



# ITALIAN LAW IN CHINA? THE TIENTSIN CONCESSION AND ITS LEGAL STATUS

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*Differently from the Italian colonies in Africa, whose status has never been put under discussion during colonial times, the Italian concession in Tientsin (today's Tianjin) has been a possession that received less attention from the Italian government. The same facts of daily life in that remote Italian outpost were minimally present in the Italian chronicles of the time. The Italian scholars who dealt with the possession engaged in a long debate about its legal status giving preference to considering the territory as a concession. Rereading history after many decades, with a broader framework of elements to consider, it might be possible to arrive at different results. In the wake of the most recent studies aimed at reconsidering - even critically - the Italian colonial experience from a legal point of view, this work tries to move in this direction, to try to better understand what the real legal status of the possession was, beyond the official declamations, trying to take into account the different data in possession of scholars who want to deal with the subject.*

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## I. INTRODUCTION

The first attempt to obtain the concession of a piece of land to support the Italian commercial expansion in China dates back to 1899 when Italy tried to gain possession of an area in the San Mun Bay. The attempt failed due to the opposition of the Chinese empire and poor diplomatic management of the affair by the Italian government.<sup>1</sup>

In the meantime, in 1898 a nationalist and anti-Western movement was created in China, known as ‘the Boxer Movement’. At the end of 1899, the Boxers attacked some Westerners, and later, in 1900, assaulted the Christian missions in Chenting Fu and Paoting Fu, as well as European diplomatic missions in Tientsin (today’s Tianjin) and Beijing.<sup>2</sup> The European powers sent troops to China as part of an international police operation to defend Western diplomatic legations in Beijing and Tientsin. Italy also participated in the campaign, sending a military contingent, which – during such campaign – militarily occupied a suburb of the city of Tientsin on 21 January 1901 for the needs of quartering the detachment of sailors disembarked from the royal ships in the context of the international occupation of the city together with the Austro-Hungarian contingent.<sup>3</sup> The establishment of the Italian concession of Tientsin took place precisely on the occasion of that European intervention in China to repress the xenophobic insurrection of the Boxers and further to that military occupation.

In April 1901, the commander of the Italian garrison (Mario Valli) published a notice in Italian and English in the Tientsin Express, which specified the boundaries of the Italian Concession. With the Italian-Chinese agreement of 7 June 1902, the territory it had materially occupied and which extended along the left bank of the Pei Ho River, between the Russian concession, the Austrian concession, and the railway line that linked Tientsin to Beijing was ceded to Italy ‘in perpetuity, as a concession’

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<sup>1</sup> The history of this failed attempt is described in G. Borsa, *Italia e Cina nel secolo XIX* (Cremona: Edizioni di Comunità, 1961), and, more recently R. Quartararo, ‘L’affare di San-Mun. Un episodio dell’imperialismo coloniale italiano alla fine del XIX secolo’ *Clio: rivista trimestrale di studi storici*, 453 (1997). See also A. Di Meo, *Tientsin: la concessione italiana* (Roma: Ginevra Bentivoglio Editoria, 2015) and E. Catellani, *La penetrazione straniera nell’estremo oriente: sue forme giuridiche ed economiche* (Firenze: G. Barbera Edizioni, 1915).

<sup>2</sup> There is a wide bibliography on the Boxer uprising. See – inter alia – V. Purcell, *The Boxer Uprising. A Background Study* (Cambridge: Cambridge University Press, 1963); J.W. Esherick, *The Origins of Boxer Uprising* (Berkeley: University of California Press, 1987); D. Preston, *The Boxer Rebellion* (London: Penguin, 2001); L. Scotto di Tella de’ Douglas, *La rivolta dei «Boxers» nella Cina dal 1899 al 1901* (Roma: Aracne, 2020).

<sup>3</sup> A. Di Meo, n 1 above; L. de Courten and G. Sarger, *Le regie truppe in Estremo Oriente 1900-1901* (Roma: Ufficio Storico dello SME, 2005); G. Manzari, ‘La partecipazione italiana alla spedizione internazionale contro i Boxer (1900): le operazioni del corpo di spedizione italiano e della Regia Marina’, in R.H. Rainero and P. Alberini eds, *Missioni militari italiane all’estero in tempo di pace (1861-1939)* (Roma: Atti del Convegno di Studi tenuto a Milano presso la Scuola Militare dell’Esercito nei giorni 25-26 ottobre 2000, 2001); U. Bassi, *Italia e Cina* (Modena: E. Bassi & nipoti, 1929); A. Tosti, *La spedizione italiana in Cina (1900-1901)* (Roma: Provveditorato generale dello stato, 1926).

and upon payment of an annual fee.<sup>4</sup> The text of the agreement, in 14 articles, in addition to recognizing the borders, established that Italy had full jurisdiction over the occupied lands and that the properties of the Chinese empire passed to the Italian one,<sup>5</sup> while the right of ownership of private individuals was guaranteed, but expropriation was foreseen if necessary for utility or public health purposes.<sup>6</sup>

Regarding the administration of the concession, the administrative responsibility was entrusted from 1902 to 1907 to a royal commissioner who was to operate in conjunction with the Italian consul in Tientsin; subsequently, the concession was governed until 1919 by Vincenzo Fileti, a navy officer, under the supervision of the royal consul. It was then administered directly by the local consulate until 1923, the year in which a regulation was promulgated (the municipal statute) which provided for the creation of a municipal council elected by the residents of the concession. According to the statute, the concession was governed by a municipal administration composed of five elected councilors, with the royal consul as president of the newly established municipal council.<sup>7</sup>

After these short introductory notes, the paper will analyze the legal status of this Italian possession in China as it has been historically presented. Then, it will discuss how life in such possession was regulated from the legal point of view. These discourses would serve to determine what the real legal status of such possession was out of the official declarations, if different, to finally close the paper with some short concluding remarks.

