

The Treaty of Nanking: Form and the Foreign Office, 1842–43

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First witness (1841): Captain Charles Elliot, as Superintendent of the British Trade mission to China, had an important meeting with the Chinese Imperial Commissioner Ch'i-shan on 27 January 1841:

I placed in his hands a Chinese version of the Treaty. He examined it with deep attention and evident distress, observing that great as the difficulties were in point of substance, he did not believe they would be as insuperable as those of form.^{1,2}

Second witness (1842): an anonymous contributor to a German newspaper describes how he had an opportunity in the quiet of Christmas day 1842 of seeing 'one of the most important documents of modern times' at the Foreign Office in London:

On my asking for the room where was working Mr. Collins [sic. Collen] ... I was directed towards the Attic. I had many stairs to climb, meeting nobody, nor could I hear any human sound. In this way I passed by a printing machine workshop; for this world-office is itself a small world containing everything it needs to be effective. Above this, in a small room with closed shutters, I found Mr. Collins, who with the help of an assistant was busy by means of lights copying the Treaty. The document itself is of Strawpaper, 4 foot long and about 10 inches wide; the letters are daintily painted figures and it has three elongated woodblock impressions in red ink as seals of authority. Two copies have been ordered: the first for the Queen intended to be framed under glass to hang in Buckingham Palace; the second goes with the signed Treaty, Mr. Collins laughed, "to astonish the natives" ... The idea seems to have

¹. Public Record Office, Foreign Office: General Correspondence: China (FO 17). FO 17/47, ff 191–2 (Elliot's dispatch No. 7, dated 13 Feb., 1841).

². References to Foreign Office documents at the Public Record Office (P.R.O.) are cited hereafter without description by FO Class Code / piece number, and internal (ff) reference. Extracts from Crown copyright documents at the Public Record Office, London, are transcribed here by permission of the Controller of Her Majesty's Stationary Office.

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come up rather late, for everything had to be done within two days, by today. That is why they were working on it on Christmas day.³

It was by the famous Treaty of Nanking that the island of Hong Kong was obtained by Great Britain in 1842.⁴ One of the most unique features of this diplomatic document was that unlike any other earlier treaty it was photocopied at that time. But apart from a brief glance at the photocopying – which has been dealt with in more detail in a publication elsewhere – the intention of this essay is to look, if not at the substance, rather at the form and the particular diplomatic preparation of the original protocol and ratification documentation of the Treaty. To examine the extent to which the Chinese Imperial Commissioner had been justified in thinking that difference between the Chinese and British as to ‘form’ could be productive of distress and why it would not necessarily be insuperable.

I

When negotiations took place throughout 1841 to 1843 the British Government, or more specifically the Foreign office, was faced with unprecedented problems of all forms of communication. Rarely before had there been such difficulties due to cultural differences, language in alien script, combined with disruption of negotiation and consultation because of slow travel between the negotiating powers. There was a lapse of six months for the return journey at that time between China and Great Britain. Clerks often prepared duplicates of dispatches to send by different routes to ensure delivery. It would not be entirely surprising that the practices for the formal preparation of protocols and ratifications differed from those followed for Treaties signed between European countries. The particular instance of the Treaty of Nanking provides a graphic instance of these cultural and technical difficulties, and of the uncomfortable learning process for both British and Chinese officials involved in the diplomatic negotiations of 1842–43.

Looking back from a world at the end of the twentieth century when all types of technical communication are so much quicker, with photocopying of documents an entirely regular part of normal life, the contemporary

³. ‘Grossbritannien. London, 27 Dec.’, *Beilage zur Allgemeinen Zeitung*, (6 Jan. 1843), 43.

⁴. For a fine historical background treatment to the Treaty it is possible to recommend just one publication: *The Cambridge History of China. Vol 10, Late Ch'ing 1800–1911*, edited by John K. Fairbank (Cambridge, 1978), Chapter 4 by F. Wakeman and chapter 5 by Fairbank.

production of a photocopy of the Treaty of Nanking represents an early practical realisation of a characteristic inherent in the photographic process: facsimile reproduction. We have had a glimpse above of the photographer at work on Christmas day 1842, and indeed an album containing sixteen paper prints photographically copied on that day or shortly afterwards from the Chinese character version of the treaty has survived until the present day. It is now held in the International Museum of Photography at George Eastman House, Rochester, New York State. The early photographer, Collen, who produced the photocopies in the album was investigated by L. Schaaf in 1982.⁵ Henry Collen (1800–1879) was originally an artist who in the eighteen–thirties was personally acquainted with the young Princess Victoria being her drawing teacher and miniature painter.⁶ For her fourteenth birthday on 24 May 1833 the young Victoria received a ‘little painting for my album’ from Collen, and she sat for her portrait by him in the summer of 1835.⁷ At this time in the mid–1830s it was widespread knowledge in England (witness, for example, W. T. Brande’s popular *Manual of Chemistry* of this period) that copies of pictures placed on paper treated with silver salts and exposed to light could be impermanently obtained. Victoria became Queen before the first practical system of photography had become possible in 1839 by Sir John Herschel reporting that ‘Hyposulphites’ would fix such silver images. Soon after W. H. F. Talbot took out a patent in 1841 for his substantial improvement, the calotype, Henry Collen took his first professional photographic portrait on paper on 16 August 1841 under a licence for the use in London of Talbot’s new technique.⁸ Apart from a very brief comment in the London weekly *Athenaeum* of 14th January 1843, the report by the German contributor to *Allgemeinen Zeitung*, quoted above is the only known contemporary account of the Treaty having been photocopied at the Foreign Office. Since 1783 the Foreign Office premises had been in Downing Street and even in the eighteen–forties, long before they were demolished in 1861, were notorious: ‘dingy and shabby to a degree, made up of dark offices and labyrinthine

