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# The Chinese Approach to International Law: An Overview

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# Introduction

- China is a socialist country with a leading party, the Chinese Communist Party.
- However, the Chinese economic system is no longer the orthodox interpretation of Marxism. In 1982, the Chinese Government started the project to realize the so called “Market socialism”.
- The aim of these reforms was to privatize a consistent part of public industries to make China more competitive at international level. This made the economic system very similar to a corporatism because the State still controls the economy and the central party have the power to allocate resources in relation to needs of the Chinese market.
- This political and economic system is very far from the “Western” concept of democracy and economic freedom.



## Glossary

**Century of humiliation** is the term used in People's Republic of China (PRC) to describe the period of intervention and subjugation of the Chinese Empire and the Republic of China (ROC) by Western powers, Russia and Japan in between 1839 and 1949.

**Old China** is the term used in PRC to describe the period of the Chinese Empire and the Republic of China.

**New China** is the term used to define the PRC.

**Unequal treaties:** bilateral or multilateral treaties concluded in the late 19th and early 20th century between Western states with China. The majority of these treaties provided clauses of extraterritoriality, most-favored nation, territorial cessions, and stationing of foreign military units among other restrictions. The inequality was evident in the nonreciprocal nature of the agreements as they conferred all rights to the great powers and imposed all duties on the less powerful country. Under the Western-dominated international law, they reflected the relations between “civilized nations” and “uncivilized nations”.

# Traditional Chinese View of World Order

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**The *Qin* Dynasty in 221 B.C unified all the warring states and founded the Chinese Empire.**

**The Chinese world order was based on the Confucian doctrine.**

- **Concept of *Tianxia*, literally “all under Heaven”:** it was the geographical space of East Asia in which China conceived itself as the center (**the Middle Kingdom**).
- China was the center of civilization.
- Chinese Emperor claimed to be *Tianzi* (the Son of Heaven), who had supreme power to reign and rule over all human affairs (Chinese universal empire).
- Chinese superiority was not one of more material power but of culture.
- Distinction between civilization and barbarity: barbarity was not tested by race, religion, language or national origin as the semantic force of the term was to Greeks and Latins; barbarian was who did not accept Chinese civilization; this distinction was based on a cultural rather than political ground.
- All peripheral countries, the Tributary States, Nepal, Korea, Annam (Northern Vietnam), Siam (Thailand), Burma (Myanmar), Japan, and the small island kingdom of *Liuqiu* (Ryukyu Islands), came under the powerful shadow of Chinese civilization.



**Qin Shi Huang**

## Tribute system

- The Chinese Emperor had authority for sending envoys to officiate at the investitures given by the imperial court to the rulers of Tributary States, conferring on them the imperial patents of appointment and noble titles in the hierarchy of Imperial China, and granting to them official seals for use of correspondence.
- China also had responsibility for assisting Tributary States in times of foreign invasion or natural disaster.



- In return, Tributary States were obliged to honor China as the superior state by presenting periodic tribute of local products and tribute memorials of various sorts on appropriate statutory occasions as well, by requesting the investiture of their rulers, and by dating their communications by the Chinese calendar-based or the reign of the Emperor.

**Note:** The rigidity of the tribute system was reflected in the *Collected Statutes of the Qing Dynasty (Da Qing Huidian)*, which prescribed regulations in specific terms on such matters as the frequency and size of tributary missions, the designated points of entry and departure, as well as the routes to be traveled in China by each mission, the appointment of Chinese envoys to deliver imperial edicts to the rulers of Tributary States, and ritual requirements to be observed at the court. Each state that entered relations with China was required to follow these rules.

- Even if the Western trading nations did not formally belong to the tribute system, the *Collected Statutes* still listed them alongside other regular Tributary States, requiring them to be treated as though they were tributary bearers if they came to China on their own. Until the First Opium War, traders from the Western maritime nations were allowed to reside in Macao and to conduct trade in Guangzhou (Canton).
- **In *Qing* policy and practice, relations with Russian Empire was defined as a special matter:** China concluded its first equal treaty, the Treaty of Nerchinsk, with Russia in 1689, which set the eastern border between the two countries, and after the Treaty of Kiakhta of 1727, Russians were allowed to maintain an Orthodox Church in Beijing with a language school attached to it. Although Russian missions to China were recorded as tribute bearers, and although they performed *Kowtow* to the Chinese Emperor, Russia was not officially listed as a tributary state in any of the five editions of the *Collected Statutes*.

**The *First Opium War* (1839-1842) with the UK and the *Second Opium War* (1856-1860) with the UK and France marked the beginning of the disintegration of the traditional Chinese world order.**



**The development of  
International Law education  
during the last period of  
Qing Dynasty  
(1842-1912)**

## First Opium War (1839-1842)

*Casus belli:* The Chinese government attempted to counter the illegal opium trade in China.

### **Treaty of Nanjing (1842):**

- (a) China opened five ports of commerce in Guangzhou, Fuzhou, Xiamen, Ningbo, and Shanghai,
- (b) China ceded Hong Kong to the United Kingdom,
- (c) China had to pay the United Kingdom a total amount of 21 million silver dollars for the war compensation, with six million, paid immediately and the rest through specified instalments thereafter,
- (d) when a British national committed a crime at the ports of commerce, the defendant could only be tried in a British court under the laws of the United Kingdom,
- (e) The right to live and rent land: the treaty provides that the British can lease land at the port. Later, foreigners used this privilege to create a special area completely out of the jurisdiction of the Chinese Government.

