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Chinese Attitudes Toward International Law in the Post-Mao Era, 1978-1987**

After the publication of an article entitled "Rusk's 'International Law' Cannot Cover Up the American Imperialists' Crime of Invading Vietnam" by the Chinese Scholar, Fu Zhu,¹ in 1965, no scholarly writings on international law were published in the People's Republic of China (PRC) until 1979. On March 30, 1979, the authoritative Chinese Communist Party newspaper *People's Daily* published a lengthy article entitled "The Study of International Law Must be Strengthened," written by Wang Tieya and Wei Min, urging (1) the restoration of research institutes on international law, (2) the establishment of a professional society of international law, (3) the strengthening of teaching and research of international law in institutions of higher learning, and (4) the formulation of short and long-range planning to develop international law studies in the PRC.² Chinese leader Deng Xiaoping, at two important Communist Party Meetings held in late 1978, advocated the need to make a serious effort towards strengthening the study of international law.³ Since then the PRC has shown

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**The Pinyin system of transliteration of Chinese titles, names, places, etc. is used in this paper. Because readers may find it difficult to locate Chinese publications cited in this article, the places of publication and the publishers are included in the notes. When a Chinese journal is first cited, the transliteration with an English translation in parentheses is given; when the same journal is later cited, only the English translation is given. All literature cited in this article is available at the University of Maryland School of Law East Asian Legal Studies Library. With a few exceptions, the cutoff date for this study is April 1987.

The Editorial Reviewer for this article is Nikki Hurst Gibson.

1. Fu Zhu, *Rusk's 'International Law' Cannot Cover up American Imperialists' Crime of Vietnam*, 1964 ZHENGFA YANJIU (STUDIES IN POLITICAL SCIENCES AND LAW), No. 2, at 8.

2. Renmin Ribao (People's Daily), March 30, 1979, at 3.

3. See Tao Zhenghua, *Carry Out the Policy of Opening to the Outside World and Strengthening the Research Work in International Law*, 1985 FAXUE YANJIU (STUDIES IN LAW), No. 1, at 83.

increasing interest in international law and significant progress has been made in developing the science of international law. Despite such interest, the PRC's legal development in the area of international law has not been systematically reviewed and studied.⁴ This article attempts to give a concise overall survey of the subject. The first section explains the motives of the PRC's renewed interest in international law, and summarizes the views of Chinese scholars on the function, definitions, class character, systems, and scope of international law. The second section is an analysis of Chinese theory and practice on the sources of international law and the relationship between international and domestic law. The final two sections cover the PRC's participation in existing multilateral lawmaking conventions, the international legislative process, and a survey of the development of the study of international law in the PRC since 1979.

I. The PRC's Motives

A. REASONS FOR CHINA'S RENEWED INTEREST IN INTERNATIONAL LAW

Like the PRC's domestic law reform, the renewed Chinese interest in international law has been primarily motivated by the PRC's four modernization programs. In a speech delivered at the inauguration meeting of the Chinese Society of International Law held in February 1980, Huan Xiang, Vice-President of the Chinese Academy of Social Sciences and President of the Society, said that an essential condition to realizing the goals of China's four modernization programs is the creation of a peaceful international environment; he further stated, however, that the current status of international law study in China was far behind the need of China's current international struggle, international intercourse, and the realization of socialist modernization. He urged the strengthening of the study of international law in order actively to assist diplomatic struggle and international interaction and to serve the modernization program. In his speech, Huan Xiang specifically pointed out that external legal relations necessary for attracting foreign investments, introducing foreign technology to China, forming joint ventures, conducting joint exploration for natural resources and participating in other forms of Sino-foreign economic cooperation, must be regulated and adjusted through legal formalities. Thus, international conventions, rules, and customs relating to

4. Cf. Chen Tiquang, *The People's Republic of China and Public International Law*, 8 DALHOUSIE L.J. 1 (1984). Professor Chen's article covers Chinese theory and practice up to 1980 and only devotes a few paragraphs to the post-Mao period of China's international law development. Professor Wang Tieya also made a brief survey of the PRC's teaching and research of international law up to 1982. See Wang Tieya, *Teaching and Research of International Law in Present Day China*, 22 COLUM. J. TRANSNAT'L L. 77 (1983).

these legal relations are in urgent need of research and study.⁵ Other participants at this meeting expressed similar views. The late Professor Chen Tiqiang also pointed out the political role of international law in international relations, noting especially the current use of international law to gain international support and thus contribute to the maintenance of international peace and the carrying out of the anti-hegemonism struggle.⁶ Later, Chinese writer Liu Fengming gave a more sophisticated analysis of the relationship between international law and China's modernization program:

So far as our country is concerned, [modern international law] is an indispensable legal means to realize socialist modernization construction. For instance, in order to explore resources near our coast, we must study the legal status of the continental shelf, fishing zone and exclusive economic zone and international norms and customs between states in delimiting these regions. In order to introduce foreign advanced technology, we must immediately confront the problems of international patent, protection of trademarks, intellectual property and others. In order to create a safe and peaceful international environment for our socialist modernization construction, we must actively join international legislative activities and strengthen the struggle within the United Nations so as to form the broadest international united front for anti-hegemonism for the purpose of preventing and delaying the outbreak of World War.⁷

B. THE FUNCTION OF INTERNATIONAL LAW

In the 1950s, when Chinese scholars discussed the function of international law, almost all available literature emphasized the role of inter-

5. See Huan Xiang, *Some Opinions on Strengthening the Research Work of International Law in Our Country*, 1980 MINZHU YU FAZHI (DEMOCRACY AND LEGAL SYSTEM), No. 3, at 3. The emphasis on China's need for having a peaceful international environment to facilitate China's efforts to carry out modernization programs is again stated in his foreword to the publication of the first volume of CHINESE YEARBOOK OF INTERNATIONAL LAW, where he wrote:

In the fulfillment of China's historical task of socialist modernization, a most important condition is required, that is, a peaceful international environment, so that she may greatly expand her economic relations with other countries, make use of foreign capital, learn from advanced science and technology, and increase cultural and other exchange.

Huan Xiang, *Strive for the Founding of the Science of International Law of New China*, 1982 ZHONGGUO GUOJI FA NIANKAN (1982 CHINESE Y.B. OF INT'L L.) 5 (Beijing: China Translation and Publishing Corp., 1982) (translated in SELECTED ARTICLES FROM CHINESE Y.B. OF INT'L L. 2 (Beijing: China Translation and Publishing Corp., 1983)).

6. Xu Hegao, *The Founding of the Chinese Society of International Law and Its Activities*, in 1985 CHINESE Y.B. OF INT'L L., *supra* note 5, at 308.

