshinov, who list certain characteristics of unequal treaties. They contend that unequal treaties: (a) constrain one party's exercise of sovereignty in foreign affairs; (b) unreasonably interfere with domestic jurisdiction; (c) depend on the legislative actions of one party; (d) do not create reciprocal rights and obligations between the parties; and (e) require unequal commitments from the parties.\textsuperscript{59}

The same authors maintain that unequal treaties are not binding and may be abrogated unilaterally at any time by the oppressed party.\textsuperscript{60} In the past, the Soviet Union has abrogated treaties concluded by the Tsarist government by invoking the doctrine of \textit{rebus sic stantibus} or the unequal treaties doctrine.\textsuperscript{61}

\textsuperscript{57} Statement by Ms. Zgurskaya, \textit{supra} note 52, \textit{cited in} Erickson, \textit{supra} note 49, at 78.
\textsuperscript{58} V. I. Lissovskii, \textit{Mezhdunarodnoe Prawo} 228 (1955), \textit{cited in} Triska & Slusser, \textit{supra} note 56, at 422 n.33.
\textsuperscript{60} Id.
\textsuperscript{61} Following the October Revolution in 1917, "[T]he Soviet State broke completely and immediately with the colonial policy of tsarism and repudiated all treaties of Tsarist Russia having a colonial, annexationist, unequal character." \textit{Theory of International Law}, \textit{supra} note 48, at 11. Included were the secret treaties the Tsarist government signed between February and October 1917. The Soviets immediately abrogated treaties that they asserted secured the profits of the capitalist landowners. Although the term "unequal treaties" is not used, the abrogation was not based on \textit{rebus sic stantibus}. C. Hill, \textit{The Doctrine of Rebus Sic Stantibus in International Law} 31 (1934). Later references to this period by Soviet writers imply the use of the unequal treaties doctrine. See, e.g., \textit{Theory of International Law}, \textit{supra} note 48, at 11-14. When \textit{rebus sic stantibus} has been explicitly invoked, the general argument has been that the 1917 Revolution severed the continuity of all prior obligations. See, e.g., Decree of the Central Executive Committee of November 13, 1918 denouncing the Treaty of Brest-Litovsk: The Brest-Litovsk Treaty, a treaty of force and robbery, has fallen under the blow of the united German and Russian Proletarian Revolutionaries. The toiling masses of Russia . . . freed by the German Revolution from the yoke of this predatory treaty dictated by German militarism, are now called upon to decide their own fate. Sovetskii Soiuz v Bor'be za Mir 56, \textit{cited in} T. Taracouzio, \textit{The Soviet Union and International Law} 250 n.51 (1935). \textit{See also} the Statement of the Soviet Government dated April 2, 1924:

There was never a general abrogation of all treaties concluded by Russia under the old regime or under the provisional government. It hardly follows, however, that all these treaties are susceptible of being reconfirmed. There will be occasion to examine this question for each State and for each treaty separately from the point of view of the clause \textit{rebus sic stantibus}.

\textit{Cited in} C. Hill, \textit{The Doctrine of Rebus Sic Stantibus in International Law} 32 (1934).
B. The Chinese Unequal Treaties Doctrine

Although the Soviet and Chinese conceptions of the unequal treaties principle are similar,62 there is ample evidence to suggest that the Chinese doctrine of unequal treaties developed independently of both the Western and the Soviet concepts.63 Significant differences also exist in the application of the doctrine to treaties between other nations.64 The term was originally employed with reference to the many agreements signed by the Manchu dynasty under duress granting consular jurisdiction to Western powers in the late nineteenth century.65 One of the few available Chinese publications discussing unequal treaties provides a Marxist-Leninist differentiation between treaties based on principles of equality and those which are inherently unequal. Genuine agreements negotiated from respective positions of equality are to be honored, whereas those treaties concluded in the absence of sovereign equality are anathema to international law and without validity.66 Unequal treaties

---

63. It is notable that neither the Soviet Karakhan Declaration (Deputy People's Commissar for Foreign Affairs Leo Karakhan's July 25, 1919 renunciation of Tsarist conquests in China) nor the Sino-Soviet Agreement on the General Principles for the Settlement of Questions Between the Soviet Union and the People's Republic of China (May 31, 1924) include the term "unequal treaties." The Soviets made infrequent use of the term prior to World War II, but Chinese references to unequal treaties are found in publications from the 1920's. Chiu, Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties, in CHINA'S PRACTICE OF INTERNATIONAL LAW 243, 247 (J.A. Cohen ed. 1974) [hereinafter cited as Comparison of the Nationalist and Communist Views]. Professors Chiu and Cohen have asserted that the Nationalist Chinese coined the term in 1923. 2 PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 1116 (J.A. Cohen & H. Chiu eds. 1974) [hereinafter cited as PEOPLE'S CHINA].  
64. Chinese writers have applied the unequal treaties doctrine not only to Chinese treaties, but to treaties between other nations as well. See, e.g., the article praising the abrogation of the "unequal" Panama Canal Treaty. New Victory for Panamanian People, PEKKING REV., April 28, 1978, at 11; Cheng, The Philippines: America's Show Window of Democracy in Asia, id., Feb. 5, 1965, at 21-22; see also HSIUNG, supra note 47, at 253.  
66. The classical writers of Marxism-Leninism confirmed an important principle concerning international treaties, namely, the genuine sovereign equality between all parties concerned should become the foundation of international treaties . . . Consequently, in accordance with Marxism-Leninism, there are equal treaties and unequal treaties, and therefore, progressive mankind takes fundamentally different attitudes towards different kinds of treaties. Equal treaties should be strictly observed. Unequal treaties are in violation of international law and without legal validity. WANG Y.-T., Kuo-chi mao-yi t'iao-yueh ho hsih-ting (International Trade Treaties and Agreements) 10 (1958) [hereinafter cited as International Trade Treaties], translated in 2 PEOPLE'S CHINA, supra note 63, at 1118-20.
"undermine the most fundamental principles of international law — such as the principle of sovereignty — therefore they are illegal and void." Wang Yao-t’ien indicates that the Chinese legal concept of equality in treaty-making transcends the language of the document involved and is based on the economic and political character of the signatory nations’ relationship. Like the Soviet writers, contemporary Chinese theorists consider lack of equality between the bargaining parties in negotiations to be a characteristic of unequal treaties. Chinese jurists also view nonreciprocity of treaty terms and obligations as determinative of an agreement’s equality or inequality.