**The forced signing of the Treaty of Nanjing in 1842 was the starting point of China's substantive interaction with Western-dominated international law.**



- **1844**, Treaty of Wanghia with USA
- **1844**, Treaty of Whampoa with France
- **1858**, Treaties of Tientsin and **1860** Convention of Peking at the end of Second Opium War: opened more Chinese ports to foreign trade, permitted foreign legations in the Chinese capital Beijing, allowed Christian missionary activity, and effectively legalized the import of opium.
- **From 1876**, Imperial Government sends permanent Chinese envoys abroad
- **1861**, an Imperial Decree established the Tsung-li Ya-men (Office of Foreign Affairs) within the Imperial Government.

## First wave of the reception of international law

Translations of international law treaties from Europe and the United States:

- Charles de Martens, *Le Guide Diplomatique* (it helped early Chinese diplomats understand diplomatic customs and rules)
- Robert Joseph Phillimore, *Commentaries upon International Law* (it become China's first book on private international law)

- 1864, William A. P. Martin, an American Presbyterian missionary, translated Henry Wheaton's *Elements of International Law*. The Chinese translation, known as *Wanguo Gongfa* (Public Law of All Nations)
- 1873, Martin began his teaching of “Law of Nations” at Tongwenguan (Interpreters College). He became China's first professor of international law and Tongwenguan was also the first national institution that offered an international law course.



- The Imperial University of Peking (*Jing Shi Da Xue Tang*), the predecessor to today's Peking University, subsequently replaced Tongwenguan. In the Department of Law, **public international law and private international law were collectively taught as “Law of Negotiation”** (*Jiao She Fa*).

**Note:** the university course entitled “Law of Negotiation” illustrated that international law was commonly regarded as a tool of negotiation rather than as a universal value.

**Impact of International law on the *Qing* Dynasty was  
an intellectual shock!**

- *Wanguo Gongfa* explained the Western notion of “**sovereignty**” as “the supreme power by which any State is governed” and that a state should function “independently of foreign powers.”



**Chinese officials understood that the privilege of extraterritoriality and the right of foreign warships to navigate in internal waters actually violated Chinese sovereignty.**



## **Second wave of the reception of international law (in the late XIX century)**


- Learning of international law shifted to Japan, former tributary state of the Chinese Empire. Indeed, after Meiji Restoration (1868), this country completed abolition of extraterritoriality in 1899 and the military victory over Russia in 1905 transformed it into Asia's first "civilized nation".
- Until the 1920s, the majority of China's international textbooks were translated from Japanese either by Japanese professors in China or by Chinese students in Japan.
- Another conspicuous influence was Japan's international law terminology: Mitsukuri Rinsho's translation of *Guo Ji Fa* (international law) mostly replaced the Chinese indigenous translation, *Wanguo Gongfa* or *Gongfa* (public law), in the 1920s.

