

Dalhousie Law Journal

Volume 8 | Issue 1

Article 1

1-1-1984

The People's Republic of China and Public International Law

Chen Tiqiang

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [International Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Recommended Citation

Chen Tiqiang, "The People's Republic of China and Public International Law" (1984) 8:1 DLJ 3.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

Articles

Chen Tiqiang*

The People's Republic of
China and Public
International Law

The topic under discussion is subdivided into three parts: (1) background and retrospect, (2) the study of international law in China, (3) the PRC's application of international law and contribution to the development of international law.

I. *Background and Retrospect*

Like all human phenomena, the PRC's attitude toward international law cannot be divorced from China's experience with international law in the past. For an understanding of the present views of the PRC with regard to international law, it is necessary to take a quick glance at her experience with international law in the past one and a half century.

International law, in its most general meaning is the generic name for all the principles, norms, rules and institutions governing the relations among states. More specifically it consists of a body of such principles, rules and institutions that has been developed more or less systematically among new-born capitalist states of Europe roughly from the 17th century onwards. Prior to this, in the slave-owning society (such as the Greek city states) and feudal society, there also existed similar principles, rules, norms and institutions. But these were sporadic and isolated phenomena, and did not reach a stage of systematic development. Some fell into disuse and were extinct, and some were absorbed into the more modern system of international law. In ancient China, before the formation of a unified state, or during periods of break-up of the empire when independent kingdoms and political power groups existed side by side with each other, or in transactions between the central government and fringing nationalities, there also existed

*Note — Formerly spelt as "Ti-Chiang Chen", author of "International Law of Recognition," 1951. Professor Chen is currently professor of International Law at Peking University and the Foreign Affairs College, Beijing, and Vice-President of the Chinese Society of International Law. All references to Chinese writings, unless otherwise indicated, are in Chinese. May, 1982.

similar principles and rules. These, too did not have the chance to develop into a system. By international law, I mean only the system which originated in Europe and has undergone development and change to this day. In every stage in history, new forces asserted themselves, and manifested themselves in new principles, norms, rules and institutions. We now have a system which is connected with European culture and tradition and facts of life in the past, but is essentially a reflection of the world order of today.

This Europe-originated system of international law is the product of capitalism. It serves the interests of capitalist states, especially the most powerful of them. In every period of history, there were always one, two or three most powerful states in the capitalist world, which exercised predominant influence on the formation and formulation of international law, determined its contents and made it subservient to their interests. Yet in the absence of a unified world and with the continued existence of independent states, the Great Powers — however powerful — could not do everything they wished; for they were constrained by the balance of powers among themselves and checked by the resistance of lesser powers, which could not be overlooked, especially when acting in unison. The existence of independent states gave rise to mutual intercourse, transactions and flow of commerce. All these developments necessitated some rules more or less based on equality, reciprocity and cooperation. These were the mainstay of the international order among those states. In their imperialist expansion in Asia, Africa and Latin America, the European Great Powers vied for supremacy, but also acted in cooperation in suppressing the resistance of the oppressed peoples of those regions. They made in common rules and institutions for the domination and enslavement of Asian, African and Latin American colonies and semi-colonies. On the other hand, there were also some principles and norms which emerged during the struggle of the bourgeoisie against feudal oppression. These continue to have meaning in the present day.

When the Western powers appeared on the Chinese scene, they brought with them this system of international law. But though they applied among themselves the whole system of international law, they applied to China only those portions which authorized and legitimized the plundering, exploitation and oppression of colonial peoples. James Lorimer, the distinguished British international lawyer, wrote in 1883 in his *Institutes of International Law*: “As a political phenomenon, humanity in its present

condition, divides itself into three concentral zones or spheres — that of civilized humanity, that of barbarous humanity and that of savage humanity.” To these three spheres of humanity, the “civilized nations” accord three stages of recognition: “plenary political recognition, partial political recognition and natural or mere human recognition .”¹ The sphere of plenary political recognition extended to European and American states and their colonies peopled by white men. The sphere of partial political recognition extended to Turkey, Persia, China, Siam and Japan. The rest of mankind belonged to the sphere of mere human recognition: “It is with the first of these spheres alone that the international jurist has directly to deal.” “He is not bound to apply the positive law of nations to savages, or even to barbarians as such.”²

Oppenheim in his 1905 edition of *International Law* affirmed Lorimer’s view, except that he down-graded the position of China even further. He divided states into five classes: (1) European states; (2) American states, Liberia and Haiti; (3) Turkey; (4) Japan; (5) Persia, Siam, China, Korea and Abyssinia. Regarding class five, he said: “However, their civilization has not yet reached that condition which is necessary to enable their governments and their population in every respect to understand and to carry out the command of the rules of International Law.”³ In the 8th edition (1955) of Oppenheim’s *International Law*, Lauterpacht added India and Pakistan to the fourth class along with Japan, and deleted Korea and Persia from class five.⁴ This is a further downgrading of China well below the colonial countries of yesterday, India and Pakistan. Lorimer, listing China among “barbarians”, seemed to rate China one level higher than “savages”. But as far as the application of international law was concerned, he made it quite clear that China would be in the same category as savages. Oppenheim also intimated that the law of nations did not include rules of intercourse with and treatment of nations outside the family of nations. Such intercourse and treatment should be regulated by the principles of Christian morality. He wrote: “States not so accepted (i.e. accepted into the Family of Nations) were not (at least in theory) bound by international law, nor were the civilized nations bound by it in their

1. Vol. I at 101.

2. At 102.

3. At 33.

4. At 49.

behaviour towards them, as was evidenced by their behaviour with regard to Africa and (in part) to China.’⁵

Lorimer’s and Oppenheim’s views were not their own fanciful speculations, but were reflections of the facts of their time. When the Western powers came to China, they first put down China’s resistance by force, and then placed China under a regime of unequal treaties. All relations with China were conducted by reference to these treaties, and there was no application of such international law as were applied among themselves. Shueh Fu Cheng, one of the earliest diplomats during Qing Dynasty remarked with a singular clarity of insight in his book *Yung A Collected Essays* that, in the intercourse with Western countries, “China can only act according to treaties, and cannot invoke public law (i.e. international law).” As late as 1931, after the occupation of China’s Northeastern Provinces by Japan, the Japanese representative at the League of Nations declared that China was not an “organized state.” While this was a slanderous attack by an aggressor, it was also true that China was at that time not treated by imperialist powers as a truly independent, sovereign state. Under the unequal treaties, China was actually deprived of the basic attributes of a sovereign state. The imperialist powers had the right to station troops on Chinese territory. Their merchantmen and warships could freely navigate China’s internal waters. Their nationals enjoyed the right of extraterritoriality and were not subject to Chinese jurisdiction. Postal, customs and salt administrations were under imperialist control. The Legation Quarters in Peking and concessions and leased territories at many places in China formed states within a state. Under such circumstances, so far as China was concerned, the role of international law was merely to guarantee and supplement the execution of unequal treaties.