C. The Socialist Unequal Treaties Doctrine as a Basis for Abrogation of Treaties

Although Soviet and Chinese writers have apparently failed to provide a detailed framework for the application of the unequal treaties doctrine, socialist writers generally agree that unequal treaties are "in conflict with the peremptory principles of international law so that there are no legal obligations for their performance." This is a major divergence from the Western view, which supports the continued validity of such agreements without regard to equality. According to the Soviet view of international law, un-
equal treaties are not protected by *pacta sunt servanda*\(^73\) and are invalid per se.\(^74\) Therefore, signatory nations need not consider themselves bound by unequal treaties.\(^75\) This is true of any treaty which defies the peremptory principles of international law.\(^76\) Zadorozhnyi wrote that "Lenin maintained that unequal coercive treaties contradicted international law and were not subject to implementation."77 To assert the validity of such a treaty would be reactionary.\(^78\)

The Nationalist Government on mainland China (prior to 1949) adopted the customary view of treaty termination based on *rebus sic stantibus*\(^79\) and suc-

---


78. Id. at 100.

79. The principle of *rebus sic stantibus* has been codified as Article 62 of the Vienna Convention
cessfully invoked the doctrine to abrogate unequal treaties granting consular jurisdiction. Nationalist writers have generally adhered to the Western inter-

on the Law of Treaties. Note that § 2(a) precludes invocation of the doctrine to void a border treaty.

Article 62: Fundamental Change of Circumstances
1. A fundamental change of circumstances which has occurred with regard to those exist­ing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from a treaty unless:
   (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
   (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked as a ground for terminat­ing or withdrawing from a treaty:
   (a) if the treaty establishes a boundary; or
   (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party by the treaty.
3. If, under the foregoing paragraphs, a party may invoke a fundamental change of cir­cumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

U. N. Doc. A/Conf. 39/27 (1969); ROSENNE, supra note 39, at 324; see also Haraszti, Treaties and the Fundamental Change of Circumstances, 146-III RECUEIL DES COURS 1, 65-69 (1975). According to customary international law, rebus sic stantibus does not provide for immediate unilateral dissolution of treaties. The nation must first request that the other parties to the treaty release the nation from its obligations. OPPENHEIM, supra note 39, at 941. This approach is reflected in Article 65 of the Vienna Convention, which outlines the procedure for termination or invalidation of treaties. While the minority view that rebus sic stantibus can be invoked to void excessively burdensome treaty provisions has been roundly criticized, this interpretation may actually promote stability. See Lissitzyn, Stability and Change: Unilateral Denunciation or Suspension of Treaties by Reason of Changed Circumstances, 61 AM. SOC'Y INT'L L. PROC. 186, 189 (1967); see generally VATTEL, supra note 34, at 211; WHEATON, supra note 37, at 281; G. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 169-70 (5th ed. 1967). On the relationship between rebus sic stantibus and unequal treaties, see F. NOZARI, UNEQUAL TREATIES IN INTERNATIONAL LAW 134-65 (1971).

80. E.g., the Sino-Belgian Treaty of November 2, 1865. Article 46 of the Sino-Belgian Treaty granted Belgium a unilateral denunciation privilege. In a note to the Belgian Government dated April 16, 1926 China sought the negotiation of an "equal" treaty to replace the current agree­ment:

During the long period which has elapsed since its conclusion so many momentous political, social and commercial changes have taken place in both countries that, taking all circumstances into consideration, it is not only desirable but also essential to the mutual interest of both parties concerned, to have the said treaty revised and replaced by a new one to be mutually agreed upon.

CHINA YEARBOOK 770 (1928). Note that rebus sic stantibus was not invoked by the Chinese to justify unilateral abrogation, but rather to require the renegotiation of treaty relations between China and Belgium: "the Chinese Government are [sic] endeavoring to revise the existing treaties which are as a rule terminable by notice after a certain period, so that all unequal and absolute provisions may be omitted from the new treaties to be negotiated upon the expiration of the specified periods." Statement of the Chinese Government Explaining the Termination of the Sino-Belgian Treaty of November 2, 1865, in L. W. C. FU, STATEMENT OF THE CHINESE GOVERNMENT AND OTHER DOCUMENTS RELATING TO THE TERMINATION OF THE SINO-BELGIAN TREATY OF AMITY, COMMERCE, AND NAVIGATION OF NOVEMBER 2, 1865, at 2 (1926). On November 25, 1926 Belgium submitted a unilateral application to the Permanent Court of International Justice (under Article 40 of the Statute); however China at all times refused to recognize
pretation of the effect of inequality on the validity of treaties. Since the Revolution, the People's Republic of China has subscribed to the newer socialist interpretation of unequal treaties, permitting unilateral abrogation by the oppressed State without resort to any formal procedure. Jurist Hsin Wu declared that treaties obtained through coercion cannot be afforded the same legitimacy granted treaties based on sovereign equality. Accordingly, the

the Court's jurisdiction in the matter. China's continuing pressure on the Belgian Government eventually led to the renegotiation and conclusion of a new Sino-Belgian Treaty on November 22, 1928. See generally C. Hill, THE DOCTRINE OF REBUS SIC STANTIBUS IN INTERNATIONAL LAW 32-33 (1934). More recently, the P.R.C. has applied the doctrine of rebus sic stantibus to the Sino-Burmese frontier question:

At the same time we must bear in mind the fundamental changes of historical importance which have taken place in China and Burma respectively, i.e., China has cast away its semi-colonial status, and both have become independent and mutually friendly countries. The Burmese Government has succeeded to the territory formerly controlled by Britain, and the Union of Burma has been established by combining the various autonomous states and Burma proper, while our government has taken over the territory under the jurisdiction of the Kuomintang government. In dealing with this boundary question, attention must be paid to these historical changes, and the treaties signed in the past which concern the boundary between China and Burma must be treated in accordance with general international practice.


81. E.g., a 1927 treatise acknowledges that coercion does not necessarily vitiate a treaty. Treaty validity requires, inter alia, that the formal and free consent of the contracting parties is given. By freedom of consent it does not imply that force, as by war, reprisals, or otherwise, may not be used in bringing about a condition of affairs which may lead a state, without parting with its independence and sovereignty, to make such sacrifices as may be necessary to put an end there to.

L. C. Yen, INTERNATIONAL LAW 66 (1927).

82. Comparison of Nationalist and Communist Views, supra note 63, at 267. Some pre-1949 Chinese jurists apparently felt unilateral denunciation was possible under rebus sic stantibus. See, e.g., TSENG Y. H., THE TERMINATION OF UNEQUAL TREATIES IN INTERNATIONAL LAW 70 (1933). Even traditional Chinese theorists found coercion a vitiating factor. According to Shao-chuan Leng, classical scholar Tso-Chuan alluded to the abrogation of treaties obtained through duress: "God does not require adherence to a forced covenant; it may be broken," Leng, Sovereignty within the Chinese Legal System, in SOVEREIGNTY WITHIN THE LAW 248 (Larson ed. 1965).