⁵ L. Schaaf, ‘Henry Collen and the Treaty of Nanking’, *History of Photography*, vi (1982) 353–366; vii (1983). 163–5.

⁶ Collen as artist: 100 of his paintings and drawings, all except 3 being portraits, were exhibited at the Royal Academy between 1820 to 1872, A. Graves, *The Royal Academy of Art Exhibitors 1769–1904* (London, 1970), 104–5.

⁷ Viscount Esher (ed), *The Girlhood of Queen Victoria, A selection from Her Majesty’s Diaries between the years 1832 and 1840*, (2 vols., London, 1912), i, 77, 121, 129.

⁸ Collen as photographer: see L. Schaaf (1982, 1983) and H.J.P. Arnold, *W.H.F. Talbot: Pioneer of photography and man of science* (London, 1977), 138–140, 336.

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passages – four houses at least tumbled into one, with floors at uneven levels and wearying corkscrew stairs that men cursed as they climbed – a thorough picture of disorder, penury and meanness’.⁹

The original manuscript protocol of ‘China Treaty Nanking 29th August 1842’¹⁰ does exist in the Public Record Office, London. Bound in a slim red volume along with a preceding twenty-two in English, it has sixteen pages of Chinese character text written on one side only of thin very translucent paper. The black ink characters have an appearance almost as dense seen from the reverse side of the paper as from the front. As the pages of Collen’s photographic facsimile now at the George Eastman Museum are exactly the same size as the original treaty, and because of the translucent nature of the paper holding the Chinese characters, there can be little doubt that contact printing would have been the method used by the photographer, not imaged by a lens. Although it has been said that ‘No trace of the Queen’s copy can now be found in the Royal Archives or at the Public Record Office’¹¹ a more recent search by the present writer has revealed some more material amongst Foreign Office records which relates to Henry Collen’s financial costs in the production of the photographic copies.¹²

Signed at Nanking by Henry Pottinger¹³ on 29 August 1842, the Treaty was sent for ratification in London in the care of Major George A. Malcolm¹⁴ whose official position was ‘Secretary of Legation’ of the trade Mission led by Pottinger. Leaving Nanking on 16 September, he arrived in London on 10 December 1842.¹⁵ The Chinese text had been prepared by J. Robert

⁹. Sir Horace Rumbold, *Recollections of a Diplomatist*, (2 vols., London, 1902), i, 109–12.

¹⁰. Foreign Office: Protocols of Treaties (FO 93): FO 93/23/1B. English text of the Treaty of Nanking is on ff 2–12v, Chinese character text on ff 13r–28, Emperor’s ratification ff 29–30, Certificate of Exchange [of ratifications] ff 31v–33v.

¹¹. L. Schaaf (1982), 355.

¹². FO 366/280, ff159–167 (Chief Clerk’s department ‘Misc.1826–1863’), and see R.D. Wood, ‘Photocopying in January 1843: the Treaty of Nanking’, in *Darkness and Light*—*The proceedings of the ESHP Symposium, Oslo 1994*, ed. Roger Erlandsen and Vegard S. Halvorsen (Oslo: Norsk Fotohistorisk Forening 1995), 145–50.

¹³. *Dictionary of National Biography* (London, 1885–1900), xlvii (1896), 224–6. [After this article in *JICH* was published, a full biography of Henry Pottinger appeared - *Sir Henry Pottinger: The First Governor of Hong Kong*, by George Pottinger, Sutton Publishing, UK, and St. Martin’s Press, USA, 1997.]

¹⁴. ‘General George Alexander Malcolm (1810–1888)’, F. Boase’s *Modern English Biography* [1897] (London, 1965), ii, 708.

¹⁵. FO 17/60. ff 168–9; FO 17/64, ff 19–48.