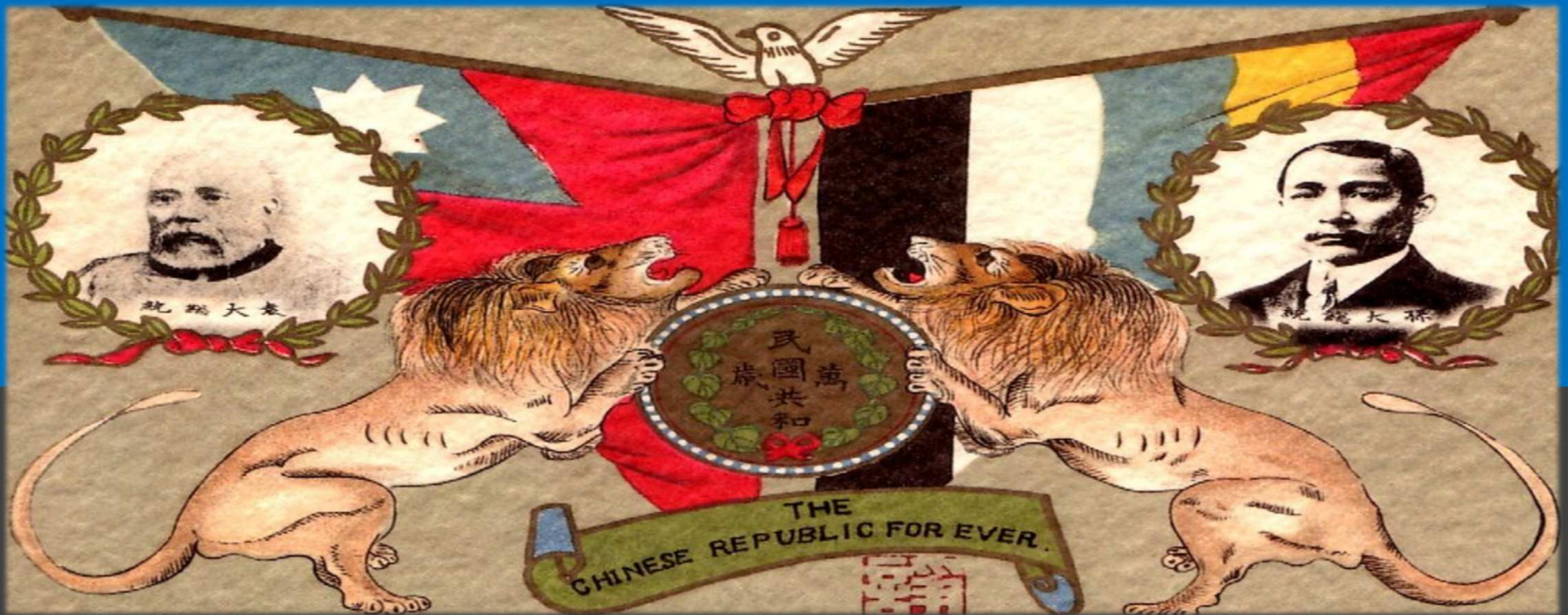
- International law became a mandatory subject in both judicial and diplomat examinations in the 1910s. The government also made international law compulsory in the college curriculum: i.e., Beiyang University had the longest teaching hours of international and comparative law courses; Soochow University Law School, in Shanghai, offered the first English-taught international law course.
- 1878, Guo Songtao, the *Qing*'s first minister appointed to the United Kingdom was invited to attend the International Law Association (ILA) meeting; later the Public Law Association (*Gong Fa Xue Hui*) and the Law Association (*Fa Lv Xue Hui*) emerged as China's first international law societies.
- 1901, the Boxer Protocol mandated that the "Office of Foreign Affairs" become "a Ministry of Foreign Affairs, *Wai Wu Pu*, which takes precedence over the six other Ministries of State"
- Starting in the 1920s, overseas-trained lawyers started returning to enhance China's academia in international law: **Zhou Gengsheng** of Peking University who studied at Paris published in 1929 ***Outline of International Law (Guo Ji Fa Da Gang)***, the first international law textbook authored by a Chinese national.

- **1899 and 1907, *Qing* government took part in the two Hague Peace Conferences** that created the first multilateral judicial forum, the Permanent Court of Arbitration (PCA)



- China was formally enclosed in the ‘family of nations’ as a member of the international society; but not as a ‘civilized nation’
- Qing officials remained suspicious about the impartiality of the West-dominated PCA: i.e, in 1909, the Qing government declined Portugal’s proposal to resort to the processes of the PCA to adjudicate territorial disputes between China and Portugal-ruled Macao

- **Tributary States ceased to pay the annual tribute to China and were no longer considered under formal Chinese sovereignty:** Kingdom of *Liuqiu* (Ryukyu Islands) in 1875, Nepal and Siam in 1882, Laos in 1893, Korea in 1894 and Burma in 1895
- **1894-1895: First Sino-Japanese War:** the Treaty of Shimonoseki signed on 17 April 1895 ceded Taiwan and the Penghu Islands and the Liaotung peninsula (Manchuria) to Japan and established the independence of Korea  **Regional dominance in East Asia shifted from China to Japan**
- **1899-1901: Boxer Rebellion,** which brought to the war with the Eight Nation Alliance (USA, Austro-Hungarian Empire, UK, France, Germany, Italy, Japan, and Russia) and the signing of the Boxer Protocol (7 September)
- **1911: Rebellion in Outer Mongolia;** it was to a large extent the reaction to the new Qing policies aimed at assimilating the Mongols by Han Chinese. In the treaty of tripartite (China, Russia and Mongolia), signed in June 1915, Outer Mongolia became an autonomous area of China, and many trading privileges were extended to Russia.



## The Republic of China (ROC) (1912-1949)

Proclamation of President Sun Yat-sen on the Establishment of the Republic of China on 1 January 1912:

- **“With the establishment of Provisional Government, we will try our best to carry out the duties of a civilized nation so as to obtain the rights of a civilized state”.**

ROC was focused on taking advantage of the Western-dominated international law to protect Chinese national interests.

**The Beiyang Government (1912-1928) – Capital: Beijing**  
**The Kuomintang Government (1928-1949) – Capital: Nanjing**



- Reform of MOFA
- Revision of unequal treaties
- Participation in International institutions
- Situation in Outer Mongolia: 11 July 1921 proclamation of independence, not recognised by China
- Situation in Tibet: under formal sovereignty of China since 1694, the territory was *de facto* independent since 1914 under British protection

1913, International Law Society (ILS) was founded

## REVISION OF UNEQUAL TREATIES

- The concept of “**unequal treaties**” began with the 1842 Treaty of Nanjing with the United Kingdom. The common features of unequal treaties included the **rights of extraterritoriality**, **leased territories**, the **stationing of troops**, and **navigation on inland waters**. These privileges were “unequal” because they were not based on the principle of reciprocity and as such they violated Chinese sovereignty.



**However, foreign powers in the respective treaties promised to relinquish extraterritoriality should China revamp its legal system to be on par with Western standards.**

**ROC’s international lawyers did not deny the validity of the unequal treaties, but rather tried legal justifications to revise or abrogate such treaties.**

**Note:** Distinct from ROC jurists, early PRC decision-makers simply considered unequal treaties *void ab initio* and failed to develop a consistent legal approach to the treaty regime.

