

The Conflicts beyond the Border and their Resolution between Russia and the Qing China

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I. Background

This paper analyzes the issues surrounding the Russia-Qing (China) border crossing in Central Asia, which today is known as the Kazakhstan-Xinjiang boundary area. Before the clear demarcation of the imperial border, there was a period of rule by “the Kazakh Khanates,” which kept their balance between the two empires until the first half of the nineteenth century (Noda 2016). In the process of the annexation of the Khanates by Russia, the borders of the two empires became closer. Negotiations for the border demarcation took place during the 1850s and 1860s, and the Treaty of Tarbagatai was concluded in 1864, resulting in a general consensus on the border line in Xinjiang. It is important to note, however, that the entire border line was not delineated at the time of the conclusion of the treaty. Further negotiations on detail border marks were still required.



Figure 1 Map of the Russo-Qing border and the location of the Kazakh Populations (Source: Map was created by the author)

In the 1860s, Xinjiang in Northwest China had experienced several well-known rebellions

by Muslim populations. The new imperial border did not function well because of confusions in the region. As a result, indigenous ethnic groups, especially the nomadic Kazakhs near the boundary area, frequently crossed the “border” to move (or escape) from one empire to another (Noda 2006). Moreover, the issue of subjection or belonging was raised. Migrating people did not always have a clear sense of subjection to a particular empire.¹ However, each imperial sides had to make it clear with which empire migrating people were affiliated. Frequent border crossings resulted in criminal acts taking place beyond the border, in other words, “international” crimes. To resolve these conflicts through legal processes, a criminal’s belonging had to be defined (Noda 2015).

II. “International” conflicts and a new resolution method

After the 1860s, while nearly all of Xinjiang was experiencing great confusion and an increase in ethnic tensions, the boundary region was still unstable. Due to mass migrations and border crossings, indigenous ethnic groups entered into conflict with each other and even within the same ethnicity, inter-clan disputes were a frequent occurrence, in which stealing cattle and murder were generally committed. Such conflicts easily escalated into “international” issues because groups from one empire would cross the imperial border and commit crimes against people under the subjection of the other empire.

Imperial administrations attempted to introduce a new resolution system for these disputes. Notably, in the Ili District under Russian control, we find that “mixed trials” were used to resolve inter-ethnic civil cases (Pantusov 1881, 8). In addition, an assembly court *s’ezd* in Russian was held in 1873 to resolve disputes between the Kazakhs and Oyrads (TsGA RK, f. 21, op. 1, d. 51, l. 70). However, these methods were not institutionalized by the empires. International conflicts still required imperial negotiations.

Who was responsible for the resolution of international conflicts? Previously, the Treaty of Peking of 1860 regulated conferences or meetings between both sides. In fact, there were requests for such conferences from the Qing Empire.² Meetings were held in the presence of Qing’s local officials in Xinjiang, Russian consuls stationed in Xinjiang, and the Russian “Judicial Investigator” (*sudebnyi sledovatel’*) which was established in the Russian Ili District.³

From a juridical point of view, the law on which the negotiations would be based was quite significant. Xinjiang on the Qing side and the Kazakh steppe from Russia were both on the periphery of the empires and special statutes were more effective than the general imperial laws (for example, the codes for Mongols (*Menggu li*) for people in Xinjiang including Kazakhs and the Statute on the Administration of Turkestan of 1867 for the Steppe region within Russia).

Which law, then, was adopted for the resolution of such international disputes? According to archival documents concerning the diplomatic negotiations of the two empires, both sides

often insisted on their own law. Thus, negotiations did not result in a clear conclusion.

As a supplementary resolution method, collective responsibility among the Kazakhs was discussed (TsGA RK, f. 64, op. 1, d. 1330, l. 18). Nevertheless, the proposal could not be realized. As a result, even the Qing side came to recognize that pending cases were accumulating” (*ji'an* 積案).⁴ Therefore, both sides had to readjust their opinions. What was the new, “fair” system that was created after negotiations?