7. LIU FENGMING, XIANDAI GUOJI FA GANGYAO (ESSENTIALS OF MODERN INTERNATIONAL LAW) 5 (Beijing: Mass Press, 1982), reviewed by Hungdah Chiu in 79 AM. J. INT'L L. 466-68 (1985). See also similar views expressed in GUOJI FA GAILUN (INTRODUCTION TO INTERNATIONAL LAW) 2 (Wei Min ed., Beijing: Guangmin Daily Press, 1986); Zhou Ziya, *The Open Door [Policy] and the Strengthening of the Study of International Law*, 1986 FAXIU ZAZHI (THE LAW MAGAZINE), No. 1, at 37, and Zhu Qiwu, *The Open Door Policy and International Law*, 1987 FAXUE (LAW SCIENCE) No. 4, at 39.

national law as an instrument of a state's foreign policy.⁸ In the post-Mao period one Chinese scholar, Lin Jinrong, still adhered to this view. He wrote in 1979 that "because international law is in the service of [a state's] external policy, it is necessary to use international law to implement thoroughly our external policy."⁹

The majority of Chinese scholars are either silent on this question or take a more neutral approach in their discussion on the function of international law. The standard textbook on international law, edited by Wang Tieya and Wei Min for the use of most colleges or other institutions of higher learning, emphasizes the function of international law as primarily adjusting relations among states in order to maintain their normal relations.

Although the Wang and Wei textbook acknowledges the so-called "struggle" among states in international relations, the treatise nevertheless considers that in certain instances the increasing cooperation among states will necessitate resorting to international law to maintain and promote these relations.¹⁰

8. Cf. the discussion summarized in Hungdah Chiu, *Communist China's Attitude Toward International Law*, 60 AM. J. INT'L L. 245, 248 (1966).

9. See Li Jinrong, *Strengthening the Study of International Law to Serve the Realization of Four Modernizations*, 1979 XINAN ZHENGFA XUEYUAN XUEBAO (JOURNAL OF THE SOUTHWEST POLITICAL-LEGAL INSTITUTES), No. 2, at 32 (1979). Note that another PRC scholar criticizes the similar view expressed in the "policy-oriented" theory of international law advocated by some Western scholars as follows:

"The policy-oriented" theory considers power as the nucleus of international politics and international law. They regard policy as the determining factor [for formulating international law] and the latter is the concrete expression of the external policy, of a state. It is true that international political relations have comparatively significant influence on the formulation of international law and each state's attitude toward international law is based on its external policy, however, international law is a matter of superstructure and it is, in the final analysis, decided by international economic relations. It is possible that imperialist big powers may impose their will on the international community and thus influence the enactment of international law. However, the international community has its own objective rules of development which cannot be diverted by the will of imperialist big powers and the development of international law cannot be separated from the object rules of the development of the international community. Therefore, we cannot just observe the phenomenon at a given moment in the international community and mix up the power politics of big powers, external policy and international law.

Pan Baocun, *On the Scientific Nature of International Law*, 1985 STUDIES IN LAW, No. 5, at 84.

Professor Wei Min criticized the "policy-oriented" theory as follows:

The policy-oriented school mixes law and policy and attempts to make international law to follow the change of policy of certain big powers. . . . It considers the external policy [of states] as the basis of international law and even to consider external policy as international law. To view law and policy as the same is baseless.

Wei, *supra* note 7, at 38.

10. GUOJI FA (INTERNATIONAL LAW) 1, 10 (Wang Tieya & Wei Min eds., Beijing: Law Press, 1981), reviewed by Hungdah Chiu in 77 AM. J. INT'L L. 977 (1983). A similar approach

In another textbook edited by Professor Wei Min for a self-study program sponsored by the PRC Government, a more comprehensive analysis of the function of international law is presented. According to Professor Wei, there are two different thoughts or tendencies in approaching the function of international law. One is the unlimited exaggeration of the function of international law by advocating the view that once there is international law, world peace can be maintained, national security may be guaranteed, and weak and small countries will no longer be the subject of aggression or bullies. The other thought is to take a nihilist attitude toward international law. In China, Professor Wei observed, this attitude was a fashion when an extreme leftist line prevailed and, as a consequence, severely undermined the research of international law and, to a certain extent, adversely affected China's struggle in the international arena.¹¹

Professor Wei considers either of the above approaches to the question of the function of international law to be incorrect. He takes a more objective but realistic approach to this question. He wrote:

How should one correctly explain the function of international law in international relations?

First, international law serves as a criterion for identifying fundamental issues of right and wrong in the international [community]. . . .

Second, it serves as legal forms of self-restraint and mutual restraint on the basis of equality among countries in order to establish normal international order. . . .

Third, it serves as legal forms for establishing certain concrete international rights and duties for countries in the process of their mutual intercourse. . . .

The above three roles of international law are interrelated and reciprocally supplemented, i.e., one cannot emphasize one role to the exclusion of the others. One should view the three roles as an integrated one to observe and study the function of international law.¹²

In a textbook on law in general the function of international law is described as follows:

International law is an important instrument in handling mutual relations in the international [community]; therefore, we should neither ignore nor deny the function of international law. Of course, we also should not exaggerate its function. The primary function of international law in international relations is to promote the intercourse among countries, adjust interstate relations, safeguard world peace, strive to establish international order of equality, and serve the just struggle against imperialism, hegemonism and colonialism. In our coun-

is expressed in Wang Tieya, *International Law*, in *ZHONGGUO DABEIKE QUANSHU FAXUE* (THE GREAT ENCYCLOPEDIA OF CHINA, LAW) 189 (Shanghai: The Great Encyclopedia of China Press, 1984).

11. Wei, *supra* note 7, at 14-15.

12. *Id.* at 15-18. A similar view is expressed in LIU FENGMIN, *supra* note 7, at 4-5.

try, we need to use the instrument of international law to serve the realization of the task of socialist modernization.¹³

C. THE DEFINITION, CLASS CHARACTER, AND SYSTEMS OF INTERNATIONAL LAW

In the 1950s Chinese scholars generally followed the Soviet definition of international law.¹⁴ The deterioration of Sino-Soviet relations in the 1960s and the decline of the study of international law following the 1957 Anti-Rightist Campaign in China left the position of Chinese scholars on the definition of international law uncertain. In a treatise completed in 1964, published in 1976 for limited circulation and reprinted in 1981, the late Professor Zhou Gengsheng defined international law as follows:

International law is formulated in the process of international transactions and recognized generally by various countries. It expresses the will of the ruling class of these countries and is the aggregate of norms of behaviors with legally binding force on countries in their international relations, including principles, rules and institutions.¹⁵

The Chinese scholar Zhu Qiwu in 1981 criticized the above definition as failing to explain clearly the role of modern international law in regulating the relations of struggle and cooperation among countries of disparate social and economic systems. The definition referred merely to the legally binding force of international law without explaining how international law could be employed to ensure the implementation of legal norms.