Upholding the civilized nation principle, the ROC did not directly challenge the normative value of the doctrine of *pacta sunt servanda*.



- a) the ROC declared war against Germany and Austria-Hungary during WWI: the goal underlying this opportunistic declaration of war was to invalidate Chinese treaties with these powers. The ROC also revoked the extraterritorial privileges of Germany and Austria-Hungary and took over German concessions in Tianjin and Hankou. Foreign troops of these countries in China were captured as prisoners of war in compliance with the 1899 Hague Convention with respect to the Laws and Customs of War on Land.
- b) the Chinese Senate claimed the absence of congressional ratification as a justification to invalidate the Sino-Japanese Treaties of 1915, which were commonly known as the “Twenty-One Demands.” Such demands obliged the ROC Government to confirm Japan’s “succession” to German rights over Shandong at the end of WWI. ➡ Since Japan insisted on the validity of the treaties, the ROC’s attempt to abolish the 1915 Treaties at the Paris Peace Conference was futile and the Chinese delegation refused to sign the Treaty of Versailles because its Art. 156 mandated the transfer of German rights in Shandong to Japan. In 1923, the ROC Senate passed a resolution invalidating the 1915 treaties; such treaties should be *void ab initio* because they lacked congressional ratification. This was the first challenge to the treaties’ validity on a domestic constitutional procedure ground.

**Note:** Art. 46 Vienna Convention on the Law of Treaties prescribes a manifest violation of provisions of internal law regarding competence to conclude treaties of fundamental importance as invalidating the consent of a State.

- c) the most broad-ranging claim against unequal treaties was the reliance on *rebus sic stantibus* (a fundamental change of circumstances): Zhou Gengsheng believed that incomplete congressional ratification did not constitute a sufficient basis for terminating the Sino-Japanese Treaties of 1915. Instead, *rebus sic stantibus* would have enabled China to assert a **vital change of circumstances** that warranted the denunciation of the treaties. As the threat of Germany and Russia to East Asia lessened substantially, the extension of the Japanese lease over Liushun and Dalian could not be justified. As a result of these political changes, it had undergone since the conclusion of the treaties in 1915, China could no longer permit foreign concessions in its territory. Furthermore, the *rebus sic stantibus* principle was enshrined in Article 19 of the Covenant of the League of Nations and prompted the return of Weihaiwei, a British colony in Shandong, to China in 1930.
- In 1926, the ROC's invalidated the 1865 Sino-Belgium Treaty on *rebus sic stantibus* principle and in 1928, new Treaty of Amity and Commerce with Belgium became the precedent for China's treaties revision.
- 1943, in the middle of WWII, marked by new treaties with the United States and the UK that abolished extraterritoriality; all unequal treaties were abolished.

## PARTICIPATION IN INTERNATIONAL INSTITUTIONS

**1919, the ROC was a founding member of the League of Nations** (China was a non-permanent member of the Council) and of the **International Labour Organisation**.

### **Japanese aggression in Manchuria (1931):**

- Chinese government appealed to the LN on the basis of Articles X, XI, and XV of the League Covenant: **Lytton Report (1932)**: it stated that Japan was the aggressor, had wrongfully invaded Manchuria and that it should be returned to the Chinese; it also argued that the Japanese puppet state of Manchukuo should not be recognized, and recommended Manchurian autonomy under Chinese sovereignty. When the League of Nations General Assembly adopted the report, Japan quitted the organization.
- To garner support from the United States, a non-member of the LN, the ROC asserted that the Japanese invasion violated the 1922 Nine-Power Treaty and the 1928 Kellogg-Briand Pact (Pact of Paris): **Stimson doctrine**, policy of nonrecognition of states created as a result of aggression.
- Chinese government asserted its **right to self-defense** against Japanese aggression.

### **Japanese invasion of China in 1937:**

- Chinese government proclaimed its **right to self-defense** against Japanese aggression and the War of Resistance
- Neither Japan nor the ROC declared war on each other or terminated diplomatic ties: legal effect of the declaration of war would allow Japan to exercise the belligerent's right of visit and search on the high seas; the exercise of this right would cut off the supply of arms and ammunition to China by ships of neutral states through ports in Vietnam and Myanmar (most Chinese harbors were already occupied by Japan)

ROC did not declare war against the Axis powers  
until the US Congress declared war on Japan after the Pearl Harbor attack in 1941.