## II. THE OFFICIAL DECLARATION: TIENTSIN AS AN ITALIAN CONCESSION IN CHINA

The Sino-Italian agreement of 7 June 1902 tries to give legal form to the occupation of the area, proceeding to identify the Italian nature of the territory towards the outside, through the indication of the border lines, and towards the inside, introducing a series of limitations on the maintenance of foreign and Chinese properties.<sup>8</sup> It was a private law agreement without the state dimension that only parliamentary approval could have conferred, which did not involve territorial increases or financial burdens.<sup>9</sup> Such a legal instrument is in line with

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<sup>4</sup> Reference is here made to Arts 1 and 12 of the Agreement. The text of the Agreement can be found in E. Catellani, n 1 above.

<sup>5</sup> Arts 3 and 4 of the Agreement.

<sup>6</sup> On the activities undertaken by the Italian government to develop the concession see A. Di Meo, n 1 above; E. Catellani, n 1 above; R.L. Borgnino, 'La 'concessione' italiana in Cina' *Augustea*, 363 (1931); C. Cesari, *Manuale di storia coloniale* (Bologna: Cappelli Edizioni, 1937).

<sup>7</sup> See Art 13 of the Agreement.

<sup>8</sup> L. Nuzzo, 'Italiani in Cina: la concessione di Tien Tsin', in A. Mazzacane ed, *Diritto, istituzioni e economia nell'Italia fascista* (Baden Baden: Nomos Verlag, 2002), 255.

<sup>9</sup> C.E. Balossini, *Concessioni in Cina* (Firenze: Sansoni, 1934); A. Di Meo, n 1 above; A. Bertola, *Storia e istituzioni dei Paesi afro-asiatici* (Torino: Giappichelli, 1964); L. Nuzzo, n 8 above.

the others signed by the Chinese authorities with the other European powers that obtained the allocation of land in Tientsin.

The Agreement (Art 1) speaks about the cession in perpetuity ‘as concession’ of an area on the bank of the Pei Ho River. It does not speak about the transfer of territorial sovereignty but about the exercise of ‘full jurisdiction’ in the same way established for the concessions obtained by the other nations. Indeed, according to the law at that time, a concession was managed by a Western power, but always respecting the sovereignty of the Chinese Empire.<sup>10</sup>

The Italian government, as well as most of the authors at that time, always identified this possession in China as a ‘concession’. This denomination can be found in the *Regolamento Fondamentale* (Fundamental Regulation) of 4 July 1913 concerning the administration of the Italian concession,<sup>11</sup> as well as in the *Statuto Municipale* and the Regulation of its application approved on 3 January 1923.<sup>12</sup>

The management of the concession was initially entrusted to a private commercial company formed by some Italian entrepreneurs who were resident in China because the conditions in which the area was found did not yet allow the establishment of an autonomous municipal council. Some Italian entrepreneurs active in Shanghai set up a limited company charged with carrying out the development works in the concession, in particular the reclamation of the marsh and the leveling of the land, in exchange for the transfer of a large part of the proceeds that would have derived from it. However, the works were not started due to bureaucratic problems linked precisely to the uncertain legal nature of the concession. In 1904 the concession was definitively placed under the direct administration of the Italian state, through the appointment of a royal commissioner who was entrusted with the development and management of the territory.<sup>13</sup>

As far as the jurisdiction is concerned, the regime of capitulations was applied being it still in force in China at the time. Consequently, Italians were subject to the Italian Jurisdiction, while the Chinese inhabitants were subject to the Chinese jurisdiction in those matters not covered by Italian regulations.<sup>14</sup>

On 5 July 1924, a real regulatory corpus of the concession was issued, consisting of four regulations, namely the *Regolamento Fondamentale* (Fundamental Regulation) and the police, building, and health regulations, intended to replace the similar regulations provisionally drawn up during the military administration.<sup>15</sup>

As it has been observed, Tientsin was a possession fundamentally ignored by

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<sup>10</sup> A. Di Meo, ‘Cittadinanza e legislazione civica nella Concessione italiana di Tianjin (1902-1947)’ 22 *Aiônos. Miscellanea di Studi Storici*, 203 (2018-2019).

<sup>11</sup> Available in E. Catellani, n 1 above.

<sup>12</sup> Both in the Dispatch no 200345/1 available at Municipio della Concessione italiana, Tientsin. Regolamenti. Regulations, Tientsin 1924 (cited in L. Nuzzo, n 8 above, fn 74).

<sup>13</sup> A. Di Meo, n 10 above; L. Nuzzo, n 8 above.

<sup>14</sup> S. Romano, *Corso di diritto coloniale* (Roma: Athenaeum, 1918); U. Borsi, *Principi di diritto coloniale* (Padova: CEDAM, 1941).

<sup>15</sup> The *Regolamento Fondamentale* (Fundamental Regulation) can be found in *La concessione italiana di Tianjin 1901-1947*, available at <https://tinyurl.com/3x5649ye> (last visited 30 May 2025).