In 1864, an American, W.A.P. Martin, chief instructor of Tung Wen Guang, the first foreign language school in China, translated Henry Wheaton’s *Elements of International Law* into Chinese. This was followed by the translation of another American author Theodore D. Woolsey’s *Introduction to the Study of International Law* (1860). The translation of these books into Chinese was an epoch-making event in the study of international law in China. It enabled the Chinese to have a first glimpse of what was called international law in the West. This contribution of American

5. 1st ed. at 34; 8th ed. at 50.

scholars to the study of international law in China forged the first memorable link between Chinese and American international lawyers. In 1864, the year in which Wheaton's work was translated, a Danish ship was seized by a Prussian warship in Bo Hai Gulf in the course of the Prussian-Danish War. The Chinese government cited Wheaton in its protest to the Prussians and secured the release of the Danish ship. This event created an illusion among the Chinese of the usefulness of international law. The illusion was enhanced by Martin's exaggerated claim in his "Preface to the Chinese Edition" concerning the nature of international law. He said: "It is called law, because it must be obeyed by all states; it is called public because it cannot be made to serve private interests of any one state." His interpretation of the word "public" was entirely without foundation, and international law was not obeyed by all states and was not even applicable to China. However, the idea of the omnipotence of international law caught the imagination of many Chinese officials. For example, Guo Sung Tao, the first Chinese minister to the Court of St. James, wrote in his *Chronicles of a Mission to the West* that the Western Powers "created the law of nations; they emulate with each other in faithfulness and righteousness, and lay particular emphasis on friendship among nations; they are reasonable and courteous; they add decorum to substance; they are far better than the states during the Spring and Autumn Period."⁶ A high official in the Koumintang government Wang Chung Huei also praised international law to the skies. In his preface to *New Public International Law* (1930) by Zhou Wei, Wang wrote: The reason why China "suffered humiliation, paid indemnities and ceded territories, was our ignorance of international law". Of course, international law could not have that much effect on the course of events. Humiliation suffered by China was due principally to the imperialist policy of the Great Powers and the incompetence, the corruption and the anti-people policy of the reactionary ruling cliques in China. International law could do nothing to change the semi-colonial degradation of China. But in the eyes of the imperialists, even the possession of some elementary knowledge of international law was regarded with horror. A story about a French chargé d'affaire in Peking was characteristic. This chargé d'affaire, upon learning of the translation of Wheaton by

6. A period in ancient Chinese history (770-476 B.C.) during which numerous independent principalities existed side by side with each other.

Martin, shouted in a fit of rage: “Who is the man who is going to give the Chinese an insight into our European international law? Kill him — choke him off; he will make us endless trouble!”⁷ No wonder the imperialist powers were careful to bar China from the application of international law.

Under these circumstances, the study of international law in China was considered useless and frustrating and made little headway. From late Qing Dynasty through the Koumintang period, only a handful of scholars took up the study of international law seriously. About 15 general treatises were written on international law. The only field in which Chinese international lawyers made intensive study was the question of unequal treaties and special rights of foreign powers in China. These works had a nationalistic ring, pursued with the hope of finding a way to put some restraint upon imperialist oppression. But since they followed indiscriminately the theories expounded and rules made by the imperialist powers for the imperialist powers, and given the subservient attitude of the then Chinese governments, they could do very little to advance the Chinese cause.

Early Chinese experience with international law is a key to the understanding of the Chinese attitude toward international law today. It explains why we laid special emphasis on state sovereignty and equality, non-intervention, non-aggression, anti-hegemonism and anti-colonialism.

II. *The Study of International Law in New China*

At the time of the founding of the People’s Republic of China in 1949, the number of international lawyers on the mainland was very small. But, with the Liberation, the study of international law received a new breath of life. The Chinese state had for the first time in one hundred years really stood up and became independent, acquired full sovereignty, stood on equal terms with all the states of the world, and was able to act with these states according to international law based on the sovereign equality of all. International law was no longer the privilege of the few. China, no longer a passive on-looker, could henceforth participate in its formulation and application.

7. Immanuel Hsu, *China’s Entrance Into the Family of Nations*, (Harvard University Press, 1960) at 138.

From the very beginning, the People's Government stressed the importance of the study of international law. In order to promote the study of international law and to train international lawyers, Soviet experts were invited to teach international law in Chinese universities. A considerable number of young international lawyers were produced as a result. International law was taught in every law college, in every university with a law faculty, and research units for international law were set up in research institutes, such as the Institutes of International Relations in Beijing and Shanghai. In 1964 an independent Institute of International Law was established. But, unfortunately, political movements soon intervened. In 1969 the Institute was abolished. All law faculties in universities and law colleges were abolished. Two were reestablished in 1970, but actually did not function.

The principal academic body concerned with the study of international law in the New China was the Chinese Political Science and Law Association. It joined the International Law Association in 1956 as a collective member, and participated in many international academic activities in the field of international law. Its publication "Studies in Political Science and Law" contained many important articles on international law. Other periodicals carrying international law articles were "Journal of International Studies" published by the Institute of International Relations in Beijing and "Legal Studies" published by the Institute of Legal Studies and the East China College of Political Science and Law in Shanghai. Both the Chinese Political Science and Law Association and the Institute of International Relations were abolished during the Cultural Revolution, together with their publications.

With the downfall of the "Gang of Four", the study of international law, like other fields of academic activities, received a new lease on life. After the Cultural Revolution, China was faced with the task of the Four Modernizations. To realize the Four Modernizations, our task in the international sphere includes, among others, the following: (1) to consolidate and strengthen a peaceful international environment; (2) to promote friendship and intercourse with other countries; (3) to increase and expand economic, technical and cultural cooperation with other countries.

For the consolidation and strengthening of a peaceful international environment, we need to study such problems as the legal aspects of disarmament, the solution of boundary disputes, the

non-use of force, anti-terrorism, anti-hegemonism, the role of the U.N., etc.

For promoting friendship and intercourse with other countries, we need to study such problems as the new international economic order, dual nationality, diplomatic and consular laws, treaty laws, pacific settlement of disputes, laws of international organizations, etc.

For economic and technical cooperation with other countries, we need to study the law of the sea, the law of air and outer space, international environmental law, international economic and commercial law, including the law relating to the World Bank, IMF, FAO and the law connected with the activities of UNESCO.

The new situation is characterized by a more active role played by China in international affairs. This calls for more work on international law, both in academic and practical spheres. Chinese activities in the Sixth Committee of the U.N. General Assembly has intensified, and a Chinese member, Mr. Nee Zhen Yu, was elected to the International Law Commission for the first time. The international law community in China is bustling with activities. Old law colleges and faculties have been restored and new ones set up, with the total number approaching thirty. Law institutes and law journals have been revived. A Chinese Society of International Law, the first in Chinese history, was inaugurated in February, 1980. A Chinese Yearbook of International Law, under the auspices of the Society, is scheduled for 1982. A textbook of international law, long overdue, will also make its appearance soon. The 80-volume *Encyclopedia Sinica*, including a volume on law of which international law will form part, will appear in due course. Foreign international lawyers have come to lecture in China, including Professor Jerome A. Cohen of Harvard, Professor Ronald St. J. Macdonald of Dalhousie, and Professor Bing Cheng of London. Others have made plans to come, such as Professor Homer G. Angelo of California. A Ford Foundation Group of twelve American law professors will be visiting Beijing to hold discussions with Chinese law professors. Among them will be international law professors Leon Lipson of Yale, Jerome A. Cohen of Harvard, Randle Edwards of Columbia and Victor Lee of Stanford. Numerous Chinese international lawyers have been invited to lecture and do research abroad. We have also established and resumed contact with international academic bodies. Professor Wang Tie Ya of Peking University was elected associate of the

Institute of International Law. Mr. Huang Jia Hua, myself and several others took part in the World Conference of Jurists in Madrid in 1979. Dr. Shen Yu attended as an observer at the International Law Association Conference at Belgrade in 1981. A vista is now open for the development of international law studies in China.