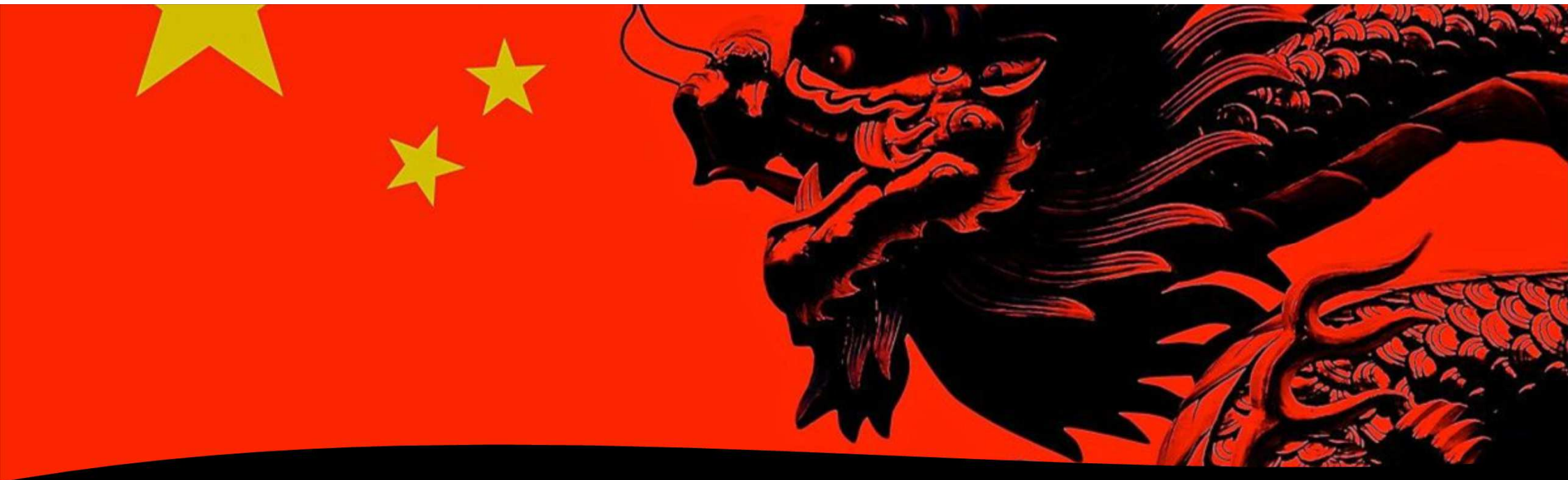
### **During WWII until 1949:**

- The ROC Consulate in Vienna gave “**visas for life**” to more than 2,000 Jews escaped Nazi-controlled Austria and sought refuge in Shanghai: the ROC’s decision was unprecedented, particularly compared to the position of 32 countries in the 1938 Evian Conference, when most Western nations were reluctant to accept Jewish refugees.
- **1943, Cairo Declaration** (USA, UK, ROC): China obtained the foundation of Asia’s post-war order: “Korea shall be free and independent” and Manchuria and Taiwan “shall be returned to the Republic of China”
- **1944 Dumbarton Oaks Conversations and 1945 San Francisco Conference:** creation of UN and the ROC was a founding member, becoming one of the five permanent members of the Security Council
- **ROC contribution to UN Charter:** Article 13, which mandates the General Assembly to promote “the progressive development of international law and its codification”; Article 76, which includes the “progressive development towards self-government or independence” as the primary goal of trust territories.
- **1946-1948**, Eleven countries (Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom, and the United States) establish the **International Military Tribunal for the Far East** (Mei Ju-ao is the Chinese judge in the court).
- ROC accepted the ICJ’s compulsory jurisdiction, under Art. 36 of the Statute of the ICJ.



According to the *UN Yearbook*, 1946-1947, p. 35, para. 15, China was the first to sign the UN Charter:

- “... On the following day the signing ceremony took place in the Veterans War Memorial Building at San Francisco. **China, in recognition of its long-standing fight against aggression, was accorded the honor of being the first to sign.** It was arranged that the signatures of the U.S.S.R., the United Kingdom and France should follow, and then, in alphabetical order, the remaining nations, with the United States, as host country, signing last. As each delegation came forward to sign, its chairman made an official speech to commemorate his country's participation in the work of the Conference”.



**The New China:  
The People's Republic of China (PRC)  
(since 1949)**

**During the period of the PRC from 1949-1978,  
China was regarded as a communist threat and  
enemy to the Western-dominated world society.**

Between the spring and summer of 1949, Chairman Mao Zedong advanced the principle of "Starting anew", "putting the house in order before inviting guests" and "leaning to one side".

- China renounced all the diplomatic relations the Kuomintang Government had established with foreign countries, treated heads of foreign diplomatic missions accredited to Old China as ordinary foreign nationals instead of diplomatic agents.
- It reviewed all the treaties and agreements Old China had concluded with foreign countries, gradually clearing up the prerogatives and influence the imperialist countries had in China.
- It established new diplomatic relations with other countries on the basis of mutual respect for sovereignty and territorial integrity, and equality and mutual benefit.



In September 1949, the National Committee of the Chinese People's Political Consultative Conference held its first session in Beijing and adopted the **“Common Programme of the Chinese People's Political Consultative Conference”** which provides:

- "The principle of the foreign policy of the People's Republic of China is **protection of the independence, freedom, integrity of territory and sovereignty of the country, upholding of lasting international peace and friendly cooperation between the peoples of all countries, and opposition to the imperialist policy of aggression and war**".
- The "Common Programme" provides that "the People's Republic of China shall unite with all peace-loving and freedom-loving countries and peoples throughout the world, first of all with the USSR, all People's Democracies and all oppressed nations. It shall take its stand in the camp of international peace and democracy, to oppose imperialist aggression and to defend lasting world peace"; **"the People's Republic of China may restore and develop commercial relations with foreign governments and peoples on the basis of equality and mutual benefit"** and so on.