Italian law, which remained concealed for almost fifty years, until September 1943, and which officially ended only with the Treaty of Paris of 1947 with which another purely private law instrument, a current remedy for the hypotheses of invalidity of a contract – the annulment of the contract – returned it to the Chinese government.<sup>16</sup>

### III. THE ITALIAN POSSESSION IN TIENTSIN BETWEEN SETTLEMENT AND CONCESSION

The most debated issue by the doctrine that has dealt with the problem has been the legal nature of the concession of Tientsin. The scholars who have addressed the subject have been almost unanimous in excluding that it could be classified as a colony.

As already said, the 1902 agreement sought to give legal form to the occupation of the Tientsin area, granting full jurisdiction to the Italian government and introducing a series of limitations on the maintenance of Chinese or foreign property. The legal form used was that of the concession, free from any time limit ('in perpetuity') or economic burden, apart from the payment of an annual rent. The issue is whether the use of the concession and the payment to the local authorities of an annual rent has allowed China to maintain sovereignty or, instead, if the perpetuity of the concession, the granting of full jurisdiction, and the recognition of Italian ownership 'without any payment' (Art 3) would have realized a full transfer and created territorial rights.<sup>17</sup>

As said, the Italian authors who analyzed the status of the Italian possession in Tientsin have been almost unanimous in considering it a concession, in line with its letteral definition in the Sino-Italian Agreement.<sup>18</sup> However, to answer the basic question about the nature of the possession, it is necessary to reconstruct the meanings of concession and colony, and, even before that, to identify the distinctive features between the term concession and that of settlement.

The origin of the settlements was traced back to the Sino-British Treaty of Nanking of 1842,<sup>19</sup> by which Westerners were allowed – either by custom or by

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<sup>16</sup> L. Nuzzo, n 8 above who, at fn 7 cites Art 15 of the Decreto legislativo del Capo provvisorio dello Stato no 1430 of 28 November 1947: 'Italy accepts the cancellation of the lease contract granted to it by the Chinese Government on the basis of which the Italian concession in Tien Tsin was established and also agrees to transmit to the Chinese Government all the assets and archives belonging to the Municipality of said concession'.

<sup>17</sup> In this sense, again, L. Nuzzo, n 8 above.

<sup>18</sup> S. Romano, n 14 above; U. Fragola, *Manuale di diritto coloniale comparato* (Napoli: Humus, 1948); C.E. Balossini, n 9 above; C. Cesari, n 6 above; E. Catellani, n 1 above; A. Bertola, n 9 above.

<sup>19</sup> With the conclusion of the Treaty of Nanking, England obtained since 1842 the opening of five commercial ports, and, with the General Regulations of Trade of the following year, the introduction of the principle of jurisdictional extraterritoriality to promote the development of commercial activities. On the English presence in China see T. Yang, 'Redefining Semi-Colonialism: A Historiographical Essay on British Colonial Presence in China' 3 *Journal of Colonialism and*

exclusive or optional allocation – to settle in open ports and maintain their commercial activities there; and where a common principle in all concessions was that these remained Chinese territory assigned, as regards to residence, property and administration, to foreigners.<sup>20</sup> Precisely based on these considerations, and having regard mainly to the official motivations that had pushed the Italian government to request the assignment of the Tientsin area, it was believed that the latter should be considered as a settlement.<sup>21</sup>

The Italian doctrine at that time was very active in elaborating on the distinction between settlement and concession. Some authors did not detect any fundamental difference between the two terms, up to using them as synonyms.<sup>22</sup> Others considered settlement and concession from the perspective of the transfer of land tenure rights. Starting from this point of view, the settlement only indicated an establishment of foreign citizens on the Chinese soil, that is, in a closed territorial space, separated from the rest of the local population and subject to legislative, executive, and jurisdictional control by the consular authorities, while concession – on the contrary – was referred to a transfer of land rights between two public law entities, the Chinese government and the concessionary State, which in turn could transfer them to private entities.<sup>23</sup>

Following this approach, however, the Tientsin area would have been a concession and not a settlement, because the Sino-Italian agreement of 1902 assigned the area to the Italian state which would – then – make it available to its citizens and therefore attributed by the Chinese government to the Italian state and not to private individuals.<sup>24</sup>

As Luigi Nuzzo observed, despite the theoretical differences between the two institutions, a widespread indeterminacy can be felt in the doctrine and in the official documents, a continuous overlapping of meanings that highlights the influence exercised by the English model in the construction of a colonial space in China aiming at guaranteeing residents the free exercise of commercial activities

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*Colonial History*, (Winter 2019), available at <https://tinyurl.com/3kuuvypw>. See also P.H. Ch'en, 'The Treaty System and European Law in China: A Study of the Exercise of British Jurisdiction in Late Imperial China', in W.J. Mommsen and J.A. De Moor eds, *European Expansion and Law: The Encounter of European and Indigenous Law in 19<sup>th</sup> and 20<sup>th</sup> Century Africa and Asia* (Oxford: Berg, 1992), in L. Nuzzo n 8 above.

<sup>20</sup> Luigi Nuzzo, n 8 above.

<sup>21</sup> E. Catellani, n 1 above.

<sup>22</sup> *ibid*; C. Cesari, n 6 above.

<sup>23</sup> C.E. Balossini, n 9 above; A. Cicchitti, 'Se la concessione italiana di Tientsin sia un possedimento coloniale' *Rivista di diritto pubblico*, 141 (1929), (who, while referring to the differences between concession and settlement, uses the two terms interchangeably). See also J. Escarra, *La Chine et le droit international* (Paris: Pedone, 1931); M. Yoshitomi, 'Les zones soumises à l'administration étrangère en Chine au point de vue du droit international' *Revue générale de droit international public*, 210 (1927).