Since the founding of the PRC numerous works on international law have been published. The first to be mentioned is a textbook: *International Law* by Professor Zhou Geng Shen, published in 1967, a 2-volume, 800-page work. The most valuable part of this work is the wealth of materials concerning the international law practice of the PRC. A smaller volume by Zhou Geng Shen on *Trends in Modern International Law Thinking in Britain and the United States* was published in 1963. Apart from these two books, Professor Zhou wrote numerous articles on international law, not to mention the numerous books published in the pre-liberation days. Ever since he became a professor of international law at the Peking University in 1925, Professor Zhou had never departed from the teaching and study of international law. It was not without reason that he was called "the dean of Chinese jurists".⁸

The following published monographs may also be mentioned: Li Hao Pei's *A Comparative Study of Nationality Laws* (1979), Nee Zheng Yu's *Jurisdiction of Courts in International Law* (1964), Liu Ze Rung's *Law of Territorial Sea* (1965), Fu Zhu's *Problems Concerning China's Territorial Sea* (1959), Wang Yao Tien's *Treaties and Agreements on International Trade* (1958).

During the years 1957 to 1960, a nation-wide debate took place among Chinese international lawyers involving some fundamental theoretical problems of international law. First, at the present stage of international relations, how many systems of international law are there in the world? Does there exist a single system of international law applicable to all states irrespective of class nature, a system called "general international law", or "common international law", or "modern international law", or "contemporary international law"? Or do there exist two systems of international law: a bourgeois international law applicable to capitalist states, and a socialist international law applicable to socialist states? Or are there three systems of international law: a

8. See Samuel Kim, *China, The United Nations and World Order*, (1970), at 407, note 3.

bourgeois international law, a socialist international law and a common international law? Second, according to the Marxist precept, law is the manifestation of the will of the ruling class; it is a superstructure built upon an economic base and serves that base. The questions raised were: the will of which ruling class is manifested in international law? Which economic base does international law serve? The debate, however, went on for a considerable time without reaching consensus.⁹

Apart from discussions on basic theories, international law writings published in PRC fall into four groups:

(1) *Articles dealing with criticisms of bourgeois international law.*

In 1959 and 1960, a series of articles appeared in the "Journal of International Studies", criticizing various aspects of bourgeois international law, such as theories concerning state sovereignty, subjects of international law, intervention, state territory, inhabitants, etc.¹⁰ By "bourgeois international law" the authors meant the entire system hitherto accepted by capitalist states, though criticisms were directed only against those most obnoxious parts advocated and practiced by imperialist powers to serve their imperialist purposes. These criticisms went behind legal appearances and tackled the substance, the political significance of certain

9. For literature on the debate, see Zhou Ze Yah, "Nature of Modern International Law" (1957), 7 *Academics Monthly*; Chiu Re Qing, "Again on the System of the International Law of the Present Stage" (1958), 3 *Legal Studies* 40; Liu Jia Jee, "Some Problems on the Nature and System of International Law", *id.* at 43; Hu Wen Zhi "A Brief Comment on the Three Systems of International Law at the Present Stage", *id.* at 49; Gen Fu Chen, "On the Present System of International Law", *id.* at 52; Yang Dian Bee, "Some Thoughts on the Systems of International Law", *id.* at 47; Lin Xin, "The Systems of International Law after World War II" (1958), 7 *Teaching and Research* at 34; Zhou Fu Luen, "Nature of Modern International Law" (1958), 3 *Teaching and Research* 52.

10. Tiao Yueh, "Preliminary Criticisms of Bourgeois International Law" (1959), 3 *Journal of International Studies* 1; Ying Tao, "Recognizing the True Face of Bourgeois International Law Through a Few Concepts" (1960), 1 *Journal of International Studies* at 42-43; Kung Meng, "Criticism of the Bourgeois International Law Theories Concerning Subjects of International Law and Recognition of States" (1960), 2 *Journal of International Studies* at 44-53; Ying Tao, "Criticism of Bourgeois International Law Concerning State Sovereignty" (1960), 3 *Journal of International Studies* at 47-52; I Xin, "What Does Bourgeois International Law Explain about the Question of Intervention?" (1960), 4 *Journal of International Studies* at 47-52; Qian Se, "A Criticism of the Views of Bourgeois of International Law on the Question of Inhabitants" (1960), 5 *Journal of International Studies* at 40-49; Xin Wu, "Criticism of Bourgeois International Law on the Question of State Territory" (1960), 7 *Journal of International Studies* at 42-51.

rules, the interests and political purposes they serve. They also exposed the practical operation of rules, which, perhaps reasonable in themselves, had in fact been manipulated to serve the one-sided interests of strong imperialist powers. These articles suggested a more critical and discriminating attitude toward the Euro-centered international law and works by Western international lawyers, which had formerly been taken at their face value. While it is possible to find points of disagreement with these articles, and some of the arguments could have shown more moderation, it cannot be denied that the questions raised provided food for thought in the further study of international law in China.

(2) *Articles dealing with concrete international law problems with which the PRC was directly concerned.*

For example:

(a) Expositions of the fundamental principles of international law — the Five Principles of Peaceful Coexistence.¹¹

(b) Arguments upholding China's sovereignty over Taiwan¹² and opposing the "Two Chinas" conspiracy,¹³ and those demanding the restoration of the lawful rights of PRC in the United Nations.¹⁴

(c) Concerning international law questions arising from the Korean War such as the legal basis of the Chinese People's Volunteers, China's recognition of the Geneva Conventions of 1949, the repatriation of POWs¹⁵ and the U.S. spy planes.

11. E.g. Zhou Geng Shen, "The Principles of Peaceful Co-existence from the Viewpoint of International Law" (1955), 6 *Studies in Political Science and Law* at 37-41; Ding Gu, "Firmly Maintain the Five Principles of Peaceful Coexistence" (1959), 3 *Journal of International Studies* at 1-6; Wang Xuan, "Principles of State Sovereignty — the Basis of International Law" (1980), 1 *Journal of the College of Political Science and Law, Beijing* 43.

12. Zhou Geng Shen, "A Refutation of the Absurd Arguments Concerning the Status of Taiwan" (1955), 1 *Studies in Political Science and Law* 46; Mei Ru Ao, "Strip the Aggressors of Their Legal Cloak" (1955), 2 *Studies in Political Science and Law* 47; Chen Tiqiang, "The Non-Existence of the So-called Question of the Legal Status of Taiwan" (1955), 3 *Studies in Political Science and Law* 22.

13. Zhou Geng Shen, "A Refutation of the Absurd Arguments Aiming At Creating 'Two Chinas'" (1959), 1 *Journal of International Studies* 1; Shao Gin Fu, "The Absurd Theory of 'Two Chinas' and Principles of International Law" (1959), 2 *Journal of International Studies* 7.

14. Xu Dong Zhang, "Question of the Restoration of Lawful Rights and Position of the People's Republic of China in the United Nations" (1956), 6 *Journal of International Studies* 11.