Zhu proposed the following definition of international law:

International law is created through agreements in international transactions, expresses the coordinated will of the ruling class of countries and is guaranteed to be implemented by compulsory measures taken individually or collectively by countries. It is the aggregate of legally binding norms of behaviors recognized generally by respective countries in adjusting the relations of struggle and cooperation among countries.¹⁶

13. LIU SHENGPING, ZHOU XINMING & TANG ZHONGYAO, FAXUE GAILUN (INTRODUCTION TO LAW) 524 (Lanzhou: Gansu People's Press, 1984). A similar view is expressed in SUN GUOHUA, ZHAO YUQI, KAO MINGXUAN, ZHENG LI & ZHU LISUN, FAXUE GAILUN (INTRODUCTION TO LAW) 385 (Beijing: Red Flag Press, 1985). This book serves as the self-study materials for Communist Party cadres and government officials. *Red Flag* is the theoretical journal of the Communist Party of China.

14. See Hungdah Chiu, *supra* note 8, at 250-51; see also Shi Xiaochong, *On the Question of the Definition of Modern International Law*, 1980 DEMOCRACY AND LEGAL SYSTEM, No. 3, at 6.

15. See 1 ZHOU GENGSHENG, GUOJI FA (INTERNATIONAL LAW) 3 (Beijing: The Commercial Press, 1981), reviewed by Hungdah Chiu in 77 AM. J. INT'L L. 977-78 (1983).

16. Zhu Qiwu, *A Brief Discussion on the Definition of International Law*, 1981 STUDIES IN LAW, No. 3, at 53.

The standard textbook on international law edited by Wang and Wei in the PRC adopts a definition different from that of Zhu. Its definition is as follows:

International law . . . is primarily a law among states. That is to say, it is a body of binding principles, rules and regulations primarily adjusting the relations between states. [The reason we use the word] "primarily" [in this definition] is because, in addition to states, there are political entities similar to states and international organizations established by states [in the international community]. Within specific conditions and bounds, they are subjects of international law and their relations are also subject to the restraint of principles, rules, and regulations of international law.¹⁷

This definition is very similar to the prevailing Western definitions of international law. For instance, Mr. J. G. Starke of the United Kingdom, whose textbook was recently translated into Chinese,¹⁸ defined international law as follows:

International law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which States feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which includes also:—

(a) the rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relations with States and individuals; and

(b) certain rules of law relating to individuals and non-State entities so far as the rights or duties of such individuals and non-State entities are the concern of the international community.¹⁹

The only major difference between the two definitions appears to be the omission of any references to individuals in the Chinese definition of international law. This difference is due to China's concern about the attempt by Western countries to interfere in China's domestic affairs on the grounds of promoting human rights or protecting foreigners in China. As a matter of fact, the Chinese standard textbook devotes only eight pages to a discussion of the human rights issue,²⁰ in sharp contrast to the more extensive coverage of the subject in many Western textbooks on international law. On the ground of violating the sovereignty of states, the Chinese textbook also criticized the Western view of emphasizing the

17. Wang & Wei, *supra* note 10, at 1; see also Lan Haichang, *Answers to Essential Questions of "International Law,"* 1986 FAXUE PINGLUN (LAW REVIEW), No. 5, at 86.

18. J. G. SHIDAKE, *GUOJI FA DAOLUN (INTRODUCTION TO INTERNATIONAL LAW)* (trans. Zhao Weitian, Beijing: Law Press, 1984). The translation is from the eighth edition published in 1977.

19. J. G. STARKE, *AN INTRODUCTION TO INTERNATIONAL LAW* 1 (8th ed., London: Butterworths, 1977).

20. See Wang & Wei, *supra* note 10, at 260-68. The self-study textbook edited by Professor Wei Min devoted only five pages to human rights. Wei, *supra* note 7, at 243-48.

international character of human rights and making individuals the subject of international law.²¹

Some Chinese scholars still adhere to a definition of international law similar to that of the Soviet writers of the 1960s and the view suggested by Zhu. Liu Fengming, for example, states:

International law is the aggregate of various principles, norms and institutions adjusting the relations of struggle and cooperation among states, reflecting the adjusted will of the ruling class of various states and enacted through the agreements among states and to be maintained by the individual or collective [effort] of states.²²

This view, nevertheless, appears to be a minority view in China. Even the *Law Dictionary*, collectively compiled and published in China, adopts the following nonpolemic and academically oriented definition of international law: "International law is [intended] to adjust mutual relations among states in their international intercourse, i.e., is the aggregate of principles and institutions of regulating rights and duties [of states]."²³ A similar definition also appears in *The Great Encyclopedia of China, Law*.²⁴

Yet while the majority of Chinese scholars writing on the definition of international law do not refer to international law's class character in their definition, these experts nevertheless acknowledge the existence of this question. According to the standard textbook edited by Wang and Wei, since law in general has class character, then international law as a part of the law in general is no exception. The will of a state is the will of the ruling class of that state, and this fact reveals the class character of international law. The Wang and Wei textbook does, however, point out the absence of a ruling class in the international community. Therefore, the class character of international law does not express the will of a single

21. Wang & Wei, *supra* note 10, at 267. See also, Wei, *supra* note 7, at 74-79 for denying individuals or juristic persons (corporations) as subjects of international law. A Chinese scholar also severely criticizes the Western theory of the international protection of human rights as a pretext to interfere with the internal affairs of other states. See Li Zerui, *A Theoretical Study of International Human Rights Law*, 1983 CHINESE Y.B. INT'L L. 93, 113-16.

22. LIU FENGMING, *supra* note 7, at 4. A similar view is expressed in ZHU LISUN, GUOJI GONG FA (PUBLIC INTERNATIONAL LAW) 6 (Beijing: Central Broadcasting and Televising University Press, 1985). For a discussion of the Soviet definition of international law and its influence on Chinese scholars in the late 1950s, see I J. A. COHEN & HUNGDAH CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 26-28 (1974).

23. FALU CIDAN (LAW DICTIONARY) 519 (Shanghai: Shanghai Dictionary Press, 2d ed. 1985). See also Wei, *supra* note 7, at 4.