<sup>24</sup> P. Callaini, *I settlements europei nei porti aperti della Cina. Studio di diritto internazionale pubblico* (Firenze: Tipografia Cenniniana, 1909).



under the protection of the laws of their nationality.<sup>25</sup> A semantic insecurity that revealed, at least in the initial phase of the Italian occupation, also a profound indecision in the choice between two different strategies for the control of the Chinese possession: a continental one, dominated in the construction of the relations between politics, law and economy by the idea of state pre-eminence, and the other, more flexible, based on the English model, open to private individuals and their interests and tending to separate control of the territory and management of productive activities.<sup>26</sup>

As mentioned above, the concession was created through a private law agreement that did not require legislative ratification since no new areas were acquired. The Italian government officially rented lands that were already materially occupied, without any increase in the national territory. The absence of approval by the parliament and the payment of an annual fee led the doctrine, almost unanimously, to recognize the permanence of Chinese sovereignty over the concession and to exclude that this could be classified as a colony.<sup>27</sup>

One might ask here how much the ethnocentric approach has (little) influenced the classification of this Italian possession, especially if one compares this Italian *modus operandi* with the one adopted in the African territories.<sup>28</sup>

One might also ask how much the classification of the possession was influenced by the desire not to irritate the Chinese counterpart, having considered the less-than-successful precedents of Italian territorial claims in China and the uncertainties shown – at least in the initial period – in the diplomatic relations with the Celestial Empire (it is very curious the fact that the text of the agreement was not published in the official documents of the Italian Kingdom and can be found as attachment in the works of some of the authors who wrote about the Tientsin possession)<sup>29,30</sup> The official position adopted by China, which considered extraterritorial jurisdictions an exception to the ordinary principle of Chinese jurisdiction over its territory

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<sup>25</sup> L. Nuzzo, n 8 above.

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> On the Italian system of administration of African colonies see S. Mancuso, *African Law(s)* (Leiden: Brill, 2023); N. Papa, *L'Africa italiana* (Roma: Aracne, 2009); L. Martone, *Diritto d'oltremare. Legge e ordine per le colonie del Regno d'Italia* (Milano: Giuffrè, 2008); E. Cucinotta, *I conflitti di leggi nell'Africa italiana* (Padova: CEDAM, 1943); A. Macchia, 'Consuetudine e legge nel diritto coloniale' *Rivista di diritto coloniale*, 158 (1941); R. Sertoli Salis, *La giustizia indigena nelle colonie* (Padova: CEDAM, 1933).

<sup>29</sup> One of the authors who attached the text of the Agreement is E. Catellani, n 1 above.

<sup>30</sup> Such attitude can be traced from the delay and subsequent suspension by the Italian parliament of the approval of a law to grant a concession to a company for the territorial development of the Tientsin concession for reasons of political opportunity, which dissuaded to open – at that moment – a discussion related to China'. See the note by the undersecretary of foreign affairs (Roma, 18 January 1905) G. Fusinato, 'Osservazioni sul quesito posto dal R. Console in Tientsin nel suo rapporto del 20.11.1904, sulla necessità o meno, di una legge speciale per dar facoltà al Governo di alienare tratti di terreno nel "settlement" italiano di Tientsin' *ASMAE Serie P*, pos. 86/37, pac. 428 (1908-1910), in L. Nuzzo, n 8 above, fn 61.



justified this soft approach.<sup>31</sup>

Such a low-profile attitude can be confirmed by considering that, as it has been acutely observed, the existence of the concession could equally have been considered legislatively approved – with the consequent *de facto* overcoming of the lack of parliamentary ratification – through the law of 30 May 1912, which authorized the *Cassa Depositi e Prestiti* to advance sums to the administration of the concession, which constituted a clear recognition of the possession by the legislative power.<sup>32</sup>

Moreover, despite the formal absence of effective territorial sovereignty, Italy enjoyed the exercise of sovereign powers, formally recognized by Art 1 of the agreement and expanded by the perpetual nature of the concession. Perpetuity represented a determining element of the institution, an exception to the normal temporariness of lease concessions, which broke the linearity of the dogmatic categories within which the doctrine was struggling to classify the Italian experience and through which it reaffirmed the preeminence of the juridical moment in the construction of the economic and political discourse.<sup>33</sup> The recognition of Chinese sovereignty and the maintenance of Chinese ownership of the leased territory were thus reduced to a simple declamation, rendered ineffective by the perpetuity of the concession.<sup>34</sup> The same use of the term ‘concession’ was necessary because at that time land in China was owned only by the emperor who could have transferred land only by leaseholds, an institution which does not exist under Italian law, so the stratagem to use the institution of the concession with the introduction of the perpetuity.

After all, the same governor Vincenzo Fileti observed that ‘it was a formality, because, *de facto*, in addition to the ownership, we are recognized to exercise our ‘full jurisdiction’’, revealing – with the use of the word ‘ownership’ – what was the real perception from the Italian side.<sup>35</sup>

#### IV. A POSSIBLE ALTERNATIVE: THE TIENTSIN POSSESSION AS A ‘HYBRID COLONY’

A possible different consideration of the legal status of such Italian presence in China could move from the analysis of the two published cases related to the possession which – perhaps perceiving the interest of the Italian government in the definitive transformation of the concession into a real colonial possession –

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<sup>31</sup> On the Chinese position see N. Wing Mah, ‘Foreign Jurisdiction in China’ 18(4) *The American Journal of International Law*, 676 (1924).