15. Mei Ru Ao, "An Absurd UN Resolution" (1955), 1 *Studies in Political Science and Law* 43.

- (d) Concerning Sino-Indian boundary question.¹⁶
 - (e) Concerning Tibet.¹⁷
 - (f) Concerning territorial disputes between China and Vietnam.¹⁸
 - (g) On miscellaneous subjects with which China was directly concerned, such as the statement on territorial sea,¹⁹ the arrest of members of Chinese Trade Delegation by Brazilian authorities, foreign intervention in Chinese judicial sovereignty,²⁰ the launching of spy balloons, the use of Hong Kong as hostile base against China, the sabotage against Chinese aircraft in Hong Kong, the piratical acts of the KMT clique, etc.²¹
- (3) *Articles in support of just struggles of peoples in other countries, such as Indo-China,²² Cambodia, Egypt,²³ Lebanon and Jordan.²⁴*

A symposium of international lawyers on Middle East crisis was held on July 19, 1958. Their views were published in "Studies in Political Science and Law."²⁵ There were also some articles on the Hungarian crisis.

16. Zhou Geng Shen, "A Refutation of the One-Sided Indian Argument Concerning Sino-Indian Boundary" (1959), 5 Studies in Political Science and Law 20; Wei Lian, "The Question of the So-Called McMahon Line Viewed From the Angle of International Law" (1959), 6 Journal of International Studies 47; Chen Tiqiang, "Legal Aspects of the Sino-Indian Boundary Question" (1982), 1 Journal of International Studies 11.

17. Zhou Geng Shen, "The Illegality of UN Intervention in the Question of Tibet" (1959), 6 Studies in Political Science and Law 8; Fu Zhu, "Oppose US Intervention in China's Domestic Affairs on the Pretext of Protection of Human Rights" (1959), 6 Studies in Political Science and Law 12.

18. Zhang Hong Zen, "China's Sovereignty Over Xisha and Nansha Archipelagoes From the Point of View of International Law" (1980), 4 Red Flag 19.

19. Guo Jee, "An Important Measure for the Defense of State Sovereignty" (1958), 5 Studies in Political Science and Law 87.

20. Guo Jee, "U.S. Intervention in China's Judicial Sovereignty" (1960), 2 Studies in Political Science and Law 4.

21. Chen Tiqiang, "Piratical Acts of Chiang Kai Shek Traitor Clique" (1954), 22 People's China 9 (in English); "Chiang and US — Accomplices in Piracy" (1954), 16 People's China 13 (in English).

22. Zhou Geng Shen, "Violation of Geneva Agreement by the South Vietnamese Authorities Must not be Allowed" (1956), 6 Studies in Political Science and Law 24.

23. Zhao Li Hai, "The Suez Canal and International Law" (1956), Studies in Political Science and Law 12; Liu Ding "Smash the Aggressors' Cynical Lies" (1980), 8 Teaching and Research 3.

24. Chiu Re Qing, "Refute the Cynical Pretext of US and British Imperialists for Their Aggression Against Lebanon and Jordan" (1958), 8 Legal Studies 7.

25. (1958), 4 Studies in Political Science and Law 1.

(4) *Articles on specific topics of international law.*

These include articles on the definition of aggression,²⁶ collective self-defence,²⁷ weapons of mass destruction,²⁸ treaties,²⁹ law of the sea,³⁰ outer space,³¹ law of UN,³² diplomatic immunities, nationality law,³³ the Berlin question³⁴ and the outlook of the science of international law.³⁵

The partial listing of works above shows that the study of international law had made considerable progress in the PRC, at least prior to the Cultural Revolution. What obscured the Chinese international law activities in those years from the Western observers is probably the fact that there was little or no contact with the West. Our only contact with the outside world was through the Soviet experts who taught in Chinese universities and the Soviet textbooks and writings which were used in Chinese classrooms.

Looking back on this period, the experience seems to have both positive and negative sides.

26. Mei Ru Ao, "The Struggle for the Definition of Aggression" (1956), 2 Studies in Political Science and Law 7; Qiu Re Qing, "A Definition of Aggression for the Maintenance of Peace and Security" (1956), Journal of East China College of Political Science and Law; Chen Tiqiang, "Why Is It Necessary to Have a Definition of Aggression?" (1953), 2 World Culture.

27. Wang Tie Ya, "Collective Self-Defence in International Law" (1955), 4 Studies in Political Science and Law 23.

28. Zhu Li Sun, "Use of Atomic and Hydrogen Weapons Is The Most Serious Crime Against International Law" (1955), 4 Studies in Political Science and Law 30. Chen Tiqiang, "Poison Gas War Criminals Cannot Escape Just Judgement of Humanity" (March 24, 1954), World Culture.

29. Wei Liang, "A Brief Comment on International Treaties Concluded Since the Second World War", Collection of International Treaties (1953-5) at 660; Li Hao Pei "Reservations to International Treaties" (1980), Social Science.

30. Liu Ze Rung, "Some Questions Concerning the Regime of Territorial Seas" (1959), 2 Journal of International Studies 60; Wang Tie Ya, "The Present Legal Status of the Continental Shelf" (1973), Journal of Peking University Philosophy and Social Sciences; Chen Tiqiang, "The Generally Recognized Principle of the Freedom of the Seas" (1954), 4 World Culture 31.

31. Liu Ze Rung, "Legal Status of Outer Space" (1959), 8 Journal of International Studies 44.

32. Ding Liu, "Admission of New Members By UN" (1956), 1 Studies in Political Science and Law 32.

33. Liu Jia Jee, "Question of Dual Nationality" (1957), 3 Legal Studies 20.

34. Zhou Geng Shen, "Question of West Berlin Seen From the Angle of International Law" (1959), 3 Studies in Political Science and Law 1.

35. Wang Tie Ya "Present Trend of International Law" (1950), Journal of Peking University — Philosophy and Social Sciences; Wang Tie Ya "International Economic Law — an Important Branch of International Law" (1980), Democracy and Law.

On the negative side, the following may be mentioned:

(1) In learning from the Soviet experts, we had been too dogmatic, accepting everything they said. There was a lack of critical analysis. We did not give sufficient importance to the study of China's own experience and experiences of other countries. We did not make sufficient efforts at developing a Chinese system of the science of international law and there was a lack of balance among various views.

(2) Soviet views were mainly in the service of Soviet interests. Their understanding of Marxism-Leninism was often one-sided.

(3) Soviet international lawyers often identified Soviet political slogans and political needs of the time with international law.

These we discovered only after a painful process. On the other hand, there was also a positive side.

(1) For those who had little contact with Marxism-Leninism before, it was a good thing to be exposed to Marxism-Leninism in connection with international law. Works of Marx, Engels and Lenin seldom discuss international law as such, but some have bearings on questions of international law. At least certain basic Marxist concepts and principles can be applied to international law questions, such as the concept of imperialism, colonialism, unequal treaties, national self-determination, etc.

(2) With some knowledge of Marxism-Leninism, we are better able to criticize imperialism and its impact on international law. We are better able to analyze critically such rules of international law as laid down by imperialist powers, the purpose of these rules and the interests they serve.