24. THE GREAT ENCYCLOPEDIA OF CHINA, LAW, *supra* note 10, at 189, where international law is defined as "the law between states, that is, the aggregate of the binding principles, rules and institutions to adjust primarily the relations between states." A similar definition is offered in a standard textbook on introduction to law used by most colleges and institutions of higher learning. FAXUE GAILUN (INTRODUCTION TO LAW) 319 (Beijing: The Law Press, 1982).

ruling class, but rather reflects the agreement of the ruling classes of various states.²⁵ Other scholars generally appear to share this view.²⁶

Nevertheless, a few Chinese scholars maintain a more dogmatic view on the class character of international law. Thus, Liu Fengming writes:

After the success of the October Revolution in Russia, a new type of international law in human history, modern international law, was created. It is created along with proletariats revolution and national liberation movement and it is accommodated with the interest and desire of proletariat, oppressed nations and people of the world. . . . International law is a law among equals and it is not a law between the ruler and the ruled. A proletarian state or a people's democratic state does not impose its own state will on any other country in the world and, based on the fundamental interest and desire of the people of various states, seeks common ground while preserving differences in international affairs. This is the main concrete expression of the class character of modern international law. . . . The bases of "coordinated will" and "common will" are different, the former is established on the basis of seeking common ground

25. Wang & Wei, *supra* note 10, at 9. A similar view is expressed in Wei, *supra* note 7, at 6, and Pan Baocun, *supra* note 9, at 80. Two Chinese writers have criticized Wang and Wei's brief coverage of the class character of international law. They consider this question is an important one and should be more extensively discussed. Lu Han & Yuan Chengchi, *Comments on "International Law"—A [Textbook] for Institutions of Higher Learning*, 1986 LAW SCIENCE, No. 4, at 94, 95.

26. Cf. LU YINGHUI, GUOJI FA RUMAN (AN INTRODUCTION TO INTERNATIONAL LAW) 4 (Beijing: Law Press, 1984), where the author states that while domestic law reflects the will of the ruling class of a country, international law reflects the coordinated interest of various states and it can only be created by agreement. See also the following comments on the class character of international law:

There are important differences between the will and interest of states of different historical types because of the diversity of ruling classes. Even among states of the same historical types, their will and interests are not entirely the same because they have state sovereignty and national interests. In view of this, the rules of behaviors concluded or approved by the states must pass through negotiation and struggle and necessary compromise and concession must be made. However, this compromise or concession is reached through struggle and is also subject to certain limitations. The limitation is that [compromise and concession] should not be contrary to the fundamental and long-range interest of the participating state and should also be beneficial to the maintenance of state sovereignty. This [phenomenon] is the concrete expression of the class character of international law.

LIU, ZHOU & TANG, *supra* note 13, at 523.

The late Professor Zhou Gengsheng made a similar observation of the class character of international law as revealed in the following:

Although international law is the same as other branches of law in having a class character, it is still different from domestic law. Domestic law is enacted by the legislative organ of a state representing the will of the ruling class of that state. International law is generally recognized and this does not necessarily represent the will of the ruling class of a state, but must at the same time represent the will of the ruling classes of various states. However, there cannot be a common will of the ruling classes of various states, especially among the ruling classes of states of different political and social systems. Therefore, the so called international law representing the will of the ruling classes of various states can only connote a representation of their coordinated will.

ZHOU GENSHENG, *supra* note 15, at 8.

while preserving differences, while the latter is established on the basis of identity of class interest. Therefore, we cannot say, like bourgeois scholars, that international law, which adjusts state relations, reflects the common will of various states and thus totally conceals the class character of international law.

The differences between modern international law and other types of international law are:

(1) It reflects the common will of the proletariat class of socialist countries or the coordinated will of states of different social systems approved by the proletarian class; it does not solely reflect the will of any exploitative class. . . .

(2) It regulates relations among socialist countries and relations between socialist countries and capitalist countries and the international relations relevant to socialist countries in international community . . . it does not solely adjust relations of exploitative states.²⁷

Liu's approach to the issue of the class character of international law leads to the interesting issue of whether there are one, two, or three types of international law—the so-called question of the systems of international law, which was hotly debated among Chinese scholars in the 1950s.²⁸ According to Liu, in addition to modern international law, capitalist international law still exists, although it is in the process of being substituted by modern international law and has not yet totally disappeared. Moreover, he observes that certain parts of capitalist international law are still developing and that international law continues to play a role among capitalist states. According to Liu, capitalist states have recognized modern international law as the only type of international law in adjusting relations between states of different social systems. Even the application of capitalist international law among capitalist states should be subject to the obligations prescribed by modern international law. Liu argues, Socialist states deny the validity of capitalist international law and therefore have no obligation to observe this international law.²⁹

Other writings by Chinese scholars in the post-Mao period, however, assume that there is only one international law (i.e., modern international law that was formulated after the First World War and the October Socialist Revolution).³⁰ There appears to have been no discussion, except by Liu, on the so-called capitalist international law and the systems of international law. An eminent Chinese scholar, Zhou Gengsheng, even criticizes the concept of "regional international law," especially "Amer-

27. LIU FENGMING, *supra* note 7, at 19-20.

28. See Hungdah Chiu, *supra* note 8, at 252-57; see also I COHEN & CHIU, *supra* note 22, at 53-64.

29. LIU FENGMING, *supra* note 7, at 21-22.

30. See Wang & Wei, *supra* note 10, at 25; see also LU YINGHUI, *supra* note 26, at 13-14; Wei, *supra* note 7, at 8.

ican international law" advocated by some Western scholars. According to Zhou, American states have not yet formulated a regional system of international law, but still follow general international law among themselves and in their relations with states outside the region.³¹

D. THE SCOPE OF INTERNATIONAL LAW

In the Maoist period before 1965 Chinese writings on international law were limited to the traditional scope of public international law. Since the mid-1960s several leading Western scholars have observed the expanded scope of present-day international law. Professor Louis B. Sohn wrote in 1963 that "[i]nternational law is no longer a branch of law equal to contracts, torts or constitutional law. It is . . . a great conglomeration of subjects, equivalent in its scope to all domestic (municipal, national) law taken together" and "[w]e have now in international law the equivalent of all branches of domestic law."³² In a more elaborate study the late Professor Friedmann made the following observation of the changing scope and dimension of international law:

- (1) the widening of the scope of public international law through inclusion of new subject-matters formerly outside its sphere;
- (2) the inclusion, as participants and subjects of international law, of public international organisations [sic] and to a less definite extent, of private corporations, and individuals;
- (3) the "horizontal" extension of international law, particularly through the accession of non-Western groups of states to the legal family of nations;
- (4) the impact of political, social and economic principles of organization on the universality of public international law, particularly at a time when its scope and subject-matter are expanding;
- (5) the role and variety of international organization in the implementation of the new tasks of international law.³³

No Chinese response to these observations appeared until 1980 because the study of international law was suspended between 1966 and 1978. Professor Wang Tieya was the first in the PRC to analyze this phenomenon. In 1980 he wrote an article entitled "Current Trends in International Law,"³⁴ in which he observed that there were four main characteristics of current international relations which have been reflected in the development of international law:

- (1) The rise of newly independent states;
- (2) The expansion of international organizations;

31. ZHOU GENSHENG, *supra* note 15, at 6-7.

32. Sohn, *The Many Faces of International Law*, 57 AM. J. INT'L L. 868-69 (1963).

33. W. G. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 70-71 (1964).

34. This article was published in 1980 BEIJING DAXUE XUEBAO (PEKING U.J.), No. 2, and summarized in 1980 XINHUA YUEBAO (WENZHAI BAN) (NEW CHINA MONTHLY) (Article Summary Ed.), No. 6, at 13-17.