83. In rejecting Professor Hyde's contention that treaties remain valid regardless of the motivation of the party ceding territory, Hsin Wu referred to the "unequal Treaty of Shimonoseki":

Obviously, according to such an interpretation, it was legitimate for Japan to force the Manchu Government of China to cede Taiwan and Penghu through the unequal Treaty of Shimonoseki after the 1895 Sino-Japanese War. This is tantamount to saying that it is legal for a robber to take property by brandishing a dagger before the owner, threatening his life, and then forcing him to put his fingerprint on a document indicating his consent. Is that not absurd? No wonder bourgeois international law has sometimes been described as the law of bandits.

Hsin, A Criticism of Bourgeois International Law on the Question of State Territory, 7 Kuo-chi wen-t'yi yenchiu (Studies in International Problems) 44-51 (1960) translated in 1 PEOPLE'S CHINA, supra note 63, at 326.
position of the People’s Republic of China is that unequal treaties may be terminated by a victimized nation in disregard of the principle of *pacta sunt servanda* and without invocation of the doctrine of *rebus sic stantibus.* While China has unilaterally repudiated certain treaties it considers unequal, Peking has generally refrained from unilaterally abrogating unequal treaties governing boundaries pending renegotiation.

D. A Comparison of the Western and Socialist Views of Unequal Treaties

The socialist concept of unequal treaties is not unlike the Western attitude toward treaties obtained through coercion as expressed in Article 52 of the 1969 Vienna Convention on the Law of Treaties. Both concepts provide a means of circumventing the pervasive principle of *pacta sunt servanda.* Traditionally, coercion did not serve to render a treaty void per se. The standard argument raised against such a proposition is the potential invalidation of every peace treaty signed at the conclusion of armed conflict. One major difference, however, is in the effect of the doctrine. While the Vienna Conven-

84. "The classical writers of Marxism-Leninism . . . considered the international law principle of *pacta sunt servanda* not to be applicable to treaties involving aggression and slavery . . . . Refusal to perform this type of treaty should not be considered a violation of international law." International Trade Treaties, *supra* note 66, at 10, translated in 2 PEOPLE’S CHINA, *supra* note 63, at 1118-19. Article 55 of the Common Program of the Chinese People’s Political Consultative Conference, adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949, grants the Chinese Government broad latitude to review and abrogate treaties concluded by prior governments: "ARTICLE 55. The Central People’s Government of the People’s Republic of China shall examine the treaties and agreements concluded between the Kuomintang and foreign governments, and shall recognize, abrogate, revise, or renegotiate them according to their respective contents." CONSTITUTION OF THE COMMUNIST PARTY-STATES 101 (J. Triska ed. 1968). The specific reference to the Kuomintang has not prevented the P.R.C. from reviewing the treaties of governments prior to the Kuomintang. THE P.R.C. AND THE LAW OF TREATIES, *supra* note 29, at 93.


89. Friedmann, General Course in Public International Law, 127-II RECEUIL DES COURS 38, 196 (1969).

tion is intended to guide treaties only *in futuro* and have no retroactive application, the socialist doctrine is applied retroactively so as to affect a nation's past treaties. A second difference is the method of invalidation. Invocation of Article 52 of the Vienna Convention would require recourse to the formal notification, invalidation, and termination procedures of customary international law as set forth in Articles 65 through 70. The socialist unequal treaties doctrine would permit a victimized state to unilaterally terminate an unequal treaty at will. Finally, Article 52 does not appear to subsume the broad justification of inequality cited by socialist writers as support for the application of the unequal treaties doctrine.

IV. ANALYSIS

A. Criteria

Since there is no readily apparent consensus among Chinese and Soviet jurists concerning specific criteria as indicia of inequality in treaties, the characterization of a treaty as unequal is quite dependent on political considerations. Removed from the political context, the Chinese and Soviet writers previously mentioned have provided some indication of general factors to be considered in the analysis of treaty equality or inequality. For the purposes of this Comment, circumstances relating to the processes of negotiation, conclusion, and ratification of treaties will be referred to as "procedural" factors. The actual terms and provisions of the treaty (boundaries, rights, etc.) will be referred to as the "substantive" aspect of the treaty-making process. Both the Soviets and the Chinese consider procedural

91. *The P.R.C. and the Law of Treaties*, supra note 29, at 62; Report of the International Law Commission to the General Assembly, 21 U.N. GAOR, Supp. (No. 7), U.N. Doc. A/6309/Rev. 1 (1966), reprinted in [1966] 2 Y.B. Int'l L. Comm. 169, 246, U.N. Doc. A/CN.4/SER.A/1966/Add. 1 (1966). R.Y. Jennings asserts that Article 2(4) of the United Nations Charter and Article 49 of the International Law Commission Final Draft Articles on the Law of Treaties (now Article 52) render the validity of treaties of cession under duress questionable. Note, however, that old titles by conquest, or by forced cession, must still be regarded as valid, unless indeed the rule of intertemporal law is to be rejected, and there is neither authority nor reason for doing this. In particular cases, there may or may not be political reasons why a title originating in conquest might politically be called in question; but this is a different matter. If old titles are to be dug up and examined against the contemporary rather than the intertemporal law there can be few, if any, titles that will stand up. Jennings, *General Course on Principles of International Law*, 121-II RECUEIL DES COURS 327, 419 (1967). This view is reflected in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), [1962] I.C.J. 6, 34.


94. See notes 48-70 supra and accompanying text.


96. International Trade Treaties, supra note 66, at 10, translated in 2 PEOPLE'S CHINA, supra note 63, at 1119.
equality as a major factor in determining the applicability of the doctrine.\textsuperscript{97} Each has broadened this concept from mere coercion of representatives (as in Article 51 of the Vienna Convention) to include the exertion of economic and political pressure against a nation.\textsuperscript{98} Soviet theorist V. I. Lissovskii’s definition of unequal treaties is phrased in terms of textual equality and reciprocity of obligations.\textsuperscript{99} The Chinese government has made similar references to the lack of reciprocity inherent in unequal treaties.\textsuperscript{100} Soviet and Chinese writers stress that inequality of obligations can render a treaty void \textit{ab initio} under the unequal treaties doctrine.\textsuperscript{101}

B. \textit{The Sino-Soviet Border Situation}

The Soviets have consistently denied that the treaties presently governing the far-eastern Sino-Soviet border are unequal,\textsuperscript{102} while China has specifically charged that the Treaties of Aigun (1858) and Peking (1860) are unequal and therefore invalid.\textsuperscript{103} Although the dispute has rarely involved the Treaties of

\textsuperscript{97} CHINESE TREATIES, \textit{supra} note 69, at 90.