<sup>32</sup> A. Bertola, n 9 above.

<sup>33</sup> It shall be noted that Hong Kong was also granted to Britain as a concession to be administered by the British crown in perpetuity and governed through the laws and regulations Britain would have extended to Hong Kong.

<sup>34</sup> L. Nuzzo, n 8 above.

<sup>35</sup> V. Fileti, ‘Proposte che riterrei opportuno fare’ *Archivio Storico del Ministero Affari Esteri*, Serie P, pos. 86/37, pac. 429 (1910-1913), in L. Nuzzo, n 8 above, fn 34.

began to legally give floor to this ‘masked’ form of sovereignty. In 1923, the Consular Court of Tientsin, called upon to rule on a violation of the building regulations of the concession regarding the respect of distances between buildings, rejected the exception of incompetence raised by the defendant of Chinese nationality based on the procedural rules that governed

‘actions on immovables existing in the kingdom, that is, actions of a patrimonial nature which by their nature (...) require that compliance with the law be ensured with its application by national courts’.<sup>36</sup>

Such continuous erosion of the Chinese sovereignty was confirmed by the decision of the Court of Appeal of Ancona, competent according to consular law to judge on appeal on the cases decided by the Consular Court of Tientsin,<sup>37</sup> which confirmed the decision, proclaiming the applicability of Italian law and the impossibility for the State to ‘abdicate its jurisdictional function in relation to things, acts and persons, whether citizens or foreigners, as long as they live in the territory itself’.<sup>38</sup>

As it has been correctly observed, the Court of Appeal went further concerning the assumptions of the Consular Court. On the one hand, the special nature of the settlement was reaffirmed, ‘a public body that lives in a foreign territory, and therefore does not have and cannot have all the attributes of sovereignty’, at the same time, however, this limitation was nullified by reaffirming the full jurisdiction over all residents ‘without regard to their nationality’ (thing – after all – that happened in all Italian colonies) and above all the doubt was introduced that the recognition of the power to fully exercise the jurisdictional function could express, ‘if not a transmission of territorial sovereignty, a tacit delegation of it’. A doubt resolved with the recognition of the concession as a municipal body with its statute, which exercised ‘in reality a true sovereign power’ and which unequivocally manifested ‘the evident tendency to transform [the concession] into a possession having a full colonial character’.<sup>39</sup> In this way, the judges consented to overcome the last doubts that prevented the concession from being considered a territory of the kingdom under full Italian ownership, thus giving legal form to the government’s aspirations for colonial possession in the Far East.

Before going further – and therefore considering whether the Tientsin concession could be configured as a colony in all respects – it is necessary to briefly dwell on the very concept of colony.

There was a consensus in considering a colony as any territory that a State owns outside its borders and on which it exercises political authority and

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<sup>36</sup> Tribunale Consolare Italiano di Tientsin 23 April 1923, *Foro italiano*, I, 439 (1924). This point of the decision is criticized by Arrigo Cavaglieri in his commentary to the decision on the basis that the territory of the Italian concession of Tientsin is not legally a territory of the kingdom.

<sup>37</sup> See Arts 105 and 139 of the Royal Decree 28 January 1866 n 2804, as amended by Royal Decree 14 May 1894.

<sup>38</sup> Corte d’Appello di Ancona 1 July 1925, *Foro italiano*, I, 195 (1926).

<sup>39</sup> L. Nuzzo, n 8 above.

jurisdiction.<sup>40</sup> Consequently, the colony was not independent, it was a territory for the expansion of the colonial power. The colonies were distinguished among commercial colonies, whose purpose was to develop commercial activities in the colonized territory; exploitation colonies, created to secure constant flows of goods to the motherland; and settlement colonies created to direct in that territory emigration from the mother country.<sup>41</sup>

As mentioned above, the Italian doctrine at the time was almost unanimous in denying the status of the colony to the Italian possession in Tientsin. As Santi Romano observed, the fundamental element to speak of a colony is that the colonizing state exercises power over the colonized territory, and it matters little that the colonies are in some cases designated with names that seem to exclude that they belong to the metropolitan state. The same author analyzed the lease concessions granted by the Chinese government, which he assimilates to the concessions in administration, to conclude that they cannot be classified as colonies since the power of the Chinese state was not transferred and the leases were temporary and excluding any full power of the transferee over the territory. As a consequence, he did not consider the Tientsin concession as a colony.<sup>42</sup>

If this last construction is theoretically correct, the argument is not convincing since it does not consider that the Tientsin concession was granted to the Italian government in perpetuity and not temporally and that the Chinese government granted to the Italian one 'full jurisdiction' over the territory.<sup>43</sup> It is exactly the concession in perpetuity that makes the difference with the other treaties.<sup>44</sup>

Another position that was highly considered, emphasizes the fact that the Italian concession is one among others that have been granted by the Chinese government to other countries, and therefore – from the legal point of view – it should have been considered in line with the others granted to the other countries, to be interpreted in the same way.<sup>45</sup>

The opposite argument looks at the Sino-Italian agreement as an autonomous agreement, with its own characteristics. The consequence is that, through it, China lost its sovereignty over the territory constituting the Tientsin possession, based on the following considerations.