- **14 February 1950, "Sino-Soviet Treaty of Friendship, Alliance and mutual Assistance”**
- **1950-1953, China involved in the Korean war alongside the Democratic People's Republic of Korea**

## Five Principles of Peaceful Coexistence

The Five Principles, as stated for the first time in the *Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse Between Tibet Region of China and India* (1954), are listed as:

1. mutual respect for each other's territorial integrity and sovereignty,
2. mutual non-aggression,
3. mutual non-interference in each other's internal affairs,
4. equality and mutual benefit, and
5. peaceful co-existing.

The Five Principles of Peaceful Co-Existence have become the basic norms in developing state to state relations transcending social systems and ideologies.

- **The Five Principle have been enclosed in the Preamble to the 1982 Constitution of PRC.**

- **In the 1960s, relations between China and the Soviet Union became deeply strained, largely due to their different interpretations of Marxism–Leninism.**
- **In October 1971, the PRC government replaced the Taiwan government as the representative government of China in the United Nations.** Immediately, the representatives of the Kuomintang are expelled from the United Nations and all its affiliated agencies.



**PRC is suspicious about the West-dominated international system.**

E.g., in 1972, the PRC informed the UN of its refusal to recognize the ROC's acceptance of the ICJ's compulsory jurisdiction under Art. 36 of the Statute of the ICJ.

Some Chinese proverbs related to the general aversion to adjudication:

*“in death avoid hell, in life avoid the law courts” – “to enter a court of law is to enter a tiger's mouth” – “it is better to die of starvation than to be a thief, it is better to be vexed to death than to bring a lawsuit”*

## US-China rapprochement

### **28 February 1972, Nixon's China's Visit and “Sino-U.S. Joint Communiqué”:**

- normalization of relations between China and USA
- USA acknowledges “one China” and Taiwan as a part of China, but it reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.
- Withdrawal of all US forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations in Taiwan as the tension in the area diminishes.

**PRC position on Taiwan in the Communiqué:** The Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposed any activities which aim at the creation of "one China, one Taiwan", "one China, two governments", "two Chinas", an "independent Taiwan" or advocate that "the status of Taiwan remains to be determined".

- **In the early 1970s, PRC established formal relationships with several major Western countries and Japan.**

# Treaty of Peace and Friendship Between the PRC and Japan (1978)

The Treaty stipulates:

- The Contracting Parties shall develop durable relations of peace and friendship between the two countries on the basis of the Five Principles of Peaceful Co-Existence;
- The Contracting Parties affirm that in their mutual relations, all disputes shall be settled by peaceful means without resorting to the use or threat of force;
- The Contracting Parties shall endeavor to further develop their economic and cultural cooperation and to promote exchanges between the people of the two countries.

**The two parties declare in the Treaty that neither of them should seek hegemony in the Asia-Pacific region or in any other regions and that each was opposed to efforts by any other country or group of countries to establish such hegemony.**

The Treaty also stipulates in explicit terms that "the present Treaty shall not affect the position of either Contracting Party regarding its relations with their countries".

## Three World Theory

- February 1974, Mao Zedong observed: "In my view, the United States and the Soviet Union belong to the first world. The in-between Japan, Europe and Canada belong to the second world. The third world is very populous. Except Japan, Asia belongs to the third world. So does the whole of Africa and Latin America".
- April 1974, at the 6th Special Session of the UN General Assembly, Deng Xiaoping explained the theory: "From the perspective of the changes that have taken place in international relations, the world today in fact has three sides or three worlds in existence which are mutually related as well as contradictory. The United States and the Soviet Union belong to the first world. Developing countries in Asia, Africa, Latin America and other regions belong to the third world. And the developed countries in between the two belong to the second world". He also expressed that **China was a socialist country, a developing nation, and it belonged to the third world. The Chinese Government and people firmly supported all the oppressed peoples and nations in their just struggles. He declared that China was not and would never be a super-power in the future.**