\textsuperscript{99} V. I. LISSOVSKII, \textit{MEZHDUNARODNOE PRAVO} 228 (1955), \textit{cited in} TRISHKA \& SLUSSE, \textit{supra} note 56, at 422 n.33.

\textsuperscript{100} CHINESE TREATIES, \textit{supra} note 69, at 90, 92.

\textsuperscript{101} KRYLOV, \textit{Les Notions Principales du Droit des Gens “La Doctrine Soviétique du Droit International,”} 70-1 \textit{RECUEIL DES COURS} 434 (1947). Substantive equality has arisen as a major concern in a number of the P.R.C.’s bilateral treaties, such as the boundary agreements with Burma, Nepal, Afghanistan, Mongolia, and Pakistan. See L.T. LEE, \textit{CHINA AND INTERNATIONAL AGREEMENTS} 34 (1969).

\textsuperscript{102} At least one Soviet commentator has asserted that the Treaty of Nerchinsk was unequal, and that the subsequent treaties of Aigun and Peking served to return to Russia territory lost through the prior unequal treaty of Nerchinsk. Therefore, Aigun and Peking cannot be unequal treaties. \textit{See} J. GUTTINS, \textit{SURVEY OF THE SINO-SOVIE DISPUTE} 164, 165 (1968); \textit{see also} MIASNIKOV, \textit{The Manchu Invasion of the Amur Valley and the 1689 Treaty of Nerchinsk}, 6 \textit{CHINESE L. \& GOVT} 22 (1974), \textit{cited in} Malawer, \textit{Imposed Treaties and International Law}, 7 \textit{CALIF. INT’L L. J.} 100 (1977). Numerous Tass News Agency statements have illustrated the Soviet position, \textit{e.g.}: “If states now begin to make territorial claims on one another, using as arguments some ancient data and the graves of their forefathers, if they start fighting for the revision of historically developed frontiers, this will lead to no good . . . .” \textit{Statement of the Government of the U.S.S.R.} (Sept. 20, 1963), \textit{reprinted in} D. DOOLIN, \textit{TERRITORIAL CLAIMS IN THE SINO-SOVIE CONFLICT} 32, 33 (1965) [hereinafter cited as DOOLIN].

Nerchinsk (1689) and Kiakhta (1727), these treaties will also be examined in light of the unequal treaties doctrine.

1. The Treaty of Nerchinsk

A good argument can be advanced for the characterization of the Treaty of Nerchinsk as an unequal treaty based on purely procedural grounds. On a substantive level, however, there appears to have been relative reciprocity. The Treaty of Nerchinsk (August 1689) was China's first treaty with a European power. China ceded approximately 93,000 square miles of territory in exchange for the destruction of Tsarist settlements (ostrogs) in the Amur River Valley. The Treaty boundary ran from the Argun and Amur Rivers to the mouth of the Kerbechi River, following the Kerbechi to the Hsing-an Mountain Range, thence along the Yablonovoy and Stanovoy Mountains to the Ud River. Under the terms agreed to at Nerchinsk, no Russian expeditions would be allowed to construct settlements and fortifications in Manchuria beyond the Amur. Russian colonists already settled could choose to return to Russia or establish themselves as Chinese citizens. In sum, the Russians obtained China's acknowledgment of Russian sovereignty in Eastern Siberia. In exchange for this, the Manchu court had succeeded in stemming the advance of Tsarist imperialism in Manchuria. Procedurally, the Tsar's representatives became signatories to the Treaty of Nerchinsk under substantial duress. Manchu forces had attacked the fort at Albazin in 1685 and 1686 nearly eradicating the Russian inhabitants. Additionally, the fact that the Chinese delegation outnumbered the Russian delegation 15,000 to 2,000 proved decisive in the Treaty negotiations. When negotiations had reached

105. Id., art. II. Included in the posts to be destroyed was the significant Russian fortification at Albazin. [1908] 1 H.C.T. 437, [1969] 18 Parry's T.S. 503.
106. Treaty of Nerchinsk, supra note 104, art. I. The Ud Valley frontier was left undefined as neutral territory between the two empires. [1908] 1 H.C.T. 437, [1969] 18 Parry's T.S. 503.
108. Following the Treaty of Nerchinsk, the Chinese Government prevented both Han Chinese and Manchus from settling on the Russian frontier, presumably to hinder a potential Russian invasion. When the Russians later obtained sovereignty over the Amur Basin, fewer than 11,000 inhabitants remained. In the Ussuri region, only 2,000 inhabitants were discovered. M. PAVLOVSKY, CHINESE-RUSSIAN RELATIONS 39 (1949); K. WEIGH, RUSSO-CHINESE DIPLOMACY 23 (1928) [hereinafter cited as WEIGH].
109. Other writers have argued that the Treaty of Nerchinsk was concluded under conditions of procedural equality. See, e.g., C.-L. HSIA, STUDIES IN CHINESE DIPLOMATIC HISTORY 13 (1925).
110. SCHWARTZ, supra note 23, at 28, 29. In response to the murder of twenty Chinese hunters by Russian Cossacks from Albazin in 1683, the Chinese Army destroyed the fort in 1685. The Russians rebuilt Albazin, and the Chinese attacked again in 1686, relenting upon the commencement of negotiations with the Russians at Nerchinsk. WEIGH, supra note 108, at 10.
111. SCHWARTZ, supra note 23, at 29.
an impass, Manchu Prince San-go-to threatened an attack on Nercinsk and Albazin, thereby pressuring Russian representative Fyedor Alekseyevich Golovin to accede to China’s terms.112

Although it could be argued that the Treaty of Nercinsk was based on substantive reciprocity, there is little doubt that the conditions of duress surrounding the negotiations place the Treaty within the unequal treaties doctrine as enunciated by both Chinese and Soviet jurists.

2. The Treaty of Kiakhta

The Treaty of Kiakhta, signed on October 21, 1727, established the frontier between Siberia and Mongolia. An examination of the circumstances surrounding negotiations indicates that there was relative procedural and substantive equality, precluding the characterization of Kiakhta as an “unequal treaty.” The border extended from the Sayan Mountains east to the Argun River.113 This effectively granted China control over both Inner and Outer Mongolia.114 In return, the Manchus surrendered territory between the Sayan and Upper Irtish Mountains, as well as the southern portion of Lake Baikal. This totalled some 40,000 square miles.115 The agreement left the territory west of the Bay of Ud undefined116 and also failed to delineate the western frontier. Both sides made significant substantive compromises in the Treaty of Kiakhta. China relinquished claims to significant sums of territory in exchange for Russian acknowledgment of Chinese jurisdiction over Mongolia.117 In a procedural sense, the increasing Russian influence in the Manchurian region had forced the xenophobic Manchu Dynasty to negotiate with Russia on at least a temporary basis of equality.118 The Manchu Dynasty, however, was still able to bargain from a position of respectable strength. Consequently, neither side has contended that the Treaty of Kiakhta was unequal.

