

Charting the Principle of the Open Door from Diplomatic Notes to Public Law

Mingxing Yang¹, Paul Wang^{2*}

¹Institute of International Relations, Nanjing University, Nanjing, China

²School of Law, Changzhou University, Changzhou, China

Email: *wlchangchun@jlu.edu.cn

How to cite this paper: Yang, M. X., & Wang, P. (2024). Charting the Principle of the Open Door from Diplomatic Notes to Public Law. *Beijing Law Review*, 15, 433-443. <https://doi.org/10.4236/blr.2024.151028>

Received: February 19, 2024

Accepted: March 23, 2024

Published: March 26, 2024

Copyright © 2024 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

The Open Door Notes comprise political and legal aspects. It was enunciated first in 1899 and then in 1900 by John Hay, the U.S. Secretary of States. As the diplomatic circular notes, they aimed to urge all other foreign powers involving China to respect its existing administrative and territorial integrity while protecting all privileged rights and interests of all foreigners under the principle of equal and impartial trade with China. Yet, the prevailing treaties concluded between foreign powers and China had not only trespassed on the latter's sovereignty, but also defined the "legitimate" political order among themselves in China and with the Chinese Empire. Over time, its nature had been addressed in different ways that had given rise to a debate encompassing the Open Door from diplomatic notes to public law until 1922 when the Nine-Power Treaty was finalized at the Washington Conference. This article explored the trajectory of the Open Door as it had through diplomatic negotiations prevented the partition of China among the foreign powers while legally regulating their political and economic interplays in the country. Methodologically, it examines the Open Door in the light of the declassified primary sources (two circular notes and nine-power treaty) backed up by the noted scholars' discourses on the issues.

Keywords

Open Door, China, The U.S., Foreign Powers, Nine-Power Treaty, Equal Opportunity

1. Introduction

The term of the Open Door was originally advanced by the United States at the turn of the 20th century as the circular notes to all foreign powers of the day

when the legitimacy and the capacity of the Qing dynasty ruling China were ruined. As a result, all the foreign powers hurriedly turned to compete with each other for spheres of interest in China, or say, “the battle for concessions”, since they had taken numerous political and judicial privileges and non-exclusive commercial rights under a series of unequal treaties imposed upon China (Wang, 1957).

Acting differently from other powers like Russia, France and Japan in particular, yet, the U.S. insisted that all foreign powers should vow to respect China’s sovereignty and territorial integrity rather than carrying on “scramble of China” like what the European powers had done in Africa (Paterson, 1988). The first Open Door Note was addressed in September 1898 by the Secretary of States John Hay urging all foreign powers involved in China “not to discriminate against the commerce of other nations within their spheres of influence.” One bulletin from the U.S. State Department said that as America was not ready to fight for the sake of China, it could be a “trump card for the U.S. Administration and crush all the life out of the anti-imperialist agitation” (Herring, 2008). But, the scenario in China had been that the treaties concerned had not only trespassed on China’s sovereignty, but also defined the “legitimate” political order among all foreign powers involving the country which had no capacity to hold its own destiny.

Here, it needs to say that the role of treaties in international law-making has been significant in history and in modern Europe particularly. Treaties which were usually contracted were either equal or unequal. According to Emer de Vattel, “Equal treaties were those in which the contracting parties promise the same things, or things that are equitably proportioned, so that the condition of the parties is equal.” Yet, “unequal treaties are those in which the parties do not reciprocally promise to each other the same things in the making of the treaties” (de Vattel, 2008). At the turn of the 20th century, the foreign powers of the world had rigidly imposed a series of “unequal” treaties upon China in the coercive way.