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<sup>40</sup> In these terms see A. Bertola, *Corso di diritto coloniale* (Torino: Giappichelli, 1941). On the concept of colony see also R. Quadri, *Diritto coloniale* (Padova: CEDAM, 1958); U. Fragola, n 18 above; S. Romano, n 14 above; R. Sertoli Salis, *Nozioni di diritto coloniale* (Milano: Biazzi Edizioni, 1938); U. Borsi, n 14 above; J. Axel Kämmerer, 'Colonialism', in A. Peters, and R. Wolfrum eds, *Max Planck Encyclopedia of Public International Law* (2018), available at <https://tinyurl.com/3anxcaws> (last visited 30 May 2025); T. Olawale Elias, 'Form and Content of Colonial Law' 3(4) *The International and Comparative Law Quarterly*, 645 (1954); M.G. Stanard, *European Overseas Empire, 1879-1999: A Short History* (Hoboken: John Wiley & Sons, 2018).

<sup>41</sup> S. Romano, n 14 above.

<sup>42</sup> *ibid*

<sup>43</sup> Art 1 of the Sino-Italian agreement of 7 June 1902 above.

<sup>44</sup> This is the view of A. Cicchitti, n 23 above.

<sup>45</sup> E. Catellani, n 1 above. On the same position C.E. Balossini, n 9 above.

First, it is highlighted that the agreement does not include any provision concerning revocability or release of the concession, which would have been incompatible with perpetuity (similarly, the lease in perpetuity granted to the British on Kowloon was transformed into a colony). Secondly, reference is made to the power to exercise full jurisdiction granted to Italy: in the agreements entered into before that of Italy, an express reservation to safeguard the Chinese sovereignty was inserted, a clause that was not contemplated in the Sino-Italian agreement of 7 June 1902. Third, the agreement includes the most favored nation clause in favor of Italy, without reciprocity for China.<sup>46</sup>

Furthermore, to refute the thesis that the Italian concession should have been legally considered in line with the others granted to the other countries, the same author puts forward another interesting literal element, the fact that Art 1 of the Sino-Italian agreement puts the wording ‘in which the Italian government will exercise full jurisdiction’ within two commas, so rendering the proviso independent from the part concerning the reference to the other concessions.<sup>47</sup> He also adds that the following Art 8 imposes on the Chinese inhabitants of the territory the Italian legislative power.<sup>48</sup>

If the third reasoning does not seem to be decisive, the others seem more convincing in tipping the scales in favor of the classification of the concession as a colony.

Given (or Because of) the peculiar situation outlined above, at this point one could – perhaps – move from the identification of the Tientsin concession as an ‘improper colony’<sup>49</sup>, and speak about a ‘hybrid colony’, whose characteristics of hybridity can be based on the following elements.

Despite the declamation outlined in Art 1 of the Sino-Italian Agreement, the Tientsin possession *de facto* falls within the requisites that have been identified above to have a colony because it was a territory that Italy owned outside its borders and on which it exercised political authority and jurisdiction. The exercise of political authority can be inferred from the undisputed enactment of the different regulations mentioned above (*Regolamento Fondamentale*, *Regolamento di Polizia ed Igiene*, *Regolamento Edilizio*, *Statuto Municipale*, and *Regolamento Municipale*) having full effect in the territory of the Italian possession, from the imposition of taxes, from the presence in Tientsin of an Italian military contingent and of a detachment of the Italian police present there to maintain public order, and from the administration of

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<sup>46</sup> A. Cicchitti, n 23 above.

<sup>47</sup> The text of Art 1 of the Sino-Italian agreement reads as follows ‘To favor the development of the Italian commerce in the North of China, and especially in the Cili province, the Chinese Government agrees to give in perpetuity to the Italian Government, as concession, an extension of land on the bank of the Peiho river, in which the Italian government will exercise full jurisdiction, in the same way established for the concessions obtained by other nations’. The following Art 14 expressly provides that only the Italian version is authentic.

<sup>48</sup> A. Cicchitti, n 23 above.

<sup>49</sup> A. Di Meo, n 10 above; U. Borsi, n 14 above.

the possession entrusted to the Italian consul. The exercise of full jurisdiction is witnessed by the operativity of the Consular Court of Tientsin and the appointment of a Court in Italy (Ancona) as the appeal jurisdiction against the decision of the Consular Court, other than being expressly mentioned in the same Article 1 cited.

Secondly, in Italy the administration of the possession was made through the Italian Ministry of Foreign Affairs, rather than the Ministry for the Colonies as happened for the Italian possessions in Africa.<sup>50</sup> This because the person in charge of the on-site administration of the possession was the consul and not a governor reporting to the Ministry for the Colonies like in the Italian colonies in Africa.

As already ventilated before, the reason for this attitude – which was absent in the Italian colonial experience in Africa – seems to be the intention of not creating diplomatic issues with the Chinese counterpart, especially after the previous unsuccessful experience, intention that can be detected in the carefulness with which the use of the word ‘colony’ has been always used sparingly even during fascism, when it was clear that the expansionistic move of the regime brought the Italian government to openly declare it a stable presence of Italy in the Far East.<sup>51</sup> This is evidenced by an article published on 12 April 1932 by the Turin daily newspaper ‘La Stampa’, which – recalling the 1911 approval of the expenditure item in favor of the Tientsin concession – defined it as ‘a microscopic colony’,<sup>52</sup> only to then reconsider it as Italian territory in all respects in a subsequent article dated 30 August 1939.<sup>53</sup>

A consequence of this attitude can be considered the fact that differently from the Italian possessions in Africa, where the local population have always been considered with a connotation of inferiority, in Tientsin the Chinese people living there kept their own rights and was involved in the administration of the Italian municipality.<sup>54</sup>