- (3) The change of the international economic order; and
- (4) The rapid development of science and technology.

These developments, he noted, have resulted in the emergence of new branches of international law, such as International Organization Law, International Administrative Law, International Economic Law, International Development Law, International Monetary Law, International Tax Law, International Trade Law, International Law of the Sea, International Aviation Law, Space Law, and International Environmental Law.

Following Professor Wang's analysis, two Chinese scholars, Sheng Yu and Wei Jiaju, did a comprehensive study of the expanded scope of international law.³⁵ They made the following observations:

Since the beginning of the 1970s, there has been a tendency of moving the center of international law, the political area, to the economic area. Formerly international law was [concerned] primarily with regulating political relations among states, but now it is also regulating their economic relations, which have become increasingly important. This transformation reflects the urgent desire of developing states to pursue policies of economic development and maintain economic independence.

The contents of international economic law is extremely rich and international legal circles have not been able to define its scope. Broadly speaking it should include the total activities of the international economic area, which is primarily concerned with monetary and trade issues, together with other specialized law and regulations on communication and transportation, the protection of the environment and natural resources, development and cooperation, international tourism, etc. Narrowly speaking, international economic law refers merely to the law and regulations regulating economic relations among states, such as economic cooperation, investment guarantee, government aid, procedures for settling economic disputes, etc. Each topic should include both theory and practice.

The tremendous progress in science and technology has created new branches of international law. International atomic energy law was formulated through the international exchange of the peaceful use of atomic energy and nuclear technology. Outer space law came into being because of the development of aerospace science and the emerging question of international relations concerning the use of outer space and cosmic space. International environmental law has developed as a specialized subject of governing the earth and maintaining ecological order through international law and regulations because of the breakthrough of human knowledge toward the environment and the presence of public nuisances and pollution. [Finally,] the international law of tourism has been taken seriously because of the need of tourism in human life and tourism's impact on the development of the international economy and culture. Modern society demands the international exchange of culture and art, improvement of living conditions, the protection of children, youth and others. These problems have thus become new areas of international law. The international community has shown serious concern over the substantial increase of international criminal

35. SHENG YU & WEI JIAJU, *GUOJI FA XINLING YU JIANLUN (A CONCISE INTRODUCTION TO THE NEW AREAS OF INTERNATIONAL LAW)* (Jilin: Jilin People's Press, 1984).

activities and thus renews the research and regularization of international criminal law. At present, the new areas of international law are continuing to expand.³⁶

A survey of post-Mao Chinese international law literature also indicates that a substantial number of the writings are in the so-called "new areas" of international law, such as international economic law and international environmental law.³⁷ The emergence of writings on new topics of international law indicates a desire by Chinese scholars to catch up with recent developments in international law.

Nevertheless, one new branch of international law on which Chinese scholars harbor a skeptical view is the international law of human rights. The Chinese charge that Western countries attempt to use the pretext of protecting human rights to interfere in China's and other socialist states' internal affairs. According to these scholars, only the encroachment of the right of self-determination, the right of development, and individual human rights by old or neo-colonialism and hegemonism is subject to international concern; there is no human rights problem in China.³⁸

E. THE SOURCES OF INTERNATIONAL LAW

Before the mid-1960s the Chinese position on the sources of international law was unclear since no textbooks on international law had been published and only a few scholars had made brief comments on this

36. *Id.* at 11; see also Wang & Wei, *supra* note 10, at 19-25. THE GREAT ENCYCLOPEDIA OF CHINA, LAW, *supra* note 10, classified international law into three categories. The first is international law, which covers primarily traditional political areas of that law. The second is international criminal law. The third is international economic law, which is subdivided into international economic organization law, international trade law, international monetary law, international tax law, international investment law, international law of transfer of technology, and international environment law. See *id.* at 189-92 (international law), 206-08 (environment), 209-10 (monetary), 212-13 (transfer of technology), 214-16 (international economic law), 218-19 (international economic organization law), 222-23 (trade), 233-35 (investment), and 237-39 (international criminal law).

37. The following is a list of the number of articles on new areas of international law published in Chinese journals between 1979-84:

<i>Subject</i>	<i>No. of Articles</i>
International Economic Law in general	17
International Trade Law	5
International Investment Law	7
International Law of Technology Transfer	14
International Environmental Law	5

FAXUE LUNWEN MULUJI, 1949-1984 (COLLECTION OF TITLES OF LEGAL ARTICLES, 1949-1984) 628-35 (Hanzhou: Zhejiang People's Press, 1986).

38. See Li Zerue, *supra* note 21, at 93-116; Shen Baoliang, Wang Chengquan & Li Zerui, *On the Question of Human Rights in International Arena*, 1982 HONGQI ZAZHI (RED FLAG), No. 2, at 44-48. For a study of human rights situations in China, see AMNESTY INTERNATIONAL, CHINA, VIOLATIONS OF HUMAN RIGHTS (1984) and THE COUNTRY REPORT ON HUMAN RIGHTS PRACTICE FOR 1986, at 683-708 (1987).

issue.³⁹ During that period, a Chinese scholar observed that the sources of international law should be differentiated into "substantive" and "formal" ones. He argues that "substantive sources of bourgeois international law are the external policy of the bourgeoisie which is also the will of the ruling class of those capitalist powers."⁴⁰ According to this scholar, since the so-called treaties, customs, and other sources are simply the form in which international law is expressed, they are only the formal sources.⁴¹ This view, however, does not appear to be shared by subsequent Chinese scholars.