By 1900 the battle for concessions in China finally led to the severest violence against all foreigners living in China. In theory, it was an attempt to rid China of foreign control and humiliation by force, but in effect the resort to force resulted in disastrous consequences for China and its people in particular. Troops of all the European powers along with Japan and the U.S. made the allied forces and charged into Beijing in August. Then the Qing regime was forced to accept the Final Protocol containing a series of humiliating terms, e.g. punishment of high-ranking officials of China, penal compensation of 400 million of silver dollars, and apology delegations to the powers concerned. As H. B. Morse said, “It was true that China had broken the law of nations and defied the world. But during the punitive expedition against China, all the powers recognized none of their own rules in the treatment of the law-breakers” (Morse, 1906).

For preventing China from being partitioned among the treaty-powers, in late July 1900, Hay delivered the second Open Door Note that required the United

States to act separately from other powers when they could and cooperate when they must. In a word, the policy of the U.S. was to promote “permanent safety and peace to China, preserve Chinese territorial and administrative entity ... and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire” (Paterson, 1989). Yet, the rationale behind was that the U.S. interests must be protected along with the lives and property of its citizens in China as it had formed a “mini international system”.

Accordingly, the Open Door Notes acted a dual-principle with regards to the interplay with all foreign powers involving China. First, the U.S. needed to act with all other foreign power of Europe and Japan in treating with the Chinese empire but it sought certain degree of independence in foreign affairs (Boyle, 1999). Second, the United States played the seminal role in preserving the sovereign rights of China during the First World War when Japan coveted its exclusive rights in China with the notorious demands. Finally, by 1922 when the Nine-power treaty was stipulated, the principle of the Open Door was formally written into the treaty due to all earnest efforts from the United States and China as its ally.

For sure, the Open Door Notes have aroused much debate as anything in the history of U.S. foreign relations. In 1950, scholar-diplomat George Kennan firmly dismissed them typical of the idealism and legalism that had characterized the U.S. approach to foreign affairs, simply a meaningless statement in defense of a dubious cause—the entity and freedom of China—“which had the baneful effect of inflating in the eyes of Americans the importance of their interests in China and their ability to dictate events there.” (Kennan, 1984)

Nonetheless, this study argues that the principles of the Open Door Notes were in effect endorsed in several treaties concluded by all major powers prior to the Nine-power treaty being formally stipulated in 1922. Among them, primary significance was the agreement between Germany and Britain defining each other policy towards China in 1900, then the treaty of alliance between Britain and Japan of 1902, the Russo-Japanese peace treaty of 1905 followed by the St. Petersburg Convention in 1907, and finally the Root-Takahira Agreement between the United States and Japan in 1908. Due to this, it is fair to say that “the general agreement on the Chinese open door policy among the world’s major powers of the day, together with the interlocking of Britain, France, and Russia in the Triple Entente, and the alliance between Japan and Britain—all of which states were further interconnected with the U.S. through a series of bilateral arbitration treaties—might create conditions ripe for the negotiation of some sort of peace pact.” (Boyle, 1999)

Diplomatically, the Open Door Notes were presented in the context where the U.S. came to recognize Japanese imperial status in the Pacific. However, it did not gainsay the geopolitical fact that the promotion of the U.S. possessions in the Far East depended on how to prevent Japan from obtaining any additional territory on the Asian mainland. Considering inestimable strategic and economic value of Chinese territory, population and resources, the U.S. made all efforts to

prevent China from being further divided into additional zones of exclusive economic and political control exercised by the great powers of Europe and Japan in particular. The Open Door Notes provided the generally recognized principles by which “any power was discouraged from turning its sphere of influence into an exclusive zone while balance of power acted to maintain the order and stability among the treaty powers involving China.”¹ Thus, how to turn the principles of the Open Door necessarily into the law sanctity became the main argument of this article.

Here is a qualitative analysis approach to investigate the origins and the substance of the Open Door as a political policy in the interplay with all other major powers since they were highly concerned with their interests and commercial rights defined in a series of unequal treaties with China. To that end, the research methodology covered a range of primary sources, policy-analysis and scholarly discourses, particularly from the noted law scholars throughout the 20th century. Given the fact that foreign policy and public law are always intertwined in world politics, the interpretation of the Open Door Notes involved the theoretical discourses of international relations and international law.