Morrison (1814–1843)¹⁶, the ‘Chinese Secretary’ and chief interpreter. The British special mission to China also had two other ‘Joint Interpreters’, Robert Thom¹⁷ and Charles (i.e. Karl) Gützlaff (1803–1851).¹⁸ Major Malcolm obviously also brought back to England some private correspondence from Gützlaff, for a letter by him dated ‘10 September’ at Nanking about the signing of the treaty appeared in a London evening paper, *The Globe*, on 16 December 1842. Within the next two weeks this published letter had attracted the attention of the Foreign Office, who decided to send a caution to Gützlaff not to publish anything without prior permission.¹⁹ Gützlaff was German, so it would not be entirely rash to imagine that the reason why a German person saw Henry Collen beginning work on photocopying the Treaty could have been connected in some way with the fact that Gützlaff was employed by the Foreign Office. The German writer of the letter published in *Allgemeinen Zeitung* on 6 January 1843 felt the need to comment on ‘The silence which has been maintained about this affair in all public offices. The fact that calotype [sic] facsimiles of the Chinese treaty have been made has not been mentioned by any English newspaper’. His following scornful remarks ‘The point is that if servants were allowed to break secrecy in little matters, they might break it in big matters as well’, would be remarkably apposite for someone who knew that the Foreign Office was displeased with the appearance of an earlier letter by Gützlaff in an English newspaper.

The man who brought the protocol of the Treaty to England was within four weeks again setting off for China: promoted to Lieutenant–Colonel, and honoured as Companion of the Bath, Malcolm received £500 remuneration for bringing the Treaty to England along with a £102.10s.4d. expenses for the voyage and £150 advance for the return Journey.²⁰ He was carrying back the Treaty along with the Queen’s signed ratification with the Great Seal²¹, and a special ‘certificate of exchange’ due to be completed on the day the

¹⁶ *D. N. B.*, xxxix, 111–2. United Kingdom, *Parliamentary Papers, 1844*, xxxvi, Paper 522, May 1844, ‘Communications having any reference to ... the late John Robert Morrison’.

¹⁷ P. D. Coates, *The China Consuls: British Consular Officers, 1843–1943* (Oxford, 1988), 20–5, 496, 554.

¹⁸ *Allgemeine Deutsche Biographie* (Leipzig, 1879), x, 236–7. *Imperial Dictionary of Universal Biography*, (London and Glasgow, n.d.[1857–63]), ii, 763.

¹⁹ FO 17/64, ff 99–103.

²⁰ FO 17/60, ff 162–3. FO 17/64, ff 19–48. FO 366/227, 3 and 4 Jan., 1843. *Letters of Queen Victoria. A Selection...1837–1861*, ed. A.C. Benson and Viscount Esher, i (London, 1907), 559.

²¹ *The Times*, (2 Jan. 1843), 5.

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ratifications were exchanged. Also going with Malcolm was Martin C. Morrison, fifteen years old half-brother of Robert Morrison, 'to employ him in Superintendent's Office'.²² Leaving England on 5 January 1843, they reached Canton on 17 March.²³ Not many months later, on 29 August 1843, only a few days after being appointed member of the legislative Council and Colonial Secretary of the Government of Hongkong, J. Robert Morrison died of a fever.²⁴ The very day he died was the first anniversary of the signing of the Treaty at Nanking.

The full text of the Treaty of Nanking was first made available to the public printed in English in *The London Gazette* on 7 November 1843. When the following session of parliament was opened by the Queen on 1 February 1844, the Treaty was presented as a printed Parliamentary Paper²⁵, and naturally the English text was again only given. But, in the same year, the first published copy of the Treaty of Nanking to be printed in both English-Roman type and Chinese characters was issued at Canton in the August 1844 issue of the monthly *Chinese Repository*. The British Library Oriental and India Office Collections in London holds Sir Henry Pottinger's own off-printed bound copy of the Treaty printed by the Chinese Repository.²⁶ The Chinese characters are printed on the top half of each page, beginning with the first line at the top right-hand corner going down, along with the corresponding English text below on the same page. These printed versions of the treaty were all derived from the original manuscript held by the British side. Not only does the signed protocol of the Treaty exist at the Public Record Office in London, but the Emperor's simple

²². FO 17/60, ff 179–180. FO 17/64, ff 119–120.

²³. *The Chinese Repository* (Canton), xii (March 1843), 167.

²⁴. *Chinese Rep.*, xii (1843), 448, 456–464. *Canton Press*, viii (18 March 1843), 2.

²⁵. United Kingdom, *Parliamentary Papers, 1844*, li (*Accounts and Papers*, xx), Paper 521. A later official printing of the English text appeared in *British and Foreign State Papers*, (London, 1858), xxx, 1841–1842, 389–92.

²⁶. *The Treaty of Nanking / Signed August 29th, 1842 / and the / Supplementary Treaty / Signed October 8th, 1843 / In the Chinese and English Languages / Macao / Printed at the Office of the Chinese Repository / 1844*. Crown octavo [190.5 x 127 mm], British Library shelf-mark 11099 f31. The front fly-leaf of this BL volume is signed 'Sir Henry Pottinger Bart GCB'. The Treaty of 1842 is on pp. 5–13 with Supplementary Treaty of 1843 pp.16–32. The pages are the same as that printed in *Chinese Rep.*, xiii (Aug., 1844), 437–446. According to Mrs J. Markham of the Foreign and Commonwealth Office Library, another individually bound Macao edition (unsigned) is the only copy of the Treaty held in that department.

ratification also survives there. But what of the printing and complementary original manuscripts of the Treaty and the Queen's ratification in China?