112. Id.
114. Id., art. III. Russia did reserve the right to send traders across Mongolia. Id., art. IV, [1908] 1 H.C.T. 441, [1969] 33 Parry’s T.S. 23. See AN, supra note 1, at 32.
118. Schwartz, supra note 23, at 38.
3. The Treaty of Aigun

With the decline of Manchu power, the mid-nineteenth century saw Western nations race to carve the most advantageous slice of the Chinese melon. The Opium War only served to confirm Tsarist Russia’s perception of a weakened China. During the time period between the Treaties of Kiakhta and Aigun, Imperial Russia managed to re-establish much of its power in the Amur Valley, in direct violation of the 1689 agreement at Nerchinsk. In 1858 while representatives of the United States, Russia, France and Great Britain prepared for the treaty signing at Tientsin, Tsarist and Chinese envoys met in Manchuria at Aigun. The resulting Treaty of Aigun (May 1858) was obtained by Russian representative Nikolai Muraviev largely through the intimation of a possible British takeover of the Amur region. Other procedural factors indicate that the Treaty was signed under substantial duress. Tsarist forces near Aigun comprised nearly 23,000 troops, most of them stationed along the Manchurian and Mongolian frontiers. Direct pressure from the French and British, as well as the debilitating effect of the Taiping and Nienfei uprisings, played a significant role in weakening China’s bargaining position at Aigun.

The boundaries set forth in the Treaty of Aigun included a new frontier at the source of the Ussuri where it intersects the Amur River. Under the terms of the agreement, both nations would administer the territory lying east of the Ussuri. For these rather generous territorial concessions the Chinese were permitted to maintain their sovereignty over the sixty-four settlements built by the Manchus east of the Amur. The Chinese later refused to ratify the

---

119. With the outbreak of the Crimean War, Russian fears of British or French landings on the eastern Siberian coast had prompted a move by the Tsar to acquire the border territories. AN, supra note 1, at 32, 34. In 1854, 1855, and 1856 Russia sent expeditions down the Amur River to establish Russian fortifications in direct violation of the Treaty of Nerchinsk. SCHWARTZ, supra note 23, at 47, 48. The Treaty of Aigun effectively nullified the territorial provisions established by the Treaty of Nerchinsk, granting the land to China in 1689. Treaty of Amity and Limits (Treaty of Aigun), May 16, 1858, Russia-China, art. I, [1908] 1 H.C.T. 454, [1969] 118 Parry’s T.S. 493; Treaty of Nerchinsk, supra note 104, art. I, [1908] 1 H.C.T. 437, [1969] 18 Parry’s T.S. 503. See Appendix.
120. Governor General of Siberia since 1847.
122. Realizing that acquiescence to the terms of the Treaty of Aigun would be viewed as capitulation to Tsarist strength, the Chinese chose to conclude the Treaty at Aigun rather than Peking. See AN, supra note 1, at 36.
123. Id.
124. Treaty of Aigun, supra note 119, art. I, [1908] 1 H.C.T. 454, [1969] 118 Parry’s T.S. 493. One of the few objectives that the Tsarist representatives failed to achieve at Aigun was exclusive Russian control over the 150,000 square miles of territory running along the Ussuri River to Korea. AN, supra note 1, at 36.
Aigun Treaty (in 1859), although in 1860 General Nikolai Ignatiev obtained China's assent to the Treaty of Peking. The treaty of Peking was even more pro-Russian than the Treaty negotiated at Aigun in 1858.\textsuperscript{126}

In both procedural and substantive terms the Treaty of Aigun arguably falls within the unequal treaties doctrine. When the negotiations commenced in Aigun, the Russians enjoyed the same military advantage that the Chinese had enjoyed at Nerchinsk in 1689. Supported by 20,000 soldiers, Muraviev demanded and received all territory north of the banks of the Amur River, totalling approximately 185,000 square miles.\textsuperscript{127} The only provision that can arguably be viewed as a Russian concession is the Tsar's willingness to allow China to retain jurisdiction over the sixty-four Amur River settlements.\textsuperscript{128} The Treaty of Aigun was imposed on the decaying Manchu dynasty through sheer force, presumably meeting both Russian and Chinese criteria for application of the unequal treaties doctrine. The overwhelming lack of substantive reciprocity further supports the characterization of the Treaty as unequal under the doctrine.

4. The Treaty of Peking

The Treaty of Peking was concluded in November 1860 under rather unique circumstances. Disagreements between the French and British and the Chinese government over the Treaties of Tientsin (1858) had degenerated into violence, eventually resulting in the Anglo-French occupation of Tientsin and Peking.\textsuperscript{129} Confronted with the destruction and desecration of the Royal Palace and a joint Anglo-French force of 17,000, the Manchu emperor Hsien-feng fled Peking, thus effectively transferring responsibility for foreign policy to the 28 year old Prince Kung. The treaties signed by the British, French, and Russians exacted even greater concessions and indemnities than the Western powers had initially sought to obtain.\textsuperscript{130}

The Treaty of Peking supplanted the earlier boundaries set by the Treaties of Nerchinsk (1689) and Kiakhta (1727), confirming the cessation of territory to Russia through the Treaty of Aigun (1858).\textsuperscript{131} Additionally, 133,000 square

\textsuperscript{126} LAMB, supra note 21, at 207.


\textsuperscript{129} Schwartz, supra note 23, at 50.

\textsuperscript{130} O.E. Clubb, CHINA AND RUSSIA 88 (1971). The unilaterally pro-Russian provisions of the Sino-Soviet Treaty of Peking were at least in part a reward for General Nikolai Ignatiev's role as an "honest broker" between the powerful British forces and the crumbling Manchu Dynasty. See Schwartz, supra note 23, at 50, 51.

miles of land east of the Ussuri River’s banks, formerly under joint administration by virtue of Article I of the Treaty of Aigun, became part of Imperial Russia. The eastern frontier was partially delineated by the Ussuri and Sungacha Rivers, running across lake Hinkai (Khanka), then south to the Korean border, where it terminated in the Tumen River. Ironically, the Treaty of Peking failed even to acknowledge Chinese sovereignty over the sixty-four outposts on the north bank of the Amur, which was the sole pro-Chinese provision of the Treaty of Aigun.