2. The Origins of the Open Door

In a survey of modern European states system, the contractual assurance of an “Open Door” régime went further than any other legal institution of imperialism era since it appeared everywhere where the expansive energy of a single power was insufficient to exclude all others. As Wilhelm Grewe observed that the principle of the “Open Door” in the Ottoman Empire meant the guaranteeing of an equal economic opportunity for citizens of all nations that “required non-discriminatory treatment of foreigners according to the principle of equal opportunity of trade” (Grewe, 2000). Although it was initiated by France then, the free trade doctrine was favorably echoed in Britain where it attained its classical formulation there through David Ricardo and Adam Smith.

Since the Vienna Congress of 1815 until the Versailles Peace Treaty was signed in 1919, Britain’s overseas colonies not only accepted the principle of equal opportunity of trade, but also turned it into the general policies for the worldwide free trade. That was during the international legal order of the British Age, Britain had obtained its first incentive to turn away from mercantilism as a result of the loss of its American colonies. When the liberal politician Richard Cobden (1804-65) acted the prime protagonist of the free trade doctrine, he appealed to Britain to turn its general economic policy towards the free trade system throughout the Empire. First, the Navigation Act was abolished in 1849. Then in 1860, Cobden himself went as a special envoy to Paris where he concluded the first treaty with a “most favored nation clause”.

Logically, the most-favored nation treatment was seen as the parent of the open door policy as it went one step beyond the contractual treatment and ad-

¹Wang Li, *Sovereignty, Status quo, and Diplomacy: A Case Study of China’s Interaction with the Great Powers 1912-1922* (University of Aberdeen, unpublished PhD thesis, 2002)—noted by author.

vanced a general extension of the most favored nation principle to all States in term of free trade. During 1855 and 1860 when Britain took this step in its global trade, it in effect abolished the last of the preferential customs. But, owing to the domestic pressure, this step was given up with the move away from free trade that began in the 1880s, and preferential customs were reintroduced within the entire Empire. Yet, in respect of such colonial or semi-colonial territories that were not subject to its full or limited sovereignty, Britain still clung to the policy of contractually securing open door treatment. Accordingly, the open door was proposed to greet the need for action at home while offending no one abroad.

3. The Open Door and China

As aforementioned, the open door was a smart approach to the scenario in China where it acquired a specific and thoroughly altered meaning as a result of the rivalries of the imperialistic era. By the turn of the 20th century, any country which could not be subjugated completely was pressed to submit to a trade system that Britain had abandoned in respect of its own colonies, but which still seemed to be appropriate as a basis for an intensive economic penetration into the country in question. Since the open door notes were based on the practice of equal economic opportunity in China, it actually would go back to the contractual supplements to the Treaty of Nanking of 1842, which terminated the Opium War between China and Britain (Paterson, 1989). In 1922, when the open door treaties were stipulated as guaranteeing the same opportunities to the Chinese themselves, it was no secret that this was not their design yet, nor their effect. Then in countries like China, the principle of equal economic opportunity was bound to favor the economically far superior foreign powers.

There is no question that Secretary of State John Hay saw that the occasion for the Open Door Notes lay in China's domestic scenario, where loomed the partition of the country into a multitude of spheres of influence of rival powers with exclusive privileges as expected. This threatened to do away with the principle of equal opportunity in economic competition since China nearly came to a complete disintegration of the political structure of the fragile Empire, including almost all external possessions being lost during the previous two decades. In addition to those lease treaties, other forms of imperialistic penetration could easily be found in China: spheres of influence were divided, railway concessions were negotiated with either the Chinese government or the local authorities, and declarations of inalienability were demanded from it in respect of certain territories of interest (Moon, 1947).

As the greatest rising power of the world, the United States had observed the vicissitudes in the Chinese empire with growing concerns. The increase in the number of reservations relating to special privileges for individual powers threatened to undermine the system of the open door in essence. There were even fears for the territorial integrity of China, which was seen as an indispensable prerequisite for the maintenance of the open door. To echo the crisis in the

fragile country, Secretary Hay expressed his concern about the disintegration of the Chinese Empire and the possible reaction of American public opinion on the issue if the U.S. were to participate in the great game of dividing it up. For Washington, it had stressed the necessity of preserving U.S. economic interests in China (Paterson, 1989).