The late Professor Zhou Gengsheng wrote in his treatise on international law, which was completed in 1964 and published in 1976, that there may be two meanings of the term "sources of international law." One meaning designates the method or process of formulating valid legal norms in international law; the other meaning refers to the place where norms of international law first appeared.⁴² If one speaks of the former meaning of the sources of international law, then only custom and treaties are sources of international law. If one speaks of the latter meaning of the term, then awards or decisions of international tribunals, decisions of domestic courts, writers' opinions, and diplomatic documents could also be included. Zhou felt that before these sources become customs through the long-term practice of various states, they do not have the validity of international law. Therefore, only custom and treaties are sources of international law.⁴³ According to him, this view is shared by many authorities of international law in both socialist and capitalist countries.⁴⁴

Zhou basically disagrees with many Western scholars who consider the "general principles of law recognized by civilized nations" as outlined in article 38 of the Statute of the International Court of Justice (ICJ),⁴⁵ as the third principal source of international law. On the one hand, he disagrees with the Soviet scholars' view that these "general principles" must

39. See Hungdah Chiu, *supra* note 8, at 257-59, and the excerpts of Chinese writings and practice in COHEN & CHIU, *supra* note 22, at 70-85.

40. Ying T'ao [Yin Tao in Pinyin], *Recognize the True Face of Bourgeois International Law from a Few Basic Concepts*, 1960 GUOJI WENTI YANJIU (INTERNATIONAL STUDIES, formerly the English translation of the title provided by the Chinese publisher was JOURNAL OF INTERNATIONAL STUDIES), No. 1, at 47, cited in Hungdah Chiu, *supra* note 8, at 257.

41. Ying T'ao, *supra* note 40, and Hungdah Chiu, *supra* note 48, at 257-58.

42. The second view is shared by other Chinese scholars. See Wang & Wei, *supra* note 10, at 25; Wei, *supra* note 7, at 18-19.

43. ZHOU GENSHENG, *supra* note 15, at 10. Professor Wei Min considers that "unequal treaties" should be excluded from the source of international law. Wei, *supra* note 7, at 19-20.

44. *Id.* This appears to be a questionable view, because most Western works Zhou consulted were published before 1949. He did not refer to any Western writings published after that year. See *id.* at 15 n. 4.

45. 59 Stat. 1031, 1060, T.S. No. 993, 3 Bevans 1153, 1187.

be general principles of international law,⁴⁶ because he considers it illogical to say that principles of international law are sources of international law. On the other hand, he believes that before the "general principles of law" have been generally recognized through customs or treaties they cannot become principles or parts of international law. The true meaning of the provisions on "general principles of law recognized by civilized nations" as provided in article 38 of the Statute of the ICJ is to authorize the Court, in the absence of applicable norms to be found in customs or treaties, to apply general principles of law by analogy as a convenient measure to resolve the question at bar. The relevant article 38 provisions do not have the function of serving as a new source of international law. The fact that article 59 of the Statute provides that "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case" further supports the view that "general principles" are not a source of international law.⁴⁷

Zhou's treatise is silent on the question of resolutions of international organizations as a source of international law. In one of his early writings he took the position that with the exception of the Security Council decisions to maintain peace taken under Chapter VII of the United Nations Charter, a General Assembly's resolution has only the character of a recommendation.⁴⁸ The role of the General Assembly's resolution in the creation of or in confirming rules of international law was not discussed.

The standard textbook on international law edited by Wang and Wei takes a more neutral position on the issue of the sources of international law. According to this textbook, whether there are other sources of international law, aside from treaties and customs, is a controversial question.⁴⁹ After first reviewing different theories on the meaning of the "general principles of law recognized by civilized nations" provided in article 38 of the Statute of the ICJ, the textbook comments:

The important point is the requirement of being "recognized." Obviously, any general principles of law which have not gone through the recognition of

46. See TUNKIN, *THEORY OF INTERNATIONAL LAW* 190-203 (W. E. Butler trans. 1974).

47. ZHOU GENSHENG, *supra* note 15, at 13-14. A similar view is expressed in ZHU LISUN, *supra* note 22, at 10, where it is stated:

First, in reality there are only two legal systems, i.e., municipal law and international law, and there exists neither an abstract law nor a legal system above the municipal law and international law. Therefore, there will be no general principles of law in abstract. Second, the general principles of law advocated by Western legal scholars are municipal law principles. However, since international law and municipal law are two different legal systems, the principles of municipal law cannot be applied to international law.

48. ZHOU GENSHENG, *XIANDAI YINGMEI GUOJI FA DI SIXIANG DONGXIANG* (TRENDS IN THE THOUGHT OF MODERN ENGLISH AND AMERICAN INTERNATIONAL LAW) 67 (Beijing: World Knowledge Press, 1963), reviewed by Hungdah Chiu in 59 AM. J. INT'L L. 170-73 (1965).

49. Wang & Wei, *supra* note 10, at 26.

various states cannot become sources of international law. . . . Since [general principles] must be recognized and states explicitly or implicitly express their recognition through international treaties or international customs, then the general principles of law, in this sense, are merged together with these two principal sources of international law—international treaties and international customs. Therefore, they are not an independent source of international law.

As a matter of fact, there are few general principles of law which can be considered as a source of international law and there are few opportunities to apply them in international relations. One may say that general principles of law do not occupy an important position in international law.⁵⁰

As to the role of resolutions of international organizations, the Wang and Wei textbook takes the position that these resolutions can be considered "as subsidiary means for the determination of rules of law"; their role should be similar to that of judicial decisions and teachings of publicists provided in article 38 of the Statute of the ICJ. Nevertheless, not all resolutions of international organizations may be considered as subsidiary means for determining the rules of law. Primarily, only the resolutions of universal organizations, such as the United Nations, can serve this function. Moreover, even the resolutions adopted by a universal international organization like the United Nations do not necessarily serve as subsidiary means to determine rules of law, because many resolutions on organizational affairs or concrete matters cannot have any significant impact on the formulation of international law. Only those resolutions relating to the declaration of legal principles may have such an effect. With respect to the specific question of the effect of resolutions adopted by the General Assembly of the United Nations, the Wang and Wei textbook gives the following observation:

There are divergent opinions on the effect of the resolutions of the United Nations General Assembly. According to the provisions of the Charter of the United Nations, the function of the United Nations General Assembly is generally one of deliberation and recommendation. Except for resolutions relating to organizational and financial questions [which are legally binding], the resolutions of the General Assembly are in the nature of recommendations and do not possess legally binding force. However, one cannot infer from this fact that there would be no legal consequence of resolutions adopted by the General Assembly. Some resolutions of the General Assembly were adopted by unanimous or overwhelming majority votes of member states. Therefore, these resolutions not only have a certain binding force on those members who voted for their adoption, but also have general significance in international relations. In the meantime, some declarations included in certain resolutions may in whole or in part reflect existing or formative principles, rules, regulations or institutions of international law. Thus, these declarations undoubtedly become subsidiary means to determine principles, rules, regulations and institutions of

50. *Id.* at 32. A Chinese scholar considers the "general principles of law" as the third principal source of international law. See Lan Haichang, *supra* note 17, at 87.

international law. Consequently, one should consider resolutions of international organizations, especially certain kinds of resolutions of the United Nations, as parallel to judicial decisions and writings of publicists. [They have] become "subsidiary means for the determination of rules of law," though [these resolutions] are not direct sources of international law. Moreover, in view of their international character, their [priority as subsidiary means] should be higher than that of judicial decisions and writings of publicists.⁵¹

Qin Ya, another Chinese scholar who made a very comprehensive study of the effect of resolutions of the General Assembly of the United Nations, disagrees with the view expressed in the Wang and Wei textbook that the role of the resolutions of the General Assembly is limited to a subsidiary source of international law. She states:

The term "sources" refers to the place where the norms of behavior with binding force first appeared, such as custom, treaties and others. . . .