The Treaty of Peking, in conjunction with the Aigun Treaty of 1858, has delimited the far-eastern Soviet border with Manchuria to the present. The unilateral territorial concessions contained in the Treaty of Peking actually constituted part of General Nikolai Ignatiev’s price for his role as an intermediary between the Manchu Emperor and the British army in China. Procedurally, the Treaty of Peking involved little of that which could be termed negotiation between sovereign equals. The terms were dictated by Russia with bribes and threats, and offered even less in return than the Treaty of Aigun. There can be little argument with the assertion that the Treaty of Peking created extremely one-sided obligations and evidenced no substantive reciprocity. Assuming the validity of the previous characterization of the Treaty of Aigun as unequal, the procedural and substantive aspects of the Treaty of Peking would certainly justify application of the unequal treaties doctrine as interpreted by Soviet and Chinese jurists.

V. Polemics

A. The Chinese View of the Treaties Governing the Far-Eastern Sino-Soviet Border

It has been asserted that the sudden Chinese hostility concerning the “unequal treaties” governing the Sino-Soviet border is prompted by temporal and political considerations. However, it is evident that the Treaties of Aigun and

132. Id. The territory east of the Ussuri River later became known as the Soviet Maritime Province. It should be noted that the Russians exacted even greater territorial concessions from the Manchus in Central Asia. In acquiescing to the Sinkiang - Russian Central Asian boundary the Chinese ceded nearly 350,000 square miles of land. Treaty of Peking, art. II, [1908] 1 H.C.T. 463, [1969] 123 Parry’s T.S. 125.


134. LAMB, supra note 21, at 207.

135. AN, supra note 1, at 38.


137. 1 H. MORSE, INTERNATIONAL RELATIONS OF THE CHINESE EMPIRE 1834-1860, at 613 (1910).

138. As previously noted, the Treaty of Peking ignores Chinese jurisdiction over the sixty-four settlements on the north bank of the Amur which had been granted in Article I of the Treaty of Aigun. See note 125 supra and accompanying text.
Peking satisfy the socialist criteria for unilateral abrogation under the unequal treaties doctrine. The first official Communist Chinese accusation concerning the inequality of the treaties governing the Manchurian border came on March 8, 1963. The Treaties of Aigun and Peking were listed in a Jen-min jih-pao (People's Daily) editorial as among those that China considered as "unequal." While declaring Chinese intentions of recovering some 60,000 square miles of Central Asia and Siberia taken by Imperial Russia from Manchu China, the editorial indicated Peking's willingness to maintain the status quo until negotiations could be arranged.

The revised editions of Chinese maps published in 1964 raised a number of questions concerning the status of the current Sino-Soviet frontier. Despite the announcement of a border settlement between the two nations in 1962, the Map of the Chinese People's Republic listed as "undetermined" the entire border with the Mongolian People's Republic. The far-eastern and central-asian boundaries were also left undefined by this map. This was followed in the same year by the publication of a revised edition of the Concise Geography of China which did delineate the Mongolian frontier. The northeastern, Amur and Ussuri border regions remained undefined. Other maps given to Europeans by Chinese officials several years later included the land ceded through the "unequal treaties" as Chinese territory. The foreign minister of the People's Republic of China, Chen Yi, noted in a May 20, 1966 statement that the Soviets currently occupied approximately 830,000 square miles of Chinese territory by virtue of the unequal treaties. Nonetheless, a 1979 map of the People's Republic of China fixed the far-eastern border according to the Treaties of Aigun and Peking.

139. CHINESE TREATIES, supra note 69, at 97. See Appendix.


142. AN, supra note 1, at 14.

143. MAP OF THE CHINESE PEOPLE'S REPUBLIC (3d rev. ed. 1964), cited in WATSON, supra note 11, at 188.

144. Id.

145. See WATSON, supra note 11, at 189.

146. THE ASIAN STUDENT, April 12, 1969, at 2, cited in AN, supra note 1, at 102.


148. See the map of the P.R.C. in China's National Minorities: Chinese National Minorities and Major Areas of Distribution, BEIJING REV., Feb. 9, 1979, at 17, 19. A number of recent maps accom-
The official Chinese position is that the unequal treaties permitted illegal annexations of territory.\(^{149}\) Although Peking has indicated its acceptance of the present boundaries on an interim basis,\(^{150}\) the Chinese clearly consider the current treaties as an insufficient and illegal foundation for a permanent settlement of the far-eastern border dispute.\(^{151}\) Notably, China's claims have been based on substantive factors, placing less reliance on the Karakhan Declaration and other Soviet admissions of inequality.\(^{152}\) Although the People’s Republic of China has expressed some flexibility regarding the substance of renegotiation, Peking has continued to press for a Soviet admission of the inequality of the present border treaties.\(^{153}\) To some extent, this requires that the Soviet Union accord the People’s Republic of China respect as a relative equal through the negotiation process.\(^{154}\)

**B. The Soviet View of the Treaties Governing the Far-Eastern Sino-Soviet Border**

The Russian Revolution of 1917 was followed by a general renunciation of all territories ceded to the Tsarist government under duress. Although the Karakhan Declaration of July 25, 1919 indicated that the new regime viewed previous treaties as products of imperialism,\(^ {155}\) the Soviet government made
no substantial effort toward restoration of the previous borders. In 1924, the Soviet Union and the People’s Republic of China signed the “Agreement on the General Principles for the Settlement of Questions between the People’s Republic of China and the Soviet Union.” Through this document the Soviet Union specifically renounced extraterritoriality in China. The Chinese position since 1924 has been that the 1924 Agreement mandates a renegotiation of all of the treaties concluded between the Tsarist government and China. However, Moscow has steadfastly maintained that the Agreement did not include boundary treaties. According to Soviet legal professor Grigorii Tunkin, the only unequal treaties of the Tsarist government were abrogated by the Soviet Union. The Soviets assert that the Manchurian border is the product of historical development, thus requiring that the nineteenth century treaties be respected.

The government of the Russian Socialist Federated Soviet Republics declares without force all treaties concluded by the former government of Russia and China, renounces all seizures of Chinese territory, all Russian concessions in China, and returns to China without compensation and forever all that was rapaciously seized from her by the government of the Russian bourgeoisie.


156. WATSON, supra note 11, at 51; STEPHENSON, supra note 24, at 414.


159. Leng, The Sino-Soviet Dispute, in LAW IN CHINESE FOREIGN POLICY 268, 271 (S.C. Leng & H. Chiu eds. 1972). V. Khvostov argues that the 1924 Agreement refers to the unequal treaties between China and Japan (e.g., the Treaty of Shimonoseki, (1896)) V. KHVOSTOV, MEZHDUNARODNAYA ZHIZN (1964), cited in JACKSON, supra note 10, at 119, 120. There are indications that the Chinese may have agreed initially with the Soviet Union on this point. For example, Tseng Yu-hao, a highly respected jurist, fails even to mention the Sino-Soviet border treaties in his discussion of the 1924 Agreement. TSENG Y.-H., THE TERMINATION OF UNEQUAL TREATIES IN INTERNATIONAL LAW (1933).