Diplomatically, Hay first addressed the circular note in 1899 to the governments of Britain, Germany and Russia, and then transmitted the same note to the governments of Japan, Italy and France. He called upon all these governments to give assurances that “First, each, within its respective sphere of whatever influence, will in no way interfere with any treaty port or any vested interests within any so-called ‘sphere of interest’ or leased territory it may have in China. Second, the Chinese treaty tariff of the time being shall apply to all merchandise landed or shipped to all such ports as are within said ‘sphere of interest’ unless they be free ports, no matter to what nationality it may belong, and that duties so levied shall be collected by the Chinese Government. Third, it will levy no higher harbor dues on vessels of another nationality frequenting any port in such sphere than shall be levied on vessels of its own nationality, and no higher railroad charges over lines built, controlled, or operated within its sphere on merchandise belonging to citizens or subjects of other nationalities transported through such sphere than shall be levied on similar merchandise belonging to its own nationals transported over equal distances” (Paterson, 1989).

All of the governments, with the exception of Russia, provided the requested assurance—even if they did so under the condition that all of the others did the same. Now China was not only very fragile but also had begun to disintegrate. Facing that the European powers and Japan sought for a punitive expedition against China, the United States feared that such an expedition could have led to a complete partition of the failed Empire. Given this, Secretary Hay addressed a second circular note in 1900 to the other foreign powers that were active in China (i.e. Germany, France, Britain, Italy, Russia, Austria, Belgium, Spain, Japan, the Netherlands and Portugal). In this note he underlined that the U.S. policy was directed at finding a solution, which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire (Paterson, 1989). During the further course of the domestic violence in China, the U.S. Administration pursued a policy of moderation and supported the maintenance of an independent Chinese government. This policy aimed, as Hay explained in one of his notes, to assure equality of treatment of all foreigners.

It is worth noting that during the crisis in China, one seminal treaty assuring the open door principle was concluded in October between Britain and Germany. Such as:

Article 1 defined the consensus between the two governments that it was “a

matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinctions; and the two Governments agreed on their part to uphold the same for all Chinese territory as far as they could exercise influence". Article 2 underlined the principle of the territorial integrity of China. Article 3 stated the two governments' intention "to come to a preliminary understanding as to the eventual steps to be taken, in case of another Power making use of the complications in China in order to obtain under any form whatever such territorial advantage" (Grewe, 2000).

On behalf of the U.S. Administration, Hay expressed the agreement to Articles 1 and 2 of the treaty. Its specific purpose was the loosening of the spheres of influence and the restriction of the exclusive rights of privileged powers. During the time of imperialism, similar developments also occurred in the other major cases of the application of the "open door": in the establishment of this principle for Morocco through the Final Act of Algeciras of 1906, and for Abyssinia through the Anglo-French-Italian Agreement of the same year. Similarly, the General Act of Berlin of 1885 contained provisions concerning the assurance of an open door system for the territory of the so-called "conventional" Congo Basin. It is significant that the open door principle appeared here at a point in time when the interests of the great imperial powers clashed. Although originally a creation of British world colonial policy, which was adopted and supported by the majority of European colonial powers, the principle of the open door acquired its specific character as a result of United States policy and efforts backed up by Britain to protect its overseas trading interests and geopolitical security primarily in China (Grewe, 2000).