Whether resolutions of the General Assembly of the United Nations can be considered as "sources" . . . depends on whether these resolutions can establish norms of behavior with binding force recognized by states. . . . The General Assembly does have this competence and there are situations where the resolutions of the General Assembly create new law or develop existing laws. . . . The Assembly's resolutions . . . relating to the relations of internal structure [of the organization], administrative rules or institutions may become the sources of the law of international organizations or international administrative law; and those resolutions of the Assembly of normative nature or of establishing new norms of international law may become a source of general international law.⁵²

A similar view is expressed by Zhou Xiaoling. He acknowledges that according to article 10 of the Charter of the United Nations, resolutions adopted by the General Assembly of the United Nations are recommen-

51. Wang & Wei, *supra* note 10, at 35; see also LIU FENGMING, *supra* note 7, at 35, where he wrote:

Resolutions on various matters adopted by the legally required majority of the General Assembly or Security Council of the United Nations within the scope of power and the resolutions adopted by international administration institutions in accordance with their statutes (such as the resolutions adopted by the Assembly of the Universal Postal Union) may also become sources of modern international law.

ZHU LISUN, *supra* note 22, at 10-11 takes an even more conservative view on this question where it is stated:

The resolutions of international organizations, including resolutions adopted unanimously by the United Nations, cannot directly formulate fixed norms of international law. Although resolutions of international organizations do have important significance and influence, they must be approved by states through treaties or customs, then they can create legally binding force. . . . They, however, serve an important function with respect to the formulation and development of norms of international law. They are either contributed to the establishment of norms of international law or interpretation of existing norms of international law.

THE GREAT ENCYCLOPEDIA OF CHINA, LAW, *supra* note 10, at 195 lists resolutions as a subsidiary source of international law.

52. Qin Ya, *Legal Effects of the United Nations General Assembly Resolutions*, 1984 CHINESE Y.B. INT'L L. 189.

dations without legally binding force. Nevertheless, he also observes that certain resolutions of the United Nations General Assembly, especially those of a normative nature relating to the rights and duties of states, interpretations of the Charter, or other fundamental principles of international law, reflect the will of the international community and are binding on the behavior of states. Moreover, Zhou observes that before certain resolutions develop legally binding force, they nevertheless may become evidence of customary international law and indicate the direction of development of specific areas of international law. Moreover, the United Nations General Assembly resolutions frequently become the prelude for the process of legislation through the United Nations and exert direct influence on the formulation of specific areas of international law.⁵³

On the question of judicial decisions as a source of international law, the Wang and Wei textbook generally adheres to the position of article 38 of the ICJ Statute and considers them "subsidiary means for the determination of the rule of law." The textbook also adopts article 59 of the Statute, which provides that "the decision of the Court has no binding force except between the parties and in respect of that particular case," to prove that international law rejects the rule of stare decisis in Anglo-American common law.⁵⁴ The role of ICJ decisions or advisory opinions in formulating new rules of international law was not considered.

Not all scholars in the PRC adhere to this rather conservative view on judicial decisions as a source of international law. For instance, one scholar observes:

As the principal judicial organ of the United Nations and the only existing universal judicial organ, the judgments and advisory opinions of the International Court of Justice have significant influence on the development of international law. Although article 59 of the ICJ Statute provides that the judgment of the Court is only binding on the parties and with that particular case, but because of the status of the ICJ in the area of international judiciary, the judgments and advisory opinions of the court have always been considered as the authoritative expression and interpretation of the questions involved in the case.

53. Zhou Xiaoling, *The United Nations and International Law-Making*, 1985 INTERNATIONAL STUDIES, No. 4, at 28-29. Another Chinese scholar also shares this view. See Zhang Hongzeng, *The Development of International Law in the Forty Years Since the Founding of the U.N.*, 1986 INTERNATIONAL STUDIES, No. 3, at 51. In a recent article Wang seems to modify his view of limiting the significance of United Nations General Assembly resolutions to "subsidiary" sources. He now acknowledges that some resolutions have direct impact on international law and they are sometimes referred to as law-creating resolutions, i.e., resolutions that declare or create principles, rules, and regimes of international law. Wang Tieya, *U.N. and International Law*, 1986 CHINESE Y.B. INT'L L. 15.

54. Wang & Wei, *supra* note 10, at 32. A more conservative view is expressed in ZHU LISUN, *supra* note 22, at 11. Liu Fengming's treatise is silent on this question. See LIU FENGMING, *supra* note 7, at 34-53.

For instance, significant influences have been produced by the judgments of the ICJ on the *Nottebohm* case⁵⁵ and the *Barcelona Traction* case⁵⁶ toward the question of nationality and diplomatic protections, the *Anglo-Norwegian Fisheries* case⁵⁷ and the *North Sea Continental Shelf* cases⁵⁸ toward the width of the territorial sea and the nature of continental shelf and the Advisory Opinion on the Reservation to the Genocide Convention⁵⁹ toward the international rules on the question of reservation to multilateral conventions.⁶⁰

As for judicial decisions of domestic courts, the Wang and Wei textbook observes that these courts, under certain conditions, express only the viewpoint of the state to which the courts belong. However, similar viewpoints expressed by many states through their judicial decisions have important significance in the formulation of international law. They are also "subsidiary means for the determination of the rules of law."⁶¹

With respect to the status of the "teachings of publicists" in the hierarchy of sources of international law, the textbook edited by Wang and Wei regards these as a "subsidiary means for the determination of law," as provided in article 38 of the ICJ Statute. Their role in this aspect is shrinking because of the increase in the availability of materials on international law.⁶²

II. The Relationship Between International Law and Municipal Law

In the 1950s, except for a brief criticism of Western theories on the relationship between international and municipal law, this issue was usually ignored by Chinese scholars, who never discussed the Chinese practice or their preferred theory.⁶³ The late Professor Zhou Gengsheng, in his treatise, made a more comprehensive review of the Western theories on this question.⁶⁴ He criticized the monist theory of supremacy of international law over municipal law because it results in denying state sovereignty. He also considered the monist theory as reflecting an im-

55. *Nottebohm case (Lisbon v. Guat.)*, 1955 I.C.J. 4 (Apr. 6, 1955).