## China and weapons of mass destruction

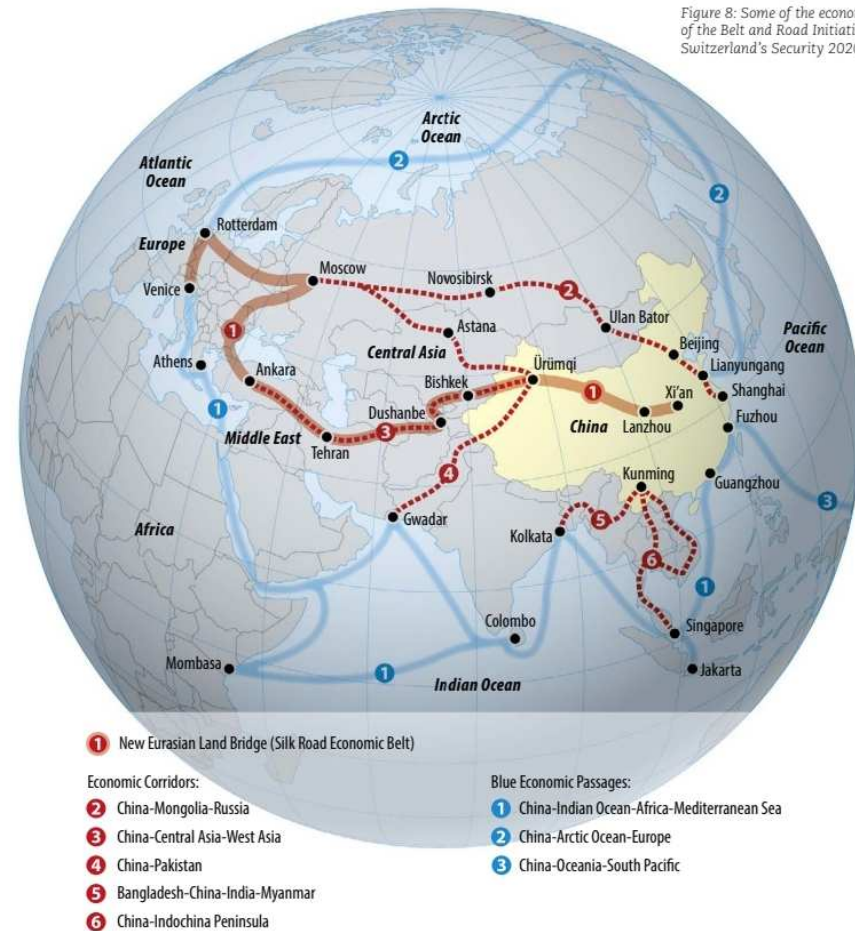
- 1964, the first of China's nuclear weapons tests took place
- 1967, its first hydrogen bomb test occurred
- 1992, China has acceded to **Nuclear Non-Proliferation Treaty (NPT)**
- 1996, China signed the **Comprehensive Test Ban Treaty (CTBT)**.
- 1984, China has acceded to the **Biological and Toxin Weapons Convention (BWC)**
- 1997, China ratified the **Chemical Weapons Convention (CWC)**
- China became the first nation to propose and pledge **no-first-use policy** when it first gained nuclear capabilities in 1964. The Chinese government "would not be the first to use [nuclear] weapons at any time and in any circumstance". In addition, in 2011, a defence white paper went on to state that this "no first use" policy would remain unchanged in the future and that China would not use or threaten to use nuclear weapons against any non-nuclear-weapon states or nuclear-weapon-free zones.

## In the post-Cold War era

- 26 March 1987: Chinese-Portuguese Agreement on the transfer of sovereignty of Macao to China on 20 December 1999
- 1996, China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan formed the Shanghai Five, a collaborative body that was renamed the **Shanghai Cooperation Organisation (SCO)** with the addition of Uzbekistan in 2001. In 2017, India and Pakistan joined SCO.
- 30 June 1997, PRC resumed sovereignty over Hong Kong
- 2001, PRC joined the **World Trade Organization (WTO)**
- 2001, **PRC-Russia Treaty of Good-Neighborliness and Friendly Cooperation**
- 2009, **BRICS** (Brazil, Russia, India, China, South Africa), a forum of emerging economies
- 2015, **Asian Infrastructure Investment Bank (AIIB)** to implement One Road, One Belt Initiative

## One Road, One Belt Initiative (2015)

“The Chinese government advocates peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit. It promotes practical cooperation in all fields, and works to build a community of shared interests, destiny and responsibility featuring mutual political trust, economic integration and cultural inclusiveness.”



## Academia and International Law

- 1977, **Research Group of International Law in the Chinese Academy of Social Sciences (CASS)** (since 2009, Institute of international Law of CASS)
- 1980, **Chinese Society of International Law:**  
At the Inaugural Meeting of Society, President Huan Xiang called for **a progressive development of the New China's own theory and system of international law guided by Marxist-Leninist and Maoist ideology.**
- 2010, **Chinese Journal of International Law**

The mainstream of contemporary Chinese international lawyers:

- **Wang Tieya**, 'International Law in China: Historical and Contemporary Perspectives', in (1990) 221 Collected Courses of the Hague Academy of International Law, 195-369
- **Xue Hanqin**, *Chinese Contemporary Perspectives on International Law History, Culture and International Law*, Brill, 2012

## Primacy of sovereignty in modern Chinese view of international law


- “In the Five Principles of Peaceful Coexistence, the principle of sovereignty ranks first. It is the main principle to which the other four principles are related. It is linked to territorial integrity and supplemented by the principles of non-intervention and non-aggression. Equality and mutual benefit is the concrete expression of the sovereignty of a State, while peaceful coexistence is premised upon the respect of the sovereignty of states.” (**Wang Tieya**, 1984).