4. A Chart from Diplomatic Notes to International Law

From the geostrategic perspective, the Open Door notes contained the first formal policy of the United States concerning matters beyond the Western hemisphere. They thus testified to the fact that, following the war against Spain in 1898, the U.S. formally annexed the Philippines and Guam. Since then, the United States considered itself an established power in the Asian-Pacific and intended to behave accordingly. Driven for its primacy, the United States had assured the Open Door policy along with all legitimate privileged rights to survive the First World War and then continued to play a major role in the global political disputes during the inter-war period (1919-1937). With the *Pax Britannica* during the 19th century collapsed, the British government had to cooperate more with the United States on the issue of China which was also an ally of them during the WWI and particularly at the peace conference in 1919. Under such circumstances, the Washington Conference was initiated by the United States in 1921 for the purpose of restoring a new world order. To that end, the United States needed such a multilateral forum to crush the life out of Japan's hegemony

in China, which was desperate to appeal to international community to redress the aggression of Japan to China in the post-war era (Koo, 1983).

Started in December 1921, the Washington Conference ended in February 1922 with the attendance of all the delegates from the United States, Britain, Japan, France, Italy, China, Portugal, Holland and Belgium. All eight powers had direct or indirect stakes in China when they came to the conference to restore the legitimate order based on the principle of the Open Door, although Japan was an exception. The proceedings at the Washington Conference contained two related but different agendas. One was related to the limitation of armaments as the major issue for the great naval powers—the U.S., Britain, Japan, France and Italy; the other one was focused on the Pacific and Far Eastern questions, which was justly said a “conference on China”. After an enduring negotiation among all sides, the Washington Conference came to the end with the Nine-power treaty on February 6. The moment was historic when China was invited to the Conference in Washington and signed the Nine-power treaty with other great powers, as it was not only treated as an equal partner, but also promised by those powers that they would respect China’s sovereignty, independence, and its territorial and administrative integrity (Morgenthau & Thompson, 1985).

Thus, during the Washington Conference, the Nine-power treaty was written into a law reaffirming the principle of the Open Door Notes as follows:

Article I: The Contracting Powers, other than China, agree:

- 1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;
- 2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;
- 3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;
- 4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

ARTICLE II: The Contracting Powers agree not to enter into any treaty arrangement, or understanding, either with one another, collectively, with any Power or Powers, which would infringe or impair the principles stated in Article I.

ARTICLE III: With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Contracting Powers, other than China, agree that they will not seek, nor support their respective nationals in seeking:

- a) Any arrangement which might purport to establish in favor of their interests any general superiority of rights with respect to commercial or economic development in any designated region of China;

b) Any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

ARTICLE IV: The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory. The spheres of influence along with the previous treatment of all nations (except the Chinese!) equally within their realm were replaced by an open door regime.

ARTICLE V: China agrees that, throughout the whole of the railways in China, she will not exercise or permit unfair discrimination of any kind. In particular there shall be no discrimination whatever, direct or indirect, in respect of charges or of facilities on the ground of the nationality of passengers or the countries from which or to which they are proceeding. The Contracting Powers assume a corresponding obligation in respect of any of the aforesaid railways over which they or their nationals are in a position to exercise any control in virtue of any concession, special agreement or otherwise.

ARTICLE VI The Contracting Powers, other than China, agree fully to respect China's rights as a neutral in time of war to which China is not a party; and China declares that when she is a neutral she will observe the obligations of neutrality.

ARTICLE VII: The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned.

ARTICLE VIII: Powers not signatory to the present Treaty, which have Governments recognized by the Signatory Powers and which have treaty relations with China, shall be invited to adhere to the present Treaty. To this end the Government of the United States will make the necessary communications to non-signatory Powers and will inform the Contracting Powers of the replies received. Adherence by any Power shall become effective on receipt of notice thereof by the Government of the United States (Moore, 1906).

Given the treaties concluded at the Washington Conference, it is fair to say that prior to the Conference, the Open Door had been taken as the principle respecting China's territorial and administrative integrity, but it did not specify the terms in details as Articles I & VI did in the Nine-power treaty. Particularly, the main task of the participants to the conference was to move from mere equal treatment to a general consensus that any foreign powers would not seek exclusive political and economic rights in any parts of China, that is, not to create

spheres of interest in a future China. Thus, the Nine-power treaty defined the open door principle in China as the regime of international law (Morgenthau & Thompson, 1985).