(3) Paradoxically, the same method of critical analysis can likewise be applied to Soviet views of international law. It gives us now a better insight of how the minds of the Soviet lawyers work, how they use international law for the furtherance of their social-imperialist foreign policy.

The lesson from the past boils down to this: Marxism has still to be studied in connection with international law. We must not discard Marxism-Leninism because of our disagreement with Soviet international lawyers. We must not throw away the baby with the bath water. We must not divorce international law from Marxism-Leninism.

The application of Marxism-Leninism to international law is by no means an easy job. It will take Chinese international lawyers long years of sustained and arduous efforts to learn how to combine

Marxism-Leninism with international law. To my mind, however, at least two Marxist-Leninist ideas have found their way into Chinese international law thinking: (1) the use of class analysis, and; (2) the application of proletarian internationalism.

As regards the first point, Chinese international lawyers can see clearly that law is the reflection of class struggle, and any legal view point must necessarily reflect certain class interests. It was pointed out in the *Communist Manifesto* that "Your (i.e. bourgeois) jurisprudence is but the will of your class made into a law for all".³⁶ Lenin wrote: "Law is the expression of the will of the classes which have emerged victorious and hold the power of the state."³⁷

These remarks refer principally to the law within a state. The reflection of class interest through international law is a more complicated matter than through municipal law. It is impossible to apply directly and literally to international law the formula applicable, to municipal law, such as the relation between economic base and superstructure, or the theory that law is the reflection of the will of the ruling class. Unlike a state which has only one ruling class at one time, in the international scene there are many states, many ruling classes and many class wills. However, the theory of class will is applicable to international law to the extent that any rule of international law which claims to have some viability, must, at a given time, be consistent with the class interests or class wills of the ruling classes of some states which promote the rule and use the power at their disposal to make it effective. The more powerful these states are, the greater chance of the rule's becoming effective. There does not exist an immutable, ideal rule of international law, nor the most reasonable, the most natural rule of international law. Every state, *i.e.* the ruling class of every state, has its own idea of a blue-print for the world, and would make efforts to make that blue-print a reality. In order to attain this aim, the states would struggle against each other or cooperate with each other, and create and apply whatever international law that is useful for this purpose. At any given time, there would be some basic principles of international law which the majority of states, or the overwhelming force within the international community, for one reason or another,

36. Karl Marx and Friedrich Engels, *Collected Works* (Vol. 6, London: Lawrence and Wishard, 1976), at 501.

37. V.I. Lenin, "The Agarian Programme of Social-Democracy in the First Russian Revolution 1905-1907", *Collected Works* (Vol. 13, Moscow: Foreign Language Publishing House, 1962) at 327.

could agree, and support with forces at their disposal. These basic principles would govern and determine the contents of minor rules. Unless one state or one group of states acquires absolute predominance, international law must contain some elements of compromise. If and when such absolute predominance is attained by one state, a world state would come into existence. Then it would be the end of international law itself.

Short of becoming a world state, the predominant force in the international community may consist of states ruled by the same class. It may also consist of states ruled by different classes. The fact that states are ruled by different classes does not prevent them from agreeing to certain rules of international law, whereas states ruled by the same class may often find themselves in disagreement. Thus, prior to the October Revolution, all the major states were capitalist states. Yet there were divergent views regarding many rules of international law; while today, China, a socialist state, can agree with capitalist states, especially of the Third World, on many important matters of international law. During the Second World War, the Axis states and the Anglo-American states all capitalist states, fought a war of extermination against one another, whereas the Anglo-American states formed an alliance with the Soviet Union, a socialist state, and at the end of the war agreed to the signing of the United Nations Charter. Thus, agreement of states on rules of international law is independent of what classes are in power within those states. It can be seen, therefore, that, unlike rules of municipal law, which reflect the will of a single ruling class of the state concerned, rules of international law agreed by the majority of states and supported by the predominant force within the international community do not reflect the will of one class, but reflect the wills of all the ruling classes of various states participating in their formulation. These ruling classes, though antagonist, may, for one reason or another, find it in their interest to agree to certain rules of international conduct.

With a better understanding of the nature of international law through class analysis, Chinese international lawyers are now less prone to accept blind-folded rules of international law advocated and eulogized by imperialist states in the past, and would analyze and assess every rule according to its merits. Those that serve exclusively the interests of capitalism would be entirely unacceptable. Some rules, though bourgeois in origin, can under certain

conditions serve the interests of the proletariat and world peace, and as such would be conditionally acceptable.

Some writers argue that a state must accept international law in its entirety; you cannot pick and choose. This does not square with facts. Apart from the fact that it is difficult to say of what the "entirety" of international law is consisted of, every state in fact makes its own choice. This is done, not capriciously, but only after calculating short and long term benefits, weighing the advantages to be derived in the particular case on hand and those to be derived in an over-all world strategy. A state faced with the task of formulating or accepting a rule of international law would in most cases choose a rule conducive to its long term benefits and advantageous to its over-all world strategy and world outlook, at the expense of its immediate advantages. It would also have to consider the need of reciprocity: a short term advantage may turn into a disadvantage when the roles are exchanged. With these considerations in mind, a state's choice cannot but be limited. Witness the fact that certain superpowers had to accept (albeit only verbally) anti-hegemonism as a principle of international conduct. Their conduct has to be restrained, at least to the extent that some explanation can be given to prove their legality.

It is thus that the rules of international law accepted by the overwhelming majority of states and supported by the dominant forces in the international community becomes binding, not only because of its acceptance by states, but also because it is in the interest of those states to abide by it and to see that others do the same.

However, while it is possible to identify a rule as a binding rule of international law, yet there is still room for varying interpretation and application. Here again class interests of states come into play. The powerful imperialist states which made the 19th century rules of international law would of course find the rules on a whole agreeable to them. But even they often changed, or at least stretched the law to suit their own convenience under changed circumstances. Every state interprets the law (considered binding upon itself), and applies it according to its own interpretation. Of course, such interpretation and application cannot go against the basic principles which the predominant force within the international community supports, without suffering from unfavourable consequences.

The second point, the question of proletarian internationalism. According to the understanding of the Chinese Communist Party,

proletarian internationalism means opposing the oppression of our own nation by any other nation, and at the same time opposing the oppression of any nation by any other nation. Such a stand is based upon the fundamental interests of the people of our own country, as well as the fundamental interests of the people of the whole world. For this reason, China, a socialist state long suffering from imperialist oppression, is in whole-hearted support of proletarian internationalism. For China, patriotism or nationalism is entirely consistent with and complementary to proletarian internationalism.³⁸ In the past, our struggle against imperialism contributed to the struggle against colonialism by other oppressed peoples, and, *vice versa*, their struggles were also of direct assistance to us. Today, though no longer a semi-colony, we are still faced with the task of building our country free from molestation by hegemonist powers, a task in common with newly emergent countries of the Third World. We feel ourselves by duty bound to assist other oppressed nations in their struggle for national liberation with the ultimate aim of eliminating all oppression in the whole world. For China, to assist in the liberation of other oppressed nations is part and parcel of the task of liberating ourselves. For this reason, in international law we are all for the respect of state sovereignty and equality; we are all for national self-determination. We are opposed to aggression, intervention and national oppression in any form. These ideas are inborn within our system. Our overall attitude toward international law cannot be divorced from this basic concept of world order.