During 1877 and 1878 authenticated copies of sixteen Treaties 'made from the originals archived in the Tsungli Yamen (Wai-wu Pu)', that is, in the government office for foreign affairs at Peking, were sent to the Inspectorate General of Customs in Shanghai, with the intention that they be printed as and when the time was found. The work progressed slowly but in 1887 an edition limited to fifty copies was issued to Chinese Customs offices. In 1908 a larger edition was printed in Shanghai. Like the published official version printed by the British side many years before the English and Chinese text was printed in parallel on the same page, although this time side-by-side. The English text is identical (the Chinese text varies in two or three printed characters) with the printed versions produced on the western side and with the manuscript original now in London. Indeed, as only this Chinese-produced printed version has the full text of Queen Victoria's official ratification document, it can be considered to be the best printed version.²⁷ Unfortunately the counterpart original manuscript of the Treaty sent to China in January 1843 along with the British Ratification and Great Seal, has not survived. According to Lihua Shen of the State Archives Bureau, only a printed version of the Treaty is now kept in the First Historical Archives in Beijing, 'the original manuscript of the Treaty of Nanjing has been lost, possibly during the 1900 Boxer Rebellion'.²⁸

II

The first working Draft of articles for a Treaty was prepared (and indeed privately printed) at the Foreign Office in London as early as February 1840.²⁹ From the very beginning there was an awareness at the Foreign Office that preparation of a Treaty requiring Chinese ideograms as well as

²⁷. Imperial Maritime Customs. III. miscellaneous series: No.30, *Treaties, Conventions, etc., between China and Foreign States* (Shanghai: Inspectorate General of Customs, 1908), vol.i, pp. iii, 159-66. These pages are more widely available from a reprinting in facsimile in *American Diplomatic and Public Papers: The United States and China. Series I, The Treaty System and the Taiping Rebellion, 1842-1860*, (Wilmington, Delaware, 1973), i, 53-8.

²⁸. The author is most grateful to Lihua Shen, Foreign Affairs Office of the State Archives Bureau in Beijing, for this information in her letter to the author dated 31 Jan. 1994.

²⁹. FO 17/37, ff 103-120 (*Draft. Proposed Treaty with China*, Printed, Foreign Office: Feb. 1840), accompanied by dispatches No. 2-5 being instructions by Foreign Secretary, Lord Palmerston, ff 121-134. A simple 7-point outline for a Treaty had earlier been sent from China by G.T. Lay in November 1839, FO 17/36, ff 163-4.

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Roman/English characters might need particular consideration. Along with the distance separating the two countries, it was realised that some flexibility and departure from established procedure in preparing Treaties might be required. By the time the Treaty was negotiated and signed, the Foreign Secretary was Lord Aberdeen, but at that early stage in 1840 it had been Palmerston. He had been the Secretary of State at the Foreign Office by then for five years dominating the work of the department, with a self discipline and personal involvement in administrative detail. A Memorandum by Palmerston dated as early as 21 February 1840 set out some thoughts regarding the proposed Treaty with China:

The usual practice in preparing Treaties in two languages for signature, is, that the respective languages should be written in parallel columns, on the same page. From the peculiar structures of the Chinese language however, this is presumed to be in the present case impossible. The Treaty had therefore better be written out in each languages separately; and then the two versions should be attached to each other by ribband, the ends of which should be secured by passing under the wax seals which the British (if not also the Chinese) Plenipotentiaries will affix opposite to their signature, so that the two versions together should form but one single unseparated Instrument ... A Duplicate of the British original in both languages may be sent home by different opportunities.³⁰

The final protocol Treaty was formally signed at Nanking on 29 August 1842. The three Chinese delegates (Ch'i-ying and I-li-pu, and the local viceroy Niu-Chien) signed first followed by Sir Henry Pottinger. This event has received considerable attention in a wide range of publications.³¹ But for the purpose of the present study the diary of Chang Hsi provides a particularly useful account of the proceedings, and when it was published in English in 1944 was accompanied by an extensive and valuable commentary by translator and editor Ssu-yü Têng. Chang Hsi was only a minor participant amongst the Chinese involved in the negotiations but his account of the signing of the Treaty is especially valuable because of a paucity of writings from the Chinese side:

³⁰. FO 17/37, ff 131–4.

³¹. Pre-eminent are the publications of John K. Fairbank (JKF), from his overview in *The Cambridge History of China. Vol 10, Late Ch'ing 1800–1911*, ed. JKF (Cambridge, 1978), chapter 5, and to the more specific dealing with our present subject; JKF, *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports 1842–1854* (2 vols, Cambridge, Mass.: Harvard U.P., 1953), i, 84–119, 200–1, ii, 7–10; JKF, 'Chinese Diplomacy and the Treaty of Nanking, 1842', *Journal of Modern History* (Chicago), xii (March 1940), 1–30; JKF, 'The Manchu Appeasement Policy of 1843', *Journal of the American Oriental Society*, 59 (Dec., 1939), 469–84.