Third, the hybridization derives from the obligation that Italy had to pay a fee (one *tiao*) to China, and from the obligation to grant to the Chinese inhabitants the possibility to resort to the Chinese jurisdiction in the domains not covered by the Italian regulations.<sup>55</sup> It is worthwhile to remember that such a system is not

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<sup>50</sup> The Ministry of Colonies was a department of the Kingdom of Italy, with jurisdiction over the administration of colonial possessions. It was established with the Royal Decree 20 November 1912 no 1205, in 1937 further to the Law 6 July 1912, no 749 authorizing its creation, whose Art 1 stated ‘The Ministry of Colonies is established in Rome, from which Tripolitania, Cyrenaica, Eritrea, Italian Somalia and the protectorates of northern Somalia depend’. It changed its name into the Ministry of Italian Africa by Royal Decree 8 April 1937 no 431, stating ‘The name of the Ministry of Colonies is changed into “Ministry of Italian Africa”. Libya and Italian East Africa depend from it.’ It was abolished in 1953.

<sup>51</sup> C. Cesari, n 6 above who, at 99, cites Benito Mussolini’s definition of the Tientsin possession as ‘advanced sentinel of the Italian civilization’.

<sup>52</sup> ‘La nostra concessione di Tien-Tsin’ *La Stampa*, 11-12 April 1932, 1.

<sup>53</sup> ‘A Tien Tsin, ma in Italia. Nascita, vita e sviluppo della nostra concessione in Cina’ *La Stampa*, 30 August 1939, 5.

<sup>54</sup> A. Di Meo, n 10 above.

<sup>55</sup> R. Quadri, n 40 above considered the Tientsin possession as a normal territorial transfer

that much different from what happened in the colonization of its African territories, where Italy used the ‘double track system’, through which Italian citizens and those assimilated were subject to the application of Italian law, while the Indigenous people were subject to their traditional rules applied by the traditional judge.<sup>56</sup>

These peculiarities of the Italian administration of the Tientsin possession hybridize the traditional conception of colonies by inserting important elements of differentiation with it, which – however – do not undermine the fundamental characteristics of a colonial possession.

## V. WAS ANY ITALIAN LAW IN FORCE IN TIENTSIN?

Another argument that could be in favor of the recognition of the Tientsin possession as a colony – even if a ‘hybrid’ one – could be inferred from the possibility to apply Italian law in the possession.

It shall be said that there is no official legal instrument extending the application in Tientsin of the Italian law in force at that time, and only the two judgments from the Consular Court of Tientsin and the related appeal decision of the Court of Appeal of Ancona seems to have been published. Already there – however – we find elements in favor of the validity of Italian law in Tientsin when the Court of Appeal of Ancona, while confirming the decision by the Consular Court of Tientsin, expressly proclaimed the applicability of Italian law, as already recognized in some scholarly works.<sup>57</sup>

If, at its beginning, the administration of the possession was merely on a military basis, it subsequently evolved into a civilian administration which had to be made with proper rules. The Italian government always considered Tientsin as a sort of ‘overseas municipality’, and the regulations explicitly issued for Tientsin dealt with matters concerning the municipal administration of the territory.<sup>58</sup> Furthermore, for those matters concerning municipal administration not covered by the regulations, the Italian municipal and provincial law was applicable.<sup>59</sup> However, these are – in any case – pieces of Italian law.

In the aforementioned aim of avoiding diplomatic incidents with the Chinese counterpart, the Italian government was very sparing in issuing specific legislative

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qualified by the elements mentioned in the text.

<sup>56</sup> R. Sertoli Salis, *La giustizia* n 28 above, who also discusses about the difference between the approach with a unique judiciary and the one with two separate judiciaries, one for the colonizers and another for the colonized people, and the reasons brought forward by the Italian doctrine to support the latter position.

<sup>57</sup> See, for example, E. Catellani, n 1 above, from which the differences between the Italian and the other settlements can be inferred.

<sup>58</sup> The section refers to the *Regolamento Fondamentale*, *Regolamento di Polizia ed Igiene*, *Regolamento Edilizio*, *Statuto Municipale* and *Regolamento Municipale* mentioned above in the text.

<sup>59</sup> R. Sertoli Salis, *Nozioni* n 40 above.



instruments for the Tientsin possession: after all, the extremely limited territorial extension of the possession greatly facilitated this possibility. However, if we take as examples the judgments of the Consular Court of Tientsin and the Court of Appeal of Ancona mentioned above, we realize how – once again in fact, and not explicitly – the extension of Italian law to Tientsin to some extent took place.

Looking at the case decided by the Consular Court of Tientsin, it is indicated that the cases were handled following the rules of procedure of the Italian Civil Procedure Code, whose Arts 105 and ff had been also used by the court to indirectly affirm that the territory had to be considered part of the Italian kingdom, being this kind of actions related to ‘immovables existing in the kingdom’.<sup>60</sup> In confirming the ruling by the Consular Court of Tientsin, the Court of Appeal of Ancona added that Art 1 of the 1902 Sino-Italian Agreement

‘gives full jurisdiction to the Italian authority: and this means that those who live in the territory are all, without any exception, subject to the empire of Italian laws. If the exception were possible, the jurisdiction would not have been full’.