160. I.e., the treaties concerning consular jurisdiction and spheres of influence.


162. By resorting to the method of “historical references” in the question of borders, one can prove anything. One can prove, for instance, that England is a French territory because she was once the possession of a Duke of Normandy. The territories to the north of the Kchingans were populated by indigenous tribes (the Evenks, Dauras, etc.) which from time to time were subjected to raids by the Manchus and paid them tribute. There was no indigenous Manchu or Chinese population in the Amur area. With Russia developing the northern half of the Amur Basin and China the southern, there began the process of delineating the factual border. It was formalised more than one hundred years ago in the Aigun and Peking Treaties.

In a September 15, 1964 discussion with a Japanese parliamentary delegation, Nikita Khrushchev stated that the Soviet government would not defend Tsarist foreign policy: "They, like other emperors, were plunderers, they waged predatory wars and strove to seize other's property and increase their own holdings... but what were the Chinese emperors engaged in? In the same wars of conquest, the same plunder as the tsars of Russia." Soviet jurist Fedor Kozhevnikov has charged that the Chinese arguments violate the basic international legal principles of territorial sovereignty and observance of voluntary international obligations: "It is known that no territorial questions exist between the U.S.S.R. and the P.R.C. and that the Soviet-Chinese frontier has taken shape historically." The Soviet Union has expressed great dissatisfaction with Peking's preliminary conditions for resumption of border negotiations. A Diplomatic Note from the Chinese Ministry of Foreign Affairs, issued March 26, 1978 in reply to the Message from the Presidium of the U.S.S.R. Supreme Soviet to the Standing Committee of the Chinese National People's Congress of February 24, 1978, stated that continued negotiations would require: 1) Soviet recognition of the "disputed areas" along the border; 2) a pull-back of Soviet forces on the frontier; and 3) an agreement on the maintenance of the status quo in this area.

It was noted in Pravda, the official Soviet newspaper, that the territorial boundaries found on Chinese maps have no juridical validity:

It is important to emphasize here that the border lines appearing on Chinese maps in the so-called "disputed areas" have no juridical foundation whatsoever and that they do not coincide with the lines fixed by the Russian-Chinese treaty documents. It is no accident that, in substantiating its drawing of the border line, Peking refuses to consider the treaty documents that are the only juridical basis for the existing border. By striving for the recognition of "disputed areas," Peking hopes to overturn the legal treaty basis of the existing border.

VI. PROSPECTS FOR RESOLUTION

There is little doubt that the Sino-Soviet territorial dispute over the far­
eastern border constitutes but a small portion of a greater ideological
divergence between the two communist superpowers.\textsuperscript{168} Therefore, any
resolution of the frontier situation would depend heavily on political factors. It
does appear that, if removed from the currently highly-charged political
arena, the prospects for resolving the unequal border treaties problem would
be favorable.\textsuperscript{169} Presently, however, the sporadic negotiations concerning the
Manchurian frontier have resulted in no apparent progress. There are indica­
tions that Peking is willing to accept the "unequal" treaties as the basis for a
renegotiation of the Sino-Soviet border.\textsuperscript{170} The People's Republic of China
has asserted that boundary questions "can be settled through negotiation be­
tween the two governments . . . pending such a settlement the status quo
should be maintained."\textsuperscript{171} In 1957 Premier Chou En-lai indicated that China
would be willing to recognize the continued force of the pre-revolutionary
boundary agreements between China and Imperial Russia, noting that
"demands made on the basis of formal treaties should be respected according
to general international practice."\textsuperscript{172}

It could also be argued that the Chinese government has displayed good
faith and a willingness to compromise in addressing the substantive issues. In
two statements issued in October 1969, China relinquished its claims to ap­
proximately 600,000 square miles of territory\textsuperscript{173} ceded to Russia through the
unequal treaties.\textsuperscript{174} Perhaps China's willingness to compromise in the border

\textsuperscript{168} E.g., the first public denunciation of the border treaties of Aigun (1858) and Peking
(1860) came only after serious differences had developed between the two nations. A Comment on
Mar. 15, 1963, at 1, 61; see A. Ulam, EXPANSION AND COEXISTENCE: SOVIET FOREIGN POLICY

\textsuperscript{169} Professor Terrill contends that although the Sino-Soviet border dispute was not the cause
of the Sino-Soviet split, the border issue has become an integral part of the current divergence.
Terrill predicts that if Soviet and Chinese interests coincide at some point in the future, the
border issue will be expeditiously resolved. R. Terrill, THE FUTURE OF CHINA 214 (1978). For
an alternative view, see H. Salisbury, WAR BETWEEN RUSSIA AND CHINA (1969).

\textsuperscript{170} Compare the Chinese willingness to utilize the prior treaties between the Chinese and
Russian Empires as a basis for renegotiation with the principle of \textit{uti possidetis de jure}. This rule of
regional international law (not applicable as customary international law), generally accepted by
Latin American states, establishes present Latin American borders congruent with the admin­
istrative boundaries of the Spanish Colonial Empire. For an illustration of \textit{uti possidetis de jure},

\textsuperscript{171} A Comment on the Statement of the Communist Party of the U.S.A., J.M.J.P., Mar. 8, 1963,

\textsuperscript{172} Report on the Question of the Boundary Line between China and Burma to the Fourth
Session of the First National People's Congress, translated in CHINESE PEOPLE'S INSTITUTE OF
FOREIGN AFFAIRS, A VICTORY FOR THE FIVE PRINCIPLES OF PEACEFUL COEXISTENCE 19, 33
(1960).

\textsuperscript{173} AN, supra note 1, at 113-14.

\textsuperscript{174} Statement of the Government of the People's Republic of China (Oct. 7, 1969) reprinted in
dispute can be observed best through Peking's past record in renegotiations. On the less politicized frontiers, the Chinese have displayed seemingly great concern for substantive and procedural equality.\(^{175}\) In each instance, China has agreed to maintain nearly traditional boundaries. This may be due to China's historically superior position to these nations. The Soviets, however, may find themselves ideologically (or politically) unable to negotiate with China as a superpower of equal stature.\(^{176}\) In certain instances, Peking has foregone legal technicalities and opted for flexibility in border negotiations. The Sino-Nepalese boundary discussions produced a frontier remarkably similar to the border set forth in the previously unacceptable treaty.\(^{177}\) It appears that China readily accepted established historical facts and merely sought to lend the agreement legitimacy through renegotiation on the basis of equality. Since the Bolshevik Revolution, the Soviet government has been placed in the uncomfortable position of defending clearly imperialistic treaties with China.\(^{178}\) The one-sidedness of the treaties is justified in the Soviet view by the fact that Imperial China was also an exploitive empire with no greater claim to legitimacy.\(^{179}\) In the case of the far-eastern frontier, this argument is at least partially supported by the examination of the Treaty of Nerchinsk.\(^{180}\)

---

\(^{175}\) Ginsburgs & Pinkele, supra note 155, at 204.