The ceremony of the reception by the barbarians was almost the same as the first time. After sitting a while, they took out the peace treaty and asked to use the seals. The treaty was written on foreign paper – first in Chinese, and then in the barbarian language. It was bound together as one book; and four copies were made, each party keeping two. If only one copy were kept, it was feared that some accident might happen on the sea; so they needed a duplicate copy. Concerning the place of stamping, the seal of our imperial commissioner was placed right in the middle, that of the governor-general of Liang-Kiang on the top, and that of the minister plenipotentiary of their country on the bottom. The three high authorities and the barbarian Pottinger all have their names and official titles written on the last page, and each personally signed his own name. As soon as the imperial seal of our country and the state stamp of their country arrive, both of which have been requested, [the copies of the treaty] are to be exchanged at Canton, to serve as an eternal document of confidence and trust.³²

[figure 1. printed here in the journal but reproduced at end of the text of this PDF reprint]
FIGURE 1 Last page (with signatures) of the Chinese character text of Protocol of the Treaty of Nanking (Public Record Office, London: FO 93/23/1B, f 13). This Crown copyright document in the Public Record Office is reproduced by permission of the Controller of Her Majesty's Stationary Office

So the proposal first put forward in Palmerston's Memorandum of February 1840 that duplicate copies of the two protocols of the Treaty should be prepared (with intention that they be retained by each party while the two originals went for ratification) seems almost certain to have been put into effect. Article No.13 of the official English version of the Treaty speaks only of 'counterpart copies' but the additional suggestion that four copies were prepared does also appear clearly in a statement of this last and thirteenth article in another draft, this time written in the Chinese language, presumably by one of the staff of the Chinese negotiators at Nanking:

The several articles of the treaty of amity...shall be held in abeyance until the great officers have separately reported to the august emperor, and obtaining his reply assenting to the same, and until the sovereign of the English nation has ratified them, when the credentials shall be immediately exchanged, each nation holding one copy in order to secure good faith; but as the nations are widely remote from each other, *two additional copies shall be prepared*, which shall first be signed and sealed by the imperial commissioner and the envoy of the English nation, *each one retaining a*

³². *Chang Hsi and the Treaty of Nanking 1842*, a translation into English of Chang's diary, edited with an introduction and notes by Ssu-yü Têng (Chicago, 1944), p.86,

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copy as proof, and from that day beginning to act with security according to the terms contained in the treaty of peace.^{33, 34}

[Immediately after the signing ceremony,] according to a report in the October 1842 issue of *The Chinese Repository*, an English-language monthly produced in Canton, ‘The Treaty was then forthwith dispatched to Peking, for the emperor’s ratification. This as our readers know already, was at once obtained; and on return of the treaty from the capital, it was again dispatched for London and may be expected to be back in March next.’ The word ratification here is open to some misunderstanding. More precisely, at that time the Emperor sent his *Assent* not his formal ratification. This Imperial command had been issued at Peking on 6th September and was passed to Pottinger at Nanking on 15th September. Only seventeen days had passed since the signing ceremony. Mayor Malcolm left within a few hours for Hong Kong and thence for England with the signed treaty [a duplicate copy was sent soon after by another route (see footnote a)] and a translation by Morrison of the *Assent*: although the Emperor had some important points to make for future negotiation, ‘regarding to the several particulars detailed in the list sent, We have carefully perused them in detail; and We command that matters be conducted as therein arranged’.^{35,36} Neither the Emperor nor

³³. *Chinese Rep.*, xiv (Jan.,1845), 26–30. Passage quoted is article 13 of this Chinese draft of the Treaty of Nanking. In a letter dated 3 Aug.,1844, the correspondent ‘Old Wheat’, who translated this original Chinese version of the Treaty into English, said he found it ‘in a native bookseller’s shop in the Chinese city where I now reside’.

³⁴. The official version of article 13 produced on the British side states ‘ The ratification of this Treaty by Her Majesty the Queen of Britain, and His Majesty the Emperor of China, shall be exchanged as soon as the great distance which separates England from China will admit; but, in the meanwhile, counterpart copies of it, signed and sealed by the plenipotentiaries on behalf of their respective sovereigns, shall be mutually delivered, and all its provisions and arrangements shall take effect’.

^a. Two copies of the Treaty were definitely sent to England, for the Foreign Secretary in a dispatch to Pottinger dated 25 January 1843 (FO 17/64, ff 143–146v) spoke of ‘the duplicate copy of the Treaty... which was enclosed in the duplicate of your Despatch 38... The duplicate was not received until the 9th of January, after the ratified Original had been sent off [back to China]’. This information about the two copies has been amended since the original publication of this article in May 1996 in place of the following deleted sentence: ‘Whether or not one of these two extra copies was retained by Sir Henry Pottinger in China, or two were immediately taken to England by Major Malcolm has not been established.’