III. Resolution by an “International Assembly”⁵

Finally, an International Assembly Court (*mezhdunarodnyi s'ezd*) appeared between the two empires. The assembly court system was officially established only after the conclusion of the St. Petersburg Treaty (1881),⁶ but no diplomatic documents have been found on this issue yet. The first mention within the international treaty is found in the 1884 Qing-Russian Treaty on the affiliation of Kazakhs (*Zhong'e tacheng hasake guifu tiaoyue*).⁷ When we consider the origin of the international assembly, we can refer to the same *s'ezd* assembly used by various ethnic groups within the Ili District during the 1870s.⁸ It also functioned as a resolution method for disputes beyond Russia's administrative borders between the Kazakhs of the Semirech'e Province and those in the Russian Ili District (Pantusov 1881, 54).

Notably, while the *s'ezd* was apparently derived from the Russian juridical system (Moiseev 2003a, 239), the Qing side also used this terminology in the form of *siyazi* 司雅仔 as mentioned in the text of the Treaty (Noda 2013).⁹ The second feature of the system was that a trial was to be conducted according to Kazakh customary law (*adat*). The Chinese text of the treaty only stated, “the problem among the Kazakhs should be judged according to the Kazakh reason (*daoli* 道理).” More importantly, the Russian and Turkic versions contained the minute description, stating, “according to customs and *shari'a*.”¹⁰ Here, it is necessary to remember that Kazakh customary law also refers to Islamic law, *Shari'a* (Martin 2001, 25). It seems that both empires attempted to utilize the laws of indigenous litigants so as to avoid considering their own imperial laws. Thus, fairness (*spravedlivost'* in Russian) could be the ideological goal of the system (TsGA RK, f. 64, op. 1, d. 1599, l. 5).

For a deeper understanding of the system, I would like to show the process of the court.¹¹

1. Each side submits a list of complaints to the other: cases where Russian subjects committed crimes against Qing subjects and vice versa. The longest list contained more than 1,000 individual cases (GXZZ, 648). Originally, only cases involving the Kazakhs could be addressed by the International Assembly. However, the lists often included various other cases such as disputes between Sibe (Qing) and Uyghurs (Russian subjects).¹²
2. Summonses were then served on the relevant parties: plaintiffs, defendants, and witnesses. Because the venue for the assembly court could be located within the territory of either

empire, subjects not from the home empire had to obtain a temporary visa to cross the border (TsGA RK, f. 44, op. 1, d. 38276, l. 28). Naturally, officials from both sides were also present in the assembly.

3. Kazakh judges (*bii*) made decisions through a council system. Here, judges from both sides were present: four *bii* from Russia, four respectable figures from the Qing. It should be noted here that Russian colonial statutes had already officially established the regulations for the Kazakh *bii*, whose decisions were in accordance with Kazakh “customary law.” In court, the decisions of the judges were authorized by a symbolic oath taken by the relevant parties such as witnesses or the accused (Martin 2001; Noda 2013). If the complaint of the plaintiff was accepted, compensation (or the return of stolen goods) would be ordered. Payment of compensation indicates the resolution of the disputes.¹³
4. The process to make decisions for all of the cases took more than a month. Finally, authorities from both empires would make a decision record for all of the cases. One can find from the records that not all of cases resulted in final decisions.
5. Needless to say, monetary expenses were incurred in holding the assembly. The expenses paid by the Qing empire for the GX 13’s assembly at Kuigen were recorded (GXZZ, 648).

The International Assembly Court between Qing and Russia seems to be quite a comprehensive resolution system. However, it is true that certain cases remained undecided for various reasons such as bad weather conditions, and nonappearance of litigants. A document from 1896 composed by both sides mentioned that undecided cases had accumulated (TsGA RK, f. 44, op. 1, d. 37661, l. 213).

Several measures were adopted to address the shortcomings of the assembly court. The *s’ezd* assembly was to be held every three years. Thus, those cases that were undecided were put to the next assembly. Next, a new post was created to manage the details – Chief of the *s’ezd*. Chiefs from both sides drafted the “protocols” for the procedures of the assembly.¹⁴ We also know that instead of *s’ezd*, both sides agreed to holding the “small” (reduced in terms of the number of cases) *s’ezd* assembly.¹⁵ In some cases, Qing’s Circuit Governor (*Daotai*) and Russian consul were appointed to hold directly the trials according to the “protocol.”¹⁶

Thus, Russian consuls in Xinjiang played a significant role in the negotiation with the Qing empire (Galiev 2011). However, this does not mean they participated through consular courts. Rather, consuls supervised the conflict resolution process including the *s’ezd* assembly.