56. *Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain)*, 1970 I.C.J. 4 (Feb. 5, 1970).

57. *Fisheries (U.K. v. Nor.)*, 1951 I.C.J. 116 (Dec. 18, 1951).

58. *North Sea Continental Shelf (W. Ger. v. Den. & W. Ger. v. Neth.)*, 1969 I.C.J. 3 (Feb. 20, 1969).

59. *Reservations to the Convention on the Preservation and Punishment of the Crime of Genocide*, 1951 I.C.J. 15 (May 28, 1951).

60. Zhou Xiaoling, *supra* note 53, at 29.

61. Wang & Wei, *supra* note 10, at 33.

62. *Id.* at 33-34. Professor Wei Min considers that it is inappropriate to take the position that the opinion of publicists, even most highly qualified ones, are capable of having legally binding force on a sovereign state. Wei, *supra* note 7, at 21.

63. See Hungdah Chiu, *supra* note 8, at 259-60.

64. ZHOU GENSHENG, *supra* note at 15, at 16-20.

perialist policy to control the world through world law or world government.⁶⁵

With respect to the dualist theory, Zhou criticized this theory as over-emphasizing the formal antagonistic aspect of international law and municipal law and ignoring the practical cooperation between them. This cooperation is based on the objective fact that states not only enact municipal law, but also participate in the enactment of international law. Therefore, he concluded that if one looks at the substance of international law and municipal law, there should not be a question of which one is supreme over another, nor should one say that one branch of law is antagonistic to the other.⁶⁶ Based on this analysis, Zhou made the following observation of the relationship between international law and municipal law:

Looking at the question of the relationship between international law and municipal law as a practical question, in the final analysis this is a question of how a state implements international law in its municipal sphere, i.e., a question of performing its obligation assumed under international law. International law by its nature is binding on a state and is not directly binding on its organs or people. Even if a municipal law is contrary to international law, the court of that state still has to execute that law, but the state will assume responsibility for violating international obligations. As states have recognized the norms of international law, they have the obligation to make their municipal law consistent with obligations assumed under international law. With respect to the question of how to fulfill this requirement, it is within the discretion of various states. . . . As long as states themselves seriously perform their international obligations, the relationship between international law and municipal law can always be reconciled.⁶⁷

By comparison to Zhou's rejection of the monist theory of the supremacy of international law over municipal law, the Wang and Wei textbook considers the monist theory as a denial of the sovereignty of states. The textbook observes that the purpose of this theory "is to use 'world law' to substitute international law and to use 'world government' to substitute sovereign states, which is theoretically illogical and also contrary to the reality."⁶⁸

On the question of the relationship between international law and municipal law, the Wang and Wei textbook sets out the following observations:

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

65. *Id.* at 19.

66. *Id.* at 19-20.

67. *Id.* at 20.

68. Wang & Wei, *supra* note 10, at 43-44. Professor Wei Min criticizes Hans Kelson's theory of the supremacy of international law over municipal law "as denying state sovereignty and thus is theoretically wrong and practically harmful." Wei, *supra* note 7, at 26.

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. In principle, when states enact municipal law, they should take into consideration the requirement of international law. [Similarly] when states participate in enacting international law, they should also consider it from the standpoint of municipal law. In practice, there are various methods to resolve or avoid the conflict between international law and municipal law. If a state enacts a law which is obviously contrary to principles, rules, regulations or institutions of international law and thus infringing on the legitimate right and interest of another state, then it becomes an international illegal act and the question of incurring international responsibility will arise. This is not a question of the basic contradiction between international law and municipal law.⁶⁹

Another Chinese scholar, Liu Fengming, while failing to discuss the dualist or monist theory, states that "in the case of a conflict between municipal law and international law, generally speaking international law should prevail over municipal law."⁷⁰ He makes clear, however, that what he refers to as international law is not bourgeois international law but modern international law, which is premised on the recognition of state sovereignty.

Except for making reference to several Chinese statutory provisions to international treaties,⁷¹ none of the Chinese scholars' works appear to discuss the Chinese practice nor how the PRC should resolve the problem, although they do review the practice of several states.⁷²

One Chinese scholar observed that:

so far as our socialist state is concerned, in principle the question of conflict between modern international law and municipal law will not arise . . . we will neither accept any international obligation which is contradictory to our municipal law principles, nor promulgate any municipal law and regulations which are contradictory to the international obligations we assumed.⁷³

69. *Id.* at 44.

70. LIU FENGMING, *supra* note 7, at 8.

71. Professors Wang and Wei quoted article 8 of the Chinese Criminal Law, which provides that "[q]uestions of criminal responsibility for foreigners who enjoy diplomatic privileges and immunities shall be resolved through diplomatic channels." Wang & Wei, *supra* note 10, at 46. Translation of article 8 is from SHAO-CHUAN LENG & HUNGDAH CHIU, CRIMINAL JUSTICE IN POST-MAO CHINA 194 (1985). A similar provision is included in article 12, paragraph 2, of the Chinese Criminal Procedure Law. *See id.* at 217. *See also* Wei, *supra* note 7, at 28, quoting article 189 of the Civil Procedure Law and article 36 of the Inheritance Law and LIU FENGMING, *supra* note 7, at 7, quoting article 5 of the 1963 Regulations Governing Trademarks (now replaced by 1982 Law of Trademarks) and article 8 of 1980 Income Tax Law.

72. *See* Wang & Wei, *supra* note 10, at 44-45; 1 ZHOU GENGSHENG, *supra* note 15, at 19, 20; LIU FENGMING, *supra* note 7, at 7, 8; Wei, *supra* note 7, at 26-28.

73. LIU FENGMING, *supra* note 7, at 9.

The 1982 Constitution of the PRC⁷⁴ is silent on the status and validity of international law in Chinese municipal law.⁷⁵ However, the document does contain three articles concerning international law:

Article 18. The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic cooperation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China.

All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.⁷⁶

Article 32. The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of the People's Republic of China.

The People's Republic of China may grant asylum to foreigners who request it for political reasons.⁷⁷

Article 50. The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.⁷⁸

Several individual legislative enactments do, however, provide for the status of treaties in Chinese municipal law. Article 189 of the Law of Civil Procedure (Provisional Application), adopted by the Standing Committee of the National People's Congress on October 1, 1982, provides: "If there are any provisions in the international treaties concluded or participated in by the People's Republic of China, which are different from those provided in the present Law, the former shall be applied. However, this rule is not applicable to those provisions [to which] our country declares a reservation."