³⁵ FO 17/60, ff 170–8 (translation of letter from the Grand Council to Imperial Commissioners announcing the Emperor’s *Assent*, and letter dated 6 Dec. 1842 from Malcolm to Foreign Secretary).

³⁶. In a letter presumably hastily written shortly before Major Malcolm left, Gützlaff wrote: ‘yesterday arrived the approval of the Emperor in a few words’. The date printed as 10th (instead of 16?) is thus doubtful: ‘China. Letter [to W. Mathieson] from the Rev.

Queen Victoria placed their signatures on the actual Treaty document. In both cases formal Ratification was by a separate document. In China this happened several weeks after Malcolm had left for London. On the 24th day of the 9th month in the 22nd year of his reign – that is on 27 October 1842 – accompanied by impression of the Imperial Seal of Promulgation³⁷ (chi ming zhi bao), the Emperor stated very simply ‘Be all conducted, as has been agreed’.³⁸

The Emperor therefore signed his official ratification statement six weeks after Major Malcolm had left China on 16 September. The protocol carried by Malcolm thus arrived in England on 10 December. The photographer, Henry Collen, was at the top of one of the buildings of the Foreign Office over the Christmas period producing a photographic facsimile of the Treaty. On 28 December 1842 Queen Victoria at Winsor Castle signed her Warrant for the Great Seal to be attached. With a full text of about 270 words, the most significant were that ‘We do by these Presents approve, accept, confirm, and ratify it for Ourselves, our Heirs, and Successors’.³⁹ On Saturday 31 December 1842 it was at the house of the Lord Chancellor. *The Times* reported as follows to the British public:

The great seal of England was on Saturday affixed to the treaty recently ratified between this country and China, at the residence of the Lord Chancellor, in Great George–street, Hanover–Square; after which it was transmitted to the War–office, for the purpose of being forwarded to the “celestial” empire, under the care of Major Malcolm. The seal is enclosed in a very handsome silver box (similar to that used for the patent of his Royal Highness the Prince of Wales),and together with the

Charles Gutzlaff, Nanking, Sept. 10, 1842’, *The Globe and traveller* (London), (16 Dec. 1842), 3. A clipping from the newspaper is filed in FO 17/64. ff 99–103.

³⁷. FO 17/67, ff 303–319v (Pottinger’s dispatch No. 66, with enclosure No. 4 being a descriptive list of the 25 Imperial Seals in which the seal used for the ratification is No.15).

³⁸. This single sheet of the Emperor’s formal ratification statement written in vermilion Chinese characters is bound (with Morrison’s translation into English) with the protocol of the Treaty, FO 93/23/1B, ff 29–30.

³⁹. ‘Ratifications of Treaties 1841 to 1844’, FO 83/985, no 17. The complete text in English of this ratification has only been published as a preamble and conclusion to the Treaty as printed by the Imperial Maritime Customs at Shanghai in 1887 and 1908, p.159 and p.164: thus it was transcribed by the Chinese from the sealed original signed by Queen Victoria.

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important document to which it is appended, is enclosed in an elegant case covered with crimson velvet.⁴⁰

Colonel Malcolm left England on 5th January arriving in Hongkong with the Queen's sealed ratification on 16 March 1843. He also brought with him dispatches to Pottinger from the Foreign Secretary containing instructions about the special procedure to be followed for the exchange of ratifications of this Treaty:

I transmit to you the Queen's ratification, under the Great Seal of the Treaty signed by you and the Plenipotentiaries of the Emperor of China, on board Her Majesty's Ship 'Cornwallis', at Nanking, on the 29th of August last; and I am to desire that you will exchange the same against a similar instrument ratified by the Emperor of China. You will observe that Her Majesty's Act of Ratification is attached to the original Treaty. Although this is not the form in which instruments of this description are usually prepared it has been adopted on the present occasion, because I have been informed by Lieutenant Colonel Malcolm, that the Chinese Ministers had already been given to understand, and will expect that the identical documents signed by the respective Plenipotentiaries, should be returned to China with the Queen's Ratification appended to it. Her Majesty's Government of course expect on their part that the instrument which will be delivered to you in exchange for the ratification of Her Majesty, will in like manner consist of the other Original of Treaty with the ratification of the Emperor attached to it.⁴¹

The Foreign Secretary decisively instructed that first 'the two instruments should be most carefully compared both in the English and Chinese versions'. He also enclosed a draft of a 'Certificate of Exchange' which was to be signed by Pottinger and the Chinese representatives to verify the fact of the exchange having taken place: 'The original'⁴², he said, 'of such certificate is to be sent to this office together with the Chinese Ratification enclosed'. Another three months were to pass from the time Malcolm had returned to Hongkong and the occasion when the ratification documents

⁴⁰. *The Times*, (2 Jan. 1843), 5. The Great Seal is illustrated (with comments on Chinese affairs and portraying Sir Henry Pottinger) in *The Illustrated London News*, ii (14 Jan. 1843), 19–21, 24–5.

⁴¹. FO 17/64. ff 1–3.