5. Conclusion

The article has argued that the history and the trajectory from the Open Door Notes to the Nine-power treaty are far more complex and far-reaching than they have been depicted. Therefore, the controversy over the dual-dimensions has existed in China and beyond. Yet, some of the arguments have seemed to ignore the reality that China was then deeply divided into the political rifts and its social-economic structure terribly fragile. Thus, the treaty-powers were unwilling to give up their “legitimate” privileged rights in China. In addition, the defender of the Open Door as either political policy or the rule of law would not use force to sustain the principle of equal economic opportunity in China unless its geopolitical concerns and core interests were under direct threats.

Accordingly, the significance of the Nine-power Treaty went out one step beyond the traditional Open Door that aimed to keep the Chinese door open for everyone, literally with each having equal opportunity and with no one receiving special or exclusive privileges. However, under the Nine-power treaty, the Open Door was legally assured of having new meaning as Article 4 of the Nine Power Treaty expressly prohibited the creation of any such spheres of influence in China. Grewe recalled that the spheres of influence were replaced by an “Open Door” regime—a system which had always been sustained by the major powers and the United States particularly.

In practice, international legal norms do play a significant role since treaties are the maids-of-all-work in international law. Historically, treaties are the major instrument of cooperation in international relations, and international cooperation often involves a change in the relative positions of the states involved (e.g. strong sides offer support to weak ones). Treaties, therefore, are often an instrument of change—a point which is forgotten by those who regard international law as an essentially conservative force. The general trend, particularly after WWI, has targeted to enhance the role of treaties in international law-making, partly in response to increasing interdependence, partly as a solution to the controversies that exist between diverse groups of states as to the content and validity of the “unequal treaties” due to the power politics. Now, the globalized world tends to settle disputes by ad hoc compromises—which is sure to appeal to treaties.

The Nine-power treaty finalized the principle of the Open Door Notes as law. Or simply put, only after the conclusion of the Nine-power treaty, were the foreign powers offered the *de jure* force to implement the principle of equal economic opportunities. Without a consensus among the major powers on the issues concerned, there is no basis for them to hold the law of international responsibility collectively and legitimately.

Funding

The authors appreciate the support by China's Major Program of the National Social Science Foundation [22VMG029].

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Boyle, F. A. (1999). *Foundations of World Order 1898-1922* (pp. 95-96). Duke University Press.
<https://doi.org/10.1515/9780822396796>
- de Vattel, E. (2008). *The Law of Nations* (pp. 348-349). Liberty Fund Inc.
- Grewe, W. G. (2000). *The Epochs of International Law* (pp. 477-480). De Gruyter.
<https://doi.org/10.1515/9783110902907>
- Herring, G. (2008). *The American Century & Beyond* (pp. 34-35). Oxford University Press.
- Kennan, G. (1984). *American Diplomacy* (pp. 32-37). The University of Chicago Press.
- Koo, W. (1983). *Reminiscence* (p. 350). China Books Inc.
- Moon, P. (1947). *Imperialism and the World Politics* (p. 321). Macmillan Company.
- Moore, J. (1906). *The Digest of International Law* (pp. 114-117). U.S. Department of State Publication.
- Morgenthau, H., & Thompson, K. (1985). *Politics among Nations* (pp. 54-55, 65). McGraw-Hill Publishing Company.
- Morse, H. B. (1906). *The International Relations of the Chinese Empire* (Vol. 3, p. 240). Shanghai Bookstore Publishing House.
- Paterson, T. (1988). *American Foreign Policy-History* (Vol. 2). D. C. Heath & Company.
- Paterson, T. (1989). *Major Problems in American Foreign Policy: Documents and Essays* (Vol. 2). D. C. Heath & Company.
- Wang, T. (1957). *A Comprehensive Compilation of Sino-Foreign Treaties and Agreements, 1686-1949* (Vol. 3, p. 41). Sanlian Bookstore.