From the works of the Chinese international lawyers mentioned above, it is clear that proletarian internationalism is a basic tenet of Chinese concept of international law. Proletarian internationalism is a principle according to which all oppressed peoples and nations should help each other in their struggle for liberation. One state can not, in the name of “proletarian internationalism”, demand one-sided sacrifices from other states for the interest of the “socialist commonwealth”, which is but another name for the Soviet Union itself.

For capitalist states, especially for powerful capitalist states, national self-interest is the highest consideration in its international conduct. For example, President Washington of the United States declared in his farewell address: “It is folly for one nation to look

38. Liu Shao Qi, “Internationalism and Nationalism” (Peking, 1953) at 7-14.

for disinterested favours from another . . . There can be no greater error than to expect or calculate upon real favours from nation to nation”.³⁹ In a letter written in 1778, he again said: “No nation is to be trusted farther than it is found by its own interests; and no prudent statesman or politician will venture to depart from it”.⁴⁰ Looking from a bourgeois philosophy of life, there is nothing wrong about such an advice. U.S. Secretary of State John Foster Dulles also declared again and again that U.S. policy was guided by its “enlightened self-interest”. It is quite clear that, to the bourgeois state, the purpose of international law is to safeguard, to promote and to advance the interests of that state. China, while it expects the same from international law from the point of view of nationalism, demands more from international law, and takes into consideration the principle of proletarian internationalism in the formulation of the fundamental principles of international law.

III. *PRC's Application of International Law and Contribution to International Law*

Ever since its founding, the PRC, in dealing with international problems, often spoke about “recognized norms of international law” or “general international practice”, and has acted consistently with these norms and practices. Although from time to time views were expressed that “a revolution knows no law”, or that “policy over-rides law”, the fact remains that, except during the chaotic conditions of the Cultural Revolution and in certain isolated cases, the PRC’s record of conducting international relations on the basis of international law is good.

For example, in the question of recognition and the question of the succession of governments, China has acted strictly in accordance with the generally recognized rules of international law. With regard to treaties concluded by former governments, Article 55 of the Common Program of the Chinese People’s Political Consultative Conference (1949) declared: “The Central People’s Government of the People’s Republic of China must study the treaties and agreements concluded by the Koumintang government with foreign governments and, depending on their contents, recognize, annul, revise or re-conclude them”. Much was made of this by foreign sources as evidence of non-observance of

39. G. Marion, *Bases and Empire* (1949) at 13.

40. *Id.*

international obligations by the PRC. But, as unequal treaties are inconsistent with the fundamental principles of sovereignty and equality of states, the observance of unequal treaties is not an obligation under modern international law. Furthermore, as the PRC has a class character radically different from that of the old China, the vital condition existing at the time of the conclusion had ceased to exist. These treaties had become void by the simple operation of the principle *rebus sic stantibus*. On other questions, such as China's sovereignty over Taiwan, China's lawful right in the U.N., the Sino-Indian boundary dispute, the Sino-Vietnamese dispute over the South China Sea Islands, the delimitation of Sino-Vietnamese boundary in the Bac Bo (Tonkin) Gulf, the position of the PRC is absolutely unassailable in international law. With regard to the question of the U.S. barracks in Beijing, these barracks were the remnants of imperialist oppression. Their retention in the hands of a foreign power was inconsistent with the principle of territorial sovereignty. It was entirely within China's lawful rights to recover them. The fact that they were taken over on the ground of requisition demonstrates an intention to soften the blow. The taking over of the properties of the British firm, the Asia Oil Company on April 30, 1951 was based on the lawful ground of requisition. In view of the violation of the immunity of China's state property in Hong Kong, the British government certainly had nothing to complain against the consequence of its own undisguised violation of international law. In the case of the shooting of a British civil aircraft over Hainan on July 23, 1954, China demonstrated over-scrupulous respect for international law. Out of humanitarian consideration, she paid prompt and adequate compensation for the loss, although responsibility for the injury under the circumstances was debatable. In the Taiwan question, distinction was made by China between the liberation of Taiwan which was a Chinese domestic question and U.S. intervention in Taiwan which was an international question. Only the latter was to be solved through negotiation between the U.S. and China. Such a fine distinction attests to China's accurate application of international law.

Even under the most extreme provocations, China has conducted herself with the utmost restraint, going beyond the requirements of international law. For example, in the border clashes with India in 1962 and Vietnam in 1979, in response to armed attacks by India and Vietnam, the Chinese border defense forces counter-attacked in self-defence. Once they had driven the attackers from the border

regions, they suddenly, at the height of victory, withdrew behind China's own borders, although a thorough crushing of the enemy could have been achieved by further advancing into enemy territories. Such acts of self-restraint for the interest of international peace and order are unprecedented in history.

Apart from applying international law, the PRC also made positive contributions to the development of international law.

(1) Five Principles of Peaceful Coexistence. The five principles were first initiated in the Agreement Between Republic of India and People's Republic of China on the Trade and Intercourse Between Tibet Region of China and India of April 29, 1954, in which the two countries declared themselves resolved to base their relations upon the following principles: (a) mutual respect for each other's territorial integrity and sovereignty, (b) mutual non-aggression, (c) mutual non-interference in each other's internal affairs, (d) equality and mutual benefit, and (e) peaceful coexistence. In a Joint Statement of June 28 of the same year, the Prime Ministers of the two countries declared that these principles "should be applied in their relations with countries in Asia, as well as in other parts of the world", and "in international relations generally". China followed this up with similar joint statements with Burma (June 29, 1954) and Indonesia (April 28, 1955). The "Ten Principles" contained in the Final Communiqué of the Bandung Conference of April 24, 1955 and proclaimed as the basis of friendly cooperation among participating states were a corollary and development of the Five Principles. The Sino-Soviet Joint Declaration of October 12, 1954 and the Sino-Vietnamese Joint Communiqué of July 7, 1955 both emphasized the Five Principles as the basis of relations with other states. Other states followed suit.⁴¹ The Soviet Union at first tried to avoid the application of the Five Principles to relations between herself and Eastern European states, but was compelled to accept them in her relations with these states in her Declaration of October 30, 1956.⁴² But she nevertheless used every opportunity to stress that the Five Principles only apply to relations between states with different social systems, thereby trying to evade her obligations

41. E.g. Soviet-Yugoslav Declaration of June 2, 1955, Soviet-Indian Joint Statement of June 22, 1955, Soviet-Vietnamese Joint Communiqué of July 18, 1955, Indian-Laos Joint Statement of September 11, 1955.

42. *Declaration on the Foundation for the Development and Further Strengthening of Friendship and Cooperation Between the Soviet Union and Other Socialist States.*

toward the Eastern European states. The Soviet manipulation, however, could not in the least diminish the significance of the Five Principles as fundamental principles of universal application. The "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of U.N." adopted by the U.N. General Assembly on December 16, 1970, reiterated the substance of the Five Principles and exhorted U.N. members to observe them in their mutual relations. In the Charter of Economic Rights and Duties of States, adopted by the U.N. General Assembly on December 12, 1974, the Five Principles were enumerated word by word as "Fundamentals of International Economic Relations".

Despite its initial reluctance to accept the Five Principles, the United States finally and formally recognized them as basis upon which to manage the relations between states, in the Joint Communiqué of February 27, 1972 with China. A similar confirmation of the Five Principles was made in the Sino-Japanese Joint Statement of September 29, 1972. With these, the Five Principles have completely established themselves as the fundamental principles of international law recognized by the whole world.