⁴². The draft Certificate of Exchange in English is an enclosure with Dispatch No. 1 of 1843, FO 17/64, ff 4–5. The signed and sealed certificate in both languages sent back to London is preserved with the Treaty, FO 93/23/1B, ff 31r–33v. However more than one copy was done on 24 June 1843, for a second Certificate, signed and sealed by both parties, survived (with the British wax seal now crushed) in the archives of the British Embassy in Beijing, FO 233/235.

were exchanged between the two sides. This time the event did not take place at Nanking, but at Hongkong. *The Chinese Repository* reported:

On Saturday [24 June], Kiying dined in private with Sir H. Pottinger, and on Monday, the 26th [June 1843] at 5 o'clock P.M. the ceremony of the exchange of the ratifications of the treaty of Nanking took place, – ten months after the agreement there to by the same high officers on the banks of the Yángtsz' Kiáng.⁴³

Thus, for the British, the crowning moment was reached: on 30 June 1843 Sir Henry Pottinger was able to dispatch to the Foreign Secretary the fact that the ratifications were formally exchanged on the 26th, 'after which the Charter for erecting the Colony of Hong Kong and my Commission as Governor were read'.⁴⁴

III

Yet that moment had been at risk of faltering due to cultural misunderstanding and differences of formal procedure. Amongst the British an important part of correct form was the use of official seals. Some pomp and pride was involved here, as can be seen from the report in *The Times* quoted above about the dispatch of the Great Seal in a handsome silver box within 'an elegant case covered with crimson velvet'. For the Chinese, Seals were used more by the Emperor in granting honours, and misunderstandings about this had caused anguish amongst the British at the time of the original negotiations at Nanking in August 1842.⁴⁵ After Lt-Colonel Malcolm returned to China and the British Mission were preparing for the exchange of ratifications of the Treaty, they felt considerable anxiety about 'the manner in which the Treaty has been ratified by the Emperor and more especially with regard to the Imperial Signet that has been used'. In June 1843 Morrison was of the opinion that 'the ratification should be rejected and the use of another seal demanded'.⁴⁶ However Pottinger decided to go ahead with the exchange of ratifications without even mentioning this last minute anxiety to Ch'i-ying. A sensible course, as Ch'i-ying on his part was always in a delicate situation with respect to offending the Emperor. Pottinger (who because of the distance from London had been granted 'full powers') wrote to London 'I trust that Her Majesty's

⁴³. *Chinese Rep.*, xii (June 1843), 335–6.

⁴⁴. FO 17/67, ff 366–7 (Pottinger's dispatch No. 69).

⁴⁵. FO 17/57, ff 208, 335–354 (enclosures 30 and 31).

⁴⁶. FO 17/67, ff 303–319, and letter 9 June 1843 from Pottinger to Morrison in FO 705/54.

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Government will approve of my having come to the conclusion to accept the Treaty as it stands without even hinting to the Chinese High Officers the doubts that had arisen'.⁴⁷ Even after Pottinger's acceptance of the situation with regard to the ratification of the original Treaty these worries continued in September 1843 because of lack of a Chinese seal when preparing the Supplementary Treaty.⁴⁸ But as Ch'i-ying emphasized to Pottinger, 'having once previously requested the use of the Imperial Seal, it would be most improper now again to request the use of it'.⁴⁹ The suggestion was, as Pottinger set-out in a memorandum dated 25 September 1843 to the Foreign Secretary, that

if His Imperial Majesty's pleasure is to write on it "let every thing be conducted as is herein settled", then, in like manner the Queen of England will write on a copy which I shall humbly submit for that purpose "All that is herein laid down is confirmed and approved", and these two copies, that is the one bearing the Imperial pleasure and the one bearing the Royal pleasure will be exchanged and placed with the Original exchanged Ratifications of the Treaty.⁵⁰

Finally, therefore, both Pottinger in China and officials in London, showed a pragmatic readiness to depart from established British form. By March of the following year of 1844 when they had to deal with ratification of the Supplementary Treaty, even the Attorney and Solicitor Generals were indeed ready to allow the Queen to dispense with the usual elaborate formal Ratification, and without any seal being affixed.⁵¹ Thus for the Supplementary Treaty the Queen did follow rather the simple practise of the Chinese Emperor, writing with her own hand the words 'Approved and confirmed; and let all be done as herein agreed. Victoria R.'⁵² The long delay at that time in dealing with such matters because of the distance between Britain and China was the prime reason for flexibility, not the extra problem of an alien text. Maybe on Pottinger's part there was some wish to get all details of the Treaty and Supplementary matters settled as quickly as possible for the sake of his own status and ambition, but more generally on the British side it was indeed wiser, or more pragmatic, to respect Chinese

⁴⁷. FO 17/67, ff 303–4 (Pottinger's dispatch No. 66, 22 June 1843).

⁴⁸. FO 17/70, ff 8–93 (dispatch No.142 with 27 enclosures), recording discussion and correspondence in Hongkong during Sept. and Oct. 1843 about Emperor not providing a seal and on way to handle the Supplementary Treaty.