In summary, a valuable feature of the assembly court was that the system was flexible and could be used interchangeably. As discussed before, the assembly court could address the inter-ethnic disputes that were very common near Northern Xinjiang boundary. Even if an assembly was not held and the Russian consul managed to commence a trial, local customary law, including *Shari’a*, was referred to rather than imperial law.¹⁷ The assembly court system,

which did not always require evidence and witnesses and, could be used as a last resort for conflict resolution (TsGA RK: f. 44, op. 1, d. 37661, no. 356).

IV. Concluding remarks

Due to frequent crossing the border by Central Asian ethnic groups such as Kazakhs, the two empires had to cooperate with each other to resolve the disputes between various ethnic groups of different subjection. Eventually, an assembly court system was created as an effective method of dispute resolution. The features of the system were as follows: 1) participation from all three parties was required—indigenous peoples (especially Kazakhs) and both empires, 2) decisions were designated to be based on customary law so that neutrality in the jurisprudence could be realized. Nevertheless, in reality, the system was located within the framework of the Russian legislation.

Since the procedures of the assembly court was not clearly institutionalized in a text, it seems that there were shortcomings. However, when supplemented with other conflict resolution methods, it remained an effective method of maintaining order and encouraging coexistence beyond the Russian-Qing border even after the end of the Qing empire in 1911.

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Notes

- 1 Nevertheless, the principle of territory-based subjection (*rensui digui* 人隨地歸) was regulated according to Article 5 of the Treaty of Tarbagatai. The occupation of the Ili District (north of Xinjiang) by Russia during 1871-1881 also led to an unclear sense of affiliation among indigenous peoples. The dates presented in this paper will be mainly according to Russia's Julian calendar.
- 2 For example, see the document from the Qing's Ili Military Governor, Jinshun to the Russian Governor of Semirech'e, GX (reign of Guangxu) 5/11/2 (TsGA RK: f. 21, op. 1, d. 420, l. 82).
- 3 This official took on the role of negotiating with Qing officials regarding legal cases and engaged in the inquiry of litigants as a preliminary judge (TsGA RK, f. 21, d. 511, l. 208).
- 4 See a report dated GX 6/3/29 (Apr. 25, 1880) (DA, 01-17-049-05-011).
- 5 Previous research on the assembly court seems to lack contrasting sources from both sides (Khafizova 1990; Moiseev 2003a; Li 2004; Khafizova 2015). My paper attempts to analyze not only the Russian perspective, but also the Qing Empire's view on this issue.
- 6 One of the earliest references to the *s'ezd* assembly is found in a document from 1881 (TsGA RK, f. 21, op. 1, d. 701, l. 9).
- 7 For the process of the creation of the assembly system by the two empires, see Noda 2013.
- 8 See a report on the assembly of the Kazakhs and Torghuts (TsGA RK, f. 21, op. 1, d. 51, l. 115).
- 9 In the Qing's official conception, the assembly system was proposed by a Qing commandant in Tarbagatai in GX 13 (GXZZ, 861).
- 10 See the photocopy of the Treaty found in <http://npmhost.npm.gov.tw/tts/npmkm2/10010.html> (the National Palace Museum of ROC, No. 910000126) (20th Sep. 2016 accessed). The Turkic text states, “*ādat hām šarīghat buyunča.*” A similar idea is found in the 1883 treaty for cases involving “Muslims” from both empires. Thus, *Sharia* mentioned here should be discussed from the viewpoint of the Qing as well.
- 11 For the general process, see (Moiseev 2003b).
- 12 In 1883 (TsGA RK: f. 21, op. 1, d. 213, l. 40).
- 13 The document signed by the Mongols under the Qing rule (TsGA RK: f. 44, op. 1, d. 37661, l. 136).
- 14 For example, a protocol confirmed the names of litigants in GX 22 (1896) (TsGA RK: f. 44, op. 1, d. 37661, l. 66ob.).
- 15 In GX 33 (GXZZ, 861). Also see (Li 2004, 270).
- 16 Both sides drafted the *protokol* (*boji bithe* in Manchu) confirming the existence of un-decided cases in GX22 (bilingual in Russian and Manchu) (TsGA RK: f. 44, op. 1, d. 37661, l. 213).
- 17 In GX21 (DA, 01-17-044-02-001).