**The Chinese conception of sovereignty is closely related to its history and the “century of humiliation”.**

### **Xue's views on sovereignty:**

- “for Europeans, the [Westphalian] system by now is over 360 years old, but for non-European countries, particularly for the Asian and African countries, it is only 60 years old”
- She observes that, contrary to Europe, for developing countries international law is “based on a foreign legacy”
- China “strongly upholds the principle of sovereignty, because it believes in diversity and mutual respect in international political life”
- Recalling the importance of the Five Principles to China’s “foreign policy of independence and peace” and acknowledging that they “by and large reiterate the fundamental principles of international law as provided in the Purposes and Principles of the UN Charter”, she states that their “essence” is the principle of sovereignty
- Importance of principle of sovereignty to safeguarding the diversity and pluriformity of international life

### *Examples of practice:*

- 12 July 2016, award on *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*: China did not recognize the jurisdiction of the Arbitral Tribunal established under the Annex VII of UNCLOS  *Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea*: "... China's Nanhai Zhudao (the South China Sea Islands) consist of Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands). The activities of the Chinese people in the South China Sea date back to over 2,000 years ago. China is the first to have discovered, named, and explored and exploited Nanhai Zhudao and relevant waters, and the first to have exercised sovereignty and jurisdiction over them continuously, peacefully and effectively, thus establishing territorial sovereignty and relevant rights and interests in the South China Sea. ...”
- 25 June 2016: **Declaration of the Russian Federation and the PRC on the Promotion of International Law – para. 2** “The Russian Federation and the People’s Republic of China share the view that the principle of sovereign equality is crucial for the stability of international relations. States enjoy their rights on the basis of independence and on an equal footing, and assume their obligations and responsibilities on the basis of mutual respect. States have the right to participate in the making of, interpreting and applying international law on an equal footing, and have the obligation to comply with international law in good faith and in a coherent and consistent manner”

# **Incorporation of International Law in PRC's Legal System**

“International law and municipal law are two systems of law or one may say that international law is a special system of law which is different from domestic law ... However, because municipal law is enacted by states and international law is enacted through the participation of states, there are close connections between these two systems – mutual infiltration and mutual supplementation”

WANG Tieya and WEI Min, eds., *International Law* (Beijing: Law Press, 1981) 44.

**At present, the Chinese Constitution and basic laws do not contain any provision on the legal status of international law and its hierarchy in the domestic legal system.**

**1982 Civil Procedure Law:**

- **Art. 189:** for civil proceedings in cases involving foreign elements, “If an international treaty concluded or acceded to by the People’s Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except for those on which China has made reservations.”

**1986 Chinese General Principles of Civil Law:**

- **Art. 142:** “If any international treaty concluded or acceded to by the People’s Republic of China contains provisions differing from those in the civil laws of the People’s Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People’s Republic of China has announced reservations. International practice may be applied to matters for which neither the law of the People’s Republic of China nor any international treaty concluded or acceded to by the People’s Republic of China has any provisions.”

**Criminal Law of the PRC, as revised in 1997:**

- **Art. 9:** “This law is applicable to the crimes proscribed in the international treaties concluded or acceded to by the People’s Republic of China and over which the People’s Republic of China exercises criminal jurisdiction in accordance with its treaty obligations.”
- **Art. 11:** “the criminal responsibility of foreigners who enjoy diplomatic privileges and immunities shall be resolved through diplomatic channels.”

- International treaties can be directly applicable in China.
- In case there is a conflict between treaty law and domestic law, the treaty law should prevail except when China has made reservations.

**Note:** Under the terms of the Chinese Treaty Procedure Law, also bilateral cooperation agreements and memoranda of understanding (MOUs) concluded by the Chinese government or governmental departments are qualified as international treaties.

- Under Art. 142 of Chinese General Principles of Civil Law, China recognizes the validity of **international customary law** to certain extent as it provides that international practice may be applied to subject matters when no applicable law could be found in either Chinese law or any treaty concluded or acceded to by China. It is unclear, however, whether China recognizes the application of all norms and rules of international customary law. According to some observations, it only refers to customary rules of international trade based on China's judicial practices.

## **Means of implementation of treaties**

### **China has transformed some treaties into domestic laws:**

- the 1986 Regulations concerning Diplomatic Privileges and Immunities,
- the 1990 Regulations concerning Consular Privileges and Immunities

### **China has adopted relevant international norms and rules in its domestic law:**

- the 1992 Law on the Territorial Sea and Contiguous Zone, and the 1998 Law on the Exclusive Economic Zone and Continental Shelf, which incorporated relevant provisions of the 1982 UN Convention on the Law of the Sea.

### **China maintains relevant domestic laws in line with the treaties that China has joined or is expected to join:**

- In preparation for joining the World Trade Organization (hereinafter “WTO”), China launched the overall review process of its laws and regulations as early as 1999. Many administrative regulations and measures either by the Chinese State Council or various ministries were annulled before the end of 2000.

## **The role of judges**

Chinese Supreme Court, *Decision on Certain Issues of Handling Administrative Cases of International Trade*, August 2002:

- When there are two reasonable interpretations in a particular applicable rule from a national law or administrative regulation in the handling of administrative cases of international trade; if one of the interpretations is in conformity with international treaties China concluded or acceded to, then the interpretation in conformity should be applied, except for those on which China has made reservations.

**Thanks for your  
attention!**

## **FURTHER READINGS**

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XUE Hanqin and JIN Qian, **‘International Treaties in the Chinese Domestic Legal System’**, (2009) 8 Chinese Journal of International Law 299

XUE Hanqin, **‘Chinese Observations on International Law’**, (2007) 6 Chinese Journal of International Law 83