⁴⁹. FO 17/70, f 24v (letter 19 Sept. 1843, from Ch'i-ying to Pottinger translated by R. Thom).

⁵⁰. FO 17/70, f 31 (enclosure No. 4 in dispatch No. 142).

⁵¹. FO 83/2247 ('Law Officers Reports China 1833–44'), ff 353–9.

⁵². FO 83/985, [Ratification] no 24.

sensibilities rather than regardlessly insist on British formal procedure. For there can be little doubt that every one fully realised that the Treaty was very unequally to the advantage of British trade and Empire. In London at the time this perception was both widely [implicitly] understood and plainly expressed. *The Illustrated London News* expressing its admiration for Sir Henry Pottinger declared it was 'a Treaty in every way advantageous to the interests of this country', their only doubt being as to 'whether it will be observed after the force to which it was conceded is withdrawn'.⁵³ Queen Victoria expressed to parliament her pleasure with regard to the Treaty: 'I rejoice to think that it will in its results prove highly advantageous to the trade of this country'.⁵⁴ There is not a great deal available in the West of contemporary Chinese documentation of their attitude to the signing of the Treaty of Nanking but what is known shows that it was signed only under pressure of circumstances. Ch'i-ying, the principal Chinese delegate, reported back to his Emperor during the weeks leading up towards the signing that the principals proposed by the British for the treaty 'truly indicate, as your Majesty had said, their insistence upon material profit'. He thought that 'although the demands of the barbarians are indeed rapacious, yet they are little more than a desire for ports and for the privilege of trade.' But he and the other two Chinese negotiators felt certain that if these demands should be refused the British would fight at Nanking and then go on to invade other provinces:

Compared with war which will inevitably entail great disasters, we would rather assent be give to their demands and thus save the whole country south of the Yangtze...In settling the barbarian affairs *this time* [author's emphasis], we are governed at every hand by the inevitable and we concede that the policy is the least commendable. What we have been doing is to chose between danger and safety, not between right and wrong.⁵⁵

With circumstances being perceived in this way there was some danger that an insistence on 'form' might have hardened within each culture to save face

⁵³ *The Illustrated London News*, 2 (14 Jan 1843), 24-5.

⁵⁴ *The Times*, (2 Feb 1844), 2, report of the Queen's speech opening the 1844 session of parliament on 1 February 1844.

⁵⁵ Ch'i-ying's perceptions are from three memoranda written to the Emperor during August 1842, documents made available by photolithographic reproduction in 1930 in *Ch'ing-tai - Ch'ou pan yi-Wu shih Mo* [Ch'ing dynasty - Complete Record of the Management of Barbarian Affairs] (Peiping: Palace Museum Photolithograph 1930) translated into English by Pin-chin Kuo, *A Critical study of the First Anglo-Chinese War with documents* (Shanghai: Commercial Press 1935: reprinted Taipei: Ch'eng Wen Publishing 1970), 292-9.

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on one side or to emphasis a commanding position on the other. Just as it had been a sensible decision in London in December 1842 to deal with the unique problem of the physical form of the Treaty by using the new technique of photography to copy Chinese characters (although there is no evidence that the process was used for other Chinese documents at the Foreign Office in the following years) so was the readiness to be flexible as to formalities of State. On the Chinese side there was also a considerable flexibility in August 1842 with regard to the substance of the treaty, yet this was due to their perception of immediate military vulnerability. The three Chinese Commissioners had found it necessary to advise the Emperor four days before the Treaty was signed that ‘Should we fail to take advantage of the present situation by soothing the barbarians, they will run over our country like beasts’. Yet they were well aware that points of substance remained which had not been made fully clear with regard to trading facilities and the use of ports rather than occupation of territory – ‘And once the trade was granted, even in the case of the ports, we cannot but permit such things as establishing consuls, building barbarian houses, residence of barbarian families, and so forth’.⁵⁶ Thus, the questions of formalities of state that arose with regard to the Treaty of Nanking discussed in this essay did not in the event disturb the firmness of the British in pursuit of a speedy resolution after the ceremony for signing the protocol on 29 August 1842. For, as J. K. Fairbank has pointed out, the tactics of both sides ‘facilitated negotiations at the time and stored up trouble for the future.’⁵⁷

[Caption to figure 1 on the following page:]

FIGURE 1 Last page (with signatures) of the Chinese character text of Protocol of the Treaty of Nanking (Public Record Office, London: FO 93/23/1B, f 13). This Crown copyright document in the Public Record Office is reproduced by permission of the Controller of Her Majesty’s Stationary Office

⁵⁶. *Ibid.*, 296-9.

⁵⁷. *Journal of Modern History* (Chicago), xii (March 1940), 30.

大清欽差便行事大臣等

大英欽奉全權公使大臣各為

君上定事蓋用

約者



按照和約開載之條施行
妥辦
英使
失要
臣和

道光二十二年七月二十四日

一千八百四十二年八月二十九日

由江寧

國記年文



防

Handwritten Chinese characters, possibly a signature or official name.

Handwritten English text: "Remy Bell" and "74 The ..."