\(^{176}\) Id. at 203. China's historical commitment to State sovereignty is reflected even in the Chinese language. The Chinese word for "country," "kuo-chia," refers to the exercise of governmental rule within territorial boundaries. H. F. Schurmann, The Logic of World Power 357 (1974). Soviet international legal theory has also evolved with a continuing emphasis on sovereignty. Quigley, The New Soviet Approach to International Law, 7 Harv. Int'l L. J. 1, 22-25 (1965); see also Triska & Slusser, supra note 56, at 84.

\(^{177}\) It should be recalled that the Soviet unequal treaties doctrine developed at least partially as a response to the new Soviet Government's need to avoid Tsarist treaty obligations. Erickson, supra note 49, at 79. Note that the problem of State succession does not occur in the case of border treaties specifically delimiting a boundary. In these cases, "what is inherited is not the treaty but the territorial extent of sovereignty." 2 D.P. O'Connell, State Succession in Municipal Law and International Law 273 (1967). In the case of the Sino-Indian border dispute, only a traditional frontier existed and China asserted that both nations must therefore formally negotiate a treaty. Id. at 277. The 1961 Sino-Burmese Boundary Treaty resolved a similar situation. Id. at 281. See generally O. Udokang, Succession of New States to International Treaties 380 (1972). Professor Tunkin states that the Soviet Union has always opposed the doctrine of State succession and unequal treaties as reactionary elements of customary international law. Theory of International Law, supra note 48, at 32.

\(^{178}\) Watson, supra note 11, at 178-9.

\(^{179}\) See § IV. B. 1 supra.
It is possible that the Soviet Union's refusal to acknowledge the inequality of prior treaties stems from a fear of encouraging similar claims by the Soviet Union's other neighbors. 181

Beyond the characteristic propaganda of the Sino-Soviet dispute, Moscow has indicated an interest in resolving the far-eastern boundary issue without loss of face. At least one writer has asserted that the U.S.S.R. was prepared to surrender its claim to the Ussuri River Islands if necessary to obtain a Chinese acknowledgment of the present frontier in the 1964 and 1969 border talks between the two nations. 182 The Soviets have also displayed a sustained interest in the resumption of border talks. 183 On November 27, 1977, border negotiations resumed in Peking between Deputy Foreign Minister Leonid I. Lyichev and Deputy Foreign Minister Yu Chan for the first time since 1975. 184 The Soviet Union has consistently maintained that the Sino-Soviet border treaties cannot be considered "unequal" and do not fall within the unequal treaties doctrine. This may stem from Moscow's fear of the consequences of a breakdown in negotiations after conceding the invalidity of the current boundary. 185 Throughout the dispute both the Soviets and the Chinese have invoked international law to bolster their respective arguments. However, political considerations have clearly controlled the selective application of the unequal treaties doctrine. 186 Somewhat ironically, the Soviet Union's present position in effect strongly resembles the reaction of customary international legal theorists to the development of the unequal treaties doctrine. 187 The continuing bitter polemics emanating from Moscow and Peking seem to indicate that no reasonable discussion of substantive issues is likely to occur under present political circumstances.

VII. CONCLUSION

Although classical Western international legal theorists have used the term "unequal treaties," the Western concept bears little resemblance to the unequal treaties doctrine advanced by Soviet and Chinese jurists. 188 The Soviet concept developed largely as an alternative to the customary doctrines and allowed abrogation of treaties concluded by the Tsarist regime. The unique Chinese experience, including extraterritoriality and spheres of influence,

181. AN, supra note 1, at 117.
185. Ginsburgs, supra note 182, at 17.
186. Hsiung, supra note 49, at 274.
187. See notes 36, 48, 71 supra.
188. See § III. A, B supra.
prompted the evolution of a slightly different concept of unequal treaties. Both Soviet and Chinese writers agree that procedural factors surrounding the negotiation of a treaty are significant in the determination of its characterization. Jurists of both nations have also placed a great deal of emphasis on the substantive equality of treaty provisions and on reciprocity of obligations. Similarly, both Chinese and Soviet legal scholars have indicated that inequality renders a treaty void \textit{ab initio}. Thus, unequal treaties are not protected by \textit{pacta sunt servanda} and cannot be enforced by the signatories. An examination of the four major treaties governing the Manchurian Sino-Soviet border elucidates the basis for application of the unequal treaties doctrine. There appears to be a great deal of historical support for Peking's characterization of the Treaties of Aigun and Peking as unequal treaties under both the Chinese and the Soviet doctrines. Since these are the two major treaties delimiting the present border, Chinese demands for renegotiation have a legitimate basis under both Soviet and Chinese articulations of the unequal treaties concept. There is also adequate support for the Soviet rejoinder that Imperial China failed to observe the rule of equality in prior border treaties. The Treaty of Nerchinsk can be characterized as procedurally unequal in favor of the Chinese, although this treaty was largely superceded by the subsequent accords regarding the far-eastern Sino-Soviet frontier.

The Soviets have answered Chinese charges that the Treaties of Aigun and Peking are unequal with the assertion that the present frontier is an historical fact. Peking appears to have actually accepted this view in its tacit agreement to honor the current treaties until new ones are renegotiated on the basis of the existing boundary. The price demanded by the Chinese for this concession is Soviet admission that the Treaties of Aigun and Peking are unequal. Peking has not chosen to unilaterally abrogate these treaties, although both the Chinese and Soviet unequal treaties doctrine would arguably render the treaties void and without force. The fact that Sino-Soviet relations have steadily deteriorated over the past two decades has not enhanced opportunities to resolve differences over the Manchurian border. Tension between the two powers in world affairs has left little room for either side to compromise without loss of face or territory. If, however, the highly-politicized atmosphere of the past decade abates, the differences over the far-eastern Sino-Soviet frontier may be resolved through recognition of the present frontier in a new "equal" treaty.

\textit{Jesse A. Finkelstein}

THE SINO-SOVET BOUNDARY

1. Boundary defined by Treaty of Nerchinsk, 1689
2. Boundary defined by Treaty of Kiakhta, 1727
3. Boundary defined by Treaty of Aigun, 1858
3a Territory ceded to Russia in 1858
4. Boundary defined by Treaty of Peking, 1860
4a Territory ceded to Russia in 1860