While it is true that each of the individual principles constituting the Five Principles has long existed and was not initiated by the PRC, putting the five together as an integral whole is something unprecedented and of great significance. The Five Principles as an integral whole is not the same as the sum total of the five individual principles. By being put together, the Five Principles individually and as a whole acquired new meanings. They are a reflection of the new international situation created by the rise and growing role of Third World states.

The principle of the mutual respect of sovereignty is not the same principle of sovereignty as existed in the 19th century, which gave free rein to powerful states to do what they liked, including the waging of wars of aggression and conquest. It ordains that the territory of every state should not be violated, that the people of every state should have the right to decide their own destinies, to choose their economic, social and political systems and ways of life, that oppressed nations and peoples should have the right to liberate themselves. The words "mutual respect" put the sovereignty of one state in the context of a world system in which the sovereignty of all states should receive equal respect. The sovereignty of one state is limited, in a sense, by the equal

sovereignty of others. But this is not the same as the doctrine of "limited sovereignty", which reduces the sovereignty of other states to one of dependency for the benefit of the unlimited sovereignty of one or two powerful states.

The principles of mutual non-aggression and non-intervention are not only supplements to the principle of sovereignty but have their own special significance. The principle of non-aggression not only prohibits the launching of aggressive wars against other countries, but also prohibits concealed armed attacks, indirect aggression and war by proxy against other states. The principle of non-intervention in domestic affairs of other states, prohibits any act to compel other states to adopt or not to adopt certain economic, social or political systems, to help suppress revolutionary movements, to create national dissensions or to foster or install puppet regimes. The principle of non-intervention prevents foreign reactionary forces from making common cause with domestic reactionary forces in suppressing revolutionary movements and movements of national self-determination. Chinese experience shows that, without foreign intervention, revolution in China would have succeeded much earlier. Revolution concerns the people of the country alone. It can have a chance of success only when the people are ready for it and demand it. For this reason, revolution cannot be exported, nor should counter-revolution. China's support of the principle of non-intervention is genuine and sincere, and it has its root in fundamental revolutionary principles.

The principle of equality requires not only formal equality, but also, more importantly, substantive equality. Sometimes formal equality is not only superficial, but is even used to cover up real inequality. Sometimes wordings in a treaty are couched in reciprocal and identical terms for both parties, but actually the advantages accrue only to the side which is economically or militarily stronger. On the other hand, real equality sometimes is attained by formal inequality. For example, the establishment of the New Economic Order requires giving developing nations special preferences. According to the principle of equality, all unequal treaties should be abolished. Theoretically, unequal treaties are illegal and *void ab initio*, but as a practical matter, the PRC has shown great patience and was willing to consult with the other party or parties concerned to take practical measures to rectify the state of inequality. Such is China's attitude in the Sino-Soviet boundary question. We merely demand the Soviet Union to acknowledge in

principle the inequality of the treaties concerned, but would wait for negotiations to find a satisfactory solution. This is the minimum for the Soviet Union, which styles itself as a socialist state, to do. According to the principle of equality, one-member-one-vote should be the organizational principle of international organizations. For a state to have three votes in the U.N. is entirely unreasonable. The rule of the unanimity of permanent members of the U.N. Security Council is a product of historical circumstances. It may be re-examined, when there is a radical change of circumstances, provided that the majority of members believe it to be inconsistent with the principle of equality and can devise a satisfactory substitute.

Especially in the economic sphere, not only equality, but also mutual benefit is required. Premier Zhou En-lai stated in his speech at the Asian-African Conference on April 19, 1955: "Among us Asian and African countries, cooperation should be based on equality and mutual benefit, and no special conditions should be attached. Trade and economic cooperation among us should aim at the promotion of economic independence of each country, and should not make one side a mere producer of raw materials or a market for consumers' goods. In cultural exchanges among us, we should respect the national cultural development of each country, so that we can learn from each other."⁴³

The principle of peaceful coexistence is the overall name for all the Five Principles, but at the same time has specific contents itself. According to this principle, a state should not only refrain from doing any thing to break to the peace, such as committing aggression and intervention, or threatening, bullying and controlling other states, but should also take positive measures to lessen the danger of war, to oppose war plots, to withdraw armed forces stationed abroad, to dismantle military bases abroad, to carry out real and not fictitious disarmament, to try pacific means for settling international disputes, to create conditions for the economic prosperity and balanced development of all countries, to give economic assistance to developing countries, to eliminate racial discrimination, to develop international cultural exchanges, etc. The PRC has always pursued a policy of peace and worked for peace among nations. This is not entirely out of altruism or abstract

43. *Documents on Foreign Relations of the People's Republic of China, 1954-1955* (in Chinese) at 247.

notion of pacificism, but also out of consideration of her own actual needs. She had had long years of war, and is badly in need of a peaceful environment to build up her economy. China's opposition to war plots and her warnings against the possibility of war, certainly does not mean that she wants war. On the contrary, it shows how strongly she abhors war and is eager for peace. The fear that warning against war would provoke war is entirely unfounded and contrary to common sense. War will only spring on the unprepared. To struggle against war is an important constituent part of the principle of peaceful existence.

(2) Eight principles of foreign aid. Premier Zhou En-lai in his report on his visit to 14 friendly nations in April 1964 declared the following eight principles as principles China has followed and would continue to follow in giving aids to foreign countries. (1) to give aid in accordance with the principle of equality and mutual benefit; to regard aid as a reciprocal act and not as a one-sided act of benevolence; (2) to strictly respect the sovereignty of the recipient state, attaching no condition whatever and demanding no special privileges; (3) to give economic aids at reasonable interest rates; (4) to help the recipient state on the path of self-reliance and independence, not to create a condition of dependence on China; (5) to undertake only construction projects which require a minimum amount of investment and can be put to use in the shortest possible time, and which would enable the recipient state to increase its income and accumulate capital; (6) to ensure that China will supply equipment and material of the highest quality at international market prices; (7) to guarantee that the personnel of the recipient state acquire the necessary techniques; (8) to require that Chinese aid experts enjoy only the same material treatment as experts of the recipient state; any special demands or enjoyments are forbidden. These principles are unprecedented in their generosity and unselfishness. They are the concrete manifestation of the Five Principles of Peaceful Coexistence in the field of foreign aid.

China's adoption of these eight principles was motivated by her adhesion to proletarian internationalism. The sooner the developing countries achieve economic independence, the better chance there is of preserving world peace, which is the aim and purpose of the PRC.