The same court confirmed once again that

‘in legal disputes relating to immovables rights, which arise in the territory of the concession, if the law to be applied is Italian law, the jurisdiction to judge can only belong to the national jurisdictional body, ie the Consular Court of Tientsin’.<sup>61</sup>

Furthermore, a general principle was that the jurisdiction falls to the Italian authority as regards immovables located in the territory: the *Regolamento Edilizio* (Building Regulation) explicitly stated that ‘all disputes that may arise between two neighboring owners and regarding their rights and duties in relation to their properties, will be brought before the Italian Consular Court in Tientsin and judged according to Italian law’,<sup>62</sup> a principle expressly incorporated in the 1923 ruling of the same court cited above. Consequently, Italian law concerning private property (that is the Italian civil code) was applicable in this matter.<sup>63</sup>

In criminal matters,<sup>64</sup> the Italian courts stated several times that in territories occupied by Italian armed forces the Italian criminal law was applicable (and – consequently – the related rules of procedure) since those territories could not have been considered as foreign territories,<sup>65</sup> and the Italian possession of Tientsin was

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<sup>60</sup> Tribunale Consolare Italiano di Tientsin 23 April 1923, n 36 above.

<sup>61</sup> Corte d’Appello di Ancona 1 July 1925, n 38 above.

<sup>62</sup> Art 11 of the *Regolamento Edilizio*.

<sup>63</sup> S. Romano, n 14 above; R. Sertoli Salis, *Nozioni* n 40 above.

<sup>64</sup> Here reference is mainly made to the 1889 Italian Penal Code, which was replaced in 1930 by the Penal Code presently in force in Italy.

<sup>65</sup> Corte d’Appello di Bari 2 December 1924.



guarded by the royal military police (*carabinieri*) and a military garrison. In addition, the Italian Supreme Court (*Corte di Cassazione*) on different occasions ruled that a territory where the regimen of the capitulations is in force shall be equated to the national territory, with the consequence that a crime committed in such territory shall be punished according to the Italian law since it cannot be considered as committed abroad.<sup>66</sup>

## VI. SOME SHORT CONCLUDING REMARKS

The Italian possession in Tientsin represents a very particular case in Italian colonial history. Born under the desire to imitate the other European powers in having territory in China, its status has never been fully clarified by the Italian government and – consequently – by the Italian scholarship which preferred to keep it in the ‘limbo’ status mentioned above, anchoring their official position to the literal declamations contained in the official documents.

The history of the Sino-Italian relations at that time witnessed the reluctance of the Chinese empire to grant territorial possession to Italy, and the substantial indifference from the other European powers, whose wavering attitude did not facilitate the Italian attempts to obtain such possession. Italy itself was not very straightforward in its quest for support from the other countries who were already present in China with their possessions, maybe also due to the internal debate on the real advantage of having a territorial possession in a place so far from the metropolis.<sup>67</sup>

Italy was very effective in grabbing the opportunity given by the need from the Chinese empire to repress the Boxers revolt, to obtain its territorial possession in China, together with the other countries who participated in the campaign.

The peculiarities of the Sino-Italian agreement by which the transfer of the land was officialized, how the territory was administered, and the caution in avoiding further diplomatic issues with China, had been all factors that prevented a resolute move towards a full exercise of colonial powers and hybridized how such powers were exercised. Most likely, Italy realized that China could not have been treated in the same way as the African territories and more caution should have been exercised to keep peaceful relations with the Celestial Empire. The official positions of the Italian government and the dominant position in Italian scholarship are clearly in this direction.

It is only with the advent of fascism that the positions of the Italian government

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<sup>66</sup> Corte di Cassazione 12 October 1925 *Foro Italiano*, II, 55 (1926); Corte di Cassazione 14 October 1925; Corte di Cassazione 5 February 1926; Corte di Cassazione 26 March 1926, ‘Reato commesso all’estero’ *Repertorio del Foro Italiano* entry nn 3, 4, 6 e 7 (1926); Corte di Cassazione 21 October 1927, *Foro Italiano*, II, 86 (1928). See also G. Escobedo, ‘L’art. 5 c.p. e i reati commessi dal cittadino in paesi di capitolazione’ *Giustizia penale*, 487 (1926).

<sup>67</sup> Such a situation is clearly described in A. Di Meo, n 10 above.

moved more clearly toward considering the Tientsin concession as a colonial possession. However, even in that period – characterized by propaganda promoting a strong sense of the nation and its centrality in international relations – such shift seems always to take into account (in line with what countries like England<sup>68</sup> and Portugal<sup>69</sup> did by transforming in subsequent stages their Chinese possessions into colonies) the need to consider that the Chinese possession should have been treated in a slightly different way from the other colonial territories.

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<sup>68</sup> The Qing dynasty ceded Hong Kong to the British Empire in 1842 through the Treaty of Nanjing, ending the First Opium War. Hong Kong then became a British crown colony. Britain also won the Second Opium War, forcing the Qing Empire to cede Kowloon in 1860 after its occupation during the conflict, while leasing the New Territories for 99 years from 1898 which were subsequently annexed to the Hong Kong colony. On the subject see, *inter alia*, S. Tsang, *A Modern History of Hong Kong: 1841-1997* (London: Bloomsbury Academic, 2019); Tak-Wing Ngo ed, *Hong Kong's History: State and Society Under Colonial Rule* (London: Routledge, 1999).

<sup>69</sup> The Portuguese control over Macao started with establishment of the Portuguese settlement in 1557. From 1849 began the colonial period, which scholars generally place from 1849 to 1974. Portuguese sovereignty over Macau strengthened and it became a constitutional part of Portuguese territory, as formalized in Law n 1/76 (*Estatuto Orgânico de Macau*) which expressly identifies Macao as a 'territory'. See Z. Hao, *Macao History and Society* (Hong Kong: Hong Kong University Press, 2011).