(3) Anti-hegemonism. Since the Second World War, hegemonism practised by the super-powers has threatened world peace. Soviet hegemonism is now in the ascendancy. The Soviet

Union occupied Czechoslovakia in 1968 and Afghanistan in 1970, egged on Vietnam to invade and occupy Cambodia, and placed Laos under Vietnamese control. Apart from armed invasions and occupation of other states, the Soviet Union has been carrying on subversion, sabotage, assassination, intervention, war by proxy and installing and fostering puppet regimes in many countries. Hegemonism is the greatest danger to world peace at the present time. China is the first country to call attention to that danger. In an article "In commemoration of Mr. Sun Yat Sen" printed in the Ren Min Re Bao, November 20, 1956, Chairman Mao Zetung announced China's determination to eliminate absolutely great nation chauvinism in China's conduct of foreign relations. He declared himself resolutely opposed to the big nations bullying the small, the powerful nations bullying the weak. The affairs of world, he said, should be decided by all the states of the world; it is not permissible for superpowers to manipulate and monopolize everything. The idea of anti-hegemonism was accepted by U.S. and Japan in their respective joint communiqué with China in 1972. "The Charter of Economic Rights and Duties of Nations" passed by the U.N. General Assembly on December 13, 1974 also made "no attempt to seek hegemony and spheres of influence" a principle governing the economic as well as political relations among states.

China even enshrined the policy of anti-hegemonism in her Constitution of March 5, 1978, which declared in its Preamble: "We shall never practice hegemonism"; we "are opposed to the hegemonism of the superpowers".

The Soviet Union, finding her hegemonist behavior exposed and condemned by world opinion, was furious with the doctrine of anti-hegemonism. She attacked the Sino-U.S. and the Sino-Japanese Joint Communiqués as "anti-Soviet". But in the fall of 1979, she put out feelers that she was also against hegemonism. On September 25, the Soviet Union formally tabled at the U.N. General Assembly a draft resolution entitled "Inadmissibility of the policy of hegemonism in international relations".

The Soviet Union, the bitter opponent of anti-hegemonism, was now trying to pass herself off as the champion of anti-hegemonism. The accused was trying to play the part of the accuser. However, it did not escape one's notice that, in the Soviet draft resolution, hegemonism was described as "the desire of some states to dominate other states and people" — a description far from

adequate to identify a hegemonist power. How can one identify a hegemonist power simply by its "desire", with no manifestation of conduct? All that the Soviet draft resolution required was to "condemn" such a policy, without any measure of implementation.

In a genuine effort to eliminate hegemonism, the Chinese Delegation submitted a draft resolution listing the concrete manifestations of hegemonism and proposed concrete measures for its elimination. Third World countries also submitted a draft resolution of their own, substantially similar to the Chinese draft. The Chinese Delegation thereupon declared itself in support of the Third World draft. As a result of General Assembly discussion, the Third world resolution was passed on November 30 by an overwhelming majority of 87-4, with 24 abstentions. With the passage of the resolution by the General Assembly, anti-hegemonism has fully established itself as a supplement to the Five Principles of Peaceful Coexistence.

(4) On the question of pre-existing treaties concluded by previous governments, the Chinese attitude has been: the state of China as a subject of international law remains unaffected by the revolution; however, having gone through a fundamental change in its social system, China cannot be bound by treaties concluded under former regimes which are incompatible with the new social system. Unequal treaties are void *ab initio*. But some of these treaties had in the course of history created certain conditions of fact which must be dealt with cautiously and reasonably. International law has always recognized that personal treaties and treaties of dynastic guarantee do not pass on to successor governments. Under modern conditions, certain treaties, though not dynastic guarantee treaties in appearance, are in fact concluded with the view to perpetuate a particular regime. Such treaties should be included within the category of dynastic guarantee treaties and terminate with the fall of the regime. Refusal of the PRC to be bound by such treaties has the support of both reason and logic.

(5) Dual nationality. Article 3 of the new Nationality Law promulgated by the PRC on June 28, 1980 provides: "The People's Republic of China does not recognize dual nationality for any Chinese national". The question of dual nationality has plagued international relations and taxed the ingenuities of international lawyers for ages. Although efforts have been made to eliminate or reduce the occurrence of dual nationality, little results have been achieved, as long as states adopt different principles in their

nationality laws and insist upon giving priority to their own nationalities. The new Chinese Nationality Law makes it clear that under certain conditions of dual nationality, the Chinese nationality will automatically give way, such as the case provided in article 5. That article states: "Any person born abroad whose parents are Chinese nationals or one of whose parents is a Chinese national has Chinese nationality. But a person whose parents are Chinese nationals and have settled abroad or one of whose parents is a Chinese national and has settled abroad and has acquired foreign nationality on birth does not have Chinese nationality." Thus a person of Chinese parentage who acquires a foreign nationality on birth for other reasons automatically loses his Chinese nationality. Also by Article 9, "Any Chinese national who has settled abroad and who has been naturalized there or has acquired foreign nationality of his own free will automatically loses his Chinese nationality." At the same time, the law also makes sure that persons who acquire Chinese nationality through naturalization or restoration do not retain their foreign nationalities.

There are indeed, some states which also declared in their nationality laws that they do not recognize dual nationality. But what they wanted to eliminate is not their nationalities, but the nationality of the other state concurrently possessed by one of its citizens. This does not diminish the occurrence of dual nationality. If anything, the question of dual nationality would be aggravated, not solved. It is only when all states adopt a self-denying policy like that of China, will there be hope for the gradual diminishing and perhaps the final elimination of the occurrence of dual nationality.

(6) On the question of recognition, the PRC manifests a tendency to adopt the policy of mutual recognition, which is a corollary of the principle of equality. Closely related is the establishment by the PRC of "semi-diplomatic relations" with certain states, namely the U.K. and the Netherlands. Full diplomatic relations did not follow the recognition of the PRC by these states, because their recognitions were incomplete, half-hearted, in fact, a "semi-recognition." The establishment of Liaison Offices by PRC and the U.S. in each other's capital from 1972 to 1979 was also an innovation in the practice of diplomatic institutions.

(7) People's diplomacy. In the early days of the founding of the PRC, relations with many countries which did not recognize the new China were carried on through people's diplomacy. Non-government bodies were created by China and other countries

concerned. They handled practical matters in various fields, such as trade, fisheries, sports, cultural exchanges, visits of personnel, etc. The most notable examples are as follows: (1) the Sino-Japanese Trade Agreement between the Commission for the Promotion of International Trade of the PRC and the Federation of Japanese Parliamentarians for the Promotion of Japan's Trade, signed on June 1, 1952, which provided for the establishment of Offices of Trade Representatives; (2) the Agreement between Chinese Fisheries Association and the Japan-China Fisheries Association on Fisheries in Yellow Sea and East China Sea, signed on April 15, 1955; (3) the Joint Statement signed on October 3, 1956 by the Commission for the Promotion of International Trade of the PRC and the Singapore and Malay Industry and Commerce Study Group. These bodies worked so effectively that for practical purposes the relations between the countries concerned were carried on smoothly as if official relations were existing between them. The cooperation between non-government bodies of states not having established diplomatic relations with each other is not unknown in history, but the wide use of such a procedure for a long duration is a special feature of Chinese diplomacy. Such a practice is useful to new states and governments in resisting pressure from foreign states, which make unreasonable demands as a price of recognition. It is also useful to a non-recognizing state whose non-recognition is the result of pressure by a third state, but itself would have liked to have practical dealings with the un-recognized regime. The practicability of People's diplomacy stems from the fact that there are no basic contradictions between peoples and that the extension of trade and cultural relations between peoples work for the benefit of all.

IV. Conclusion

A thorough study of the theory and practice of international law in the People's Republic of China is bound to be a long and arduous task. It is not attempted in this paper, which aims only at presenting some introductory thoughts, and which, it is hoped, will provoke discussion and criticism from international lawyers both in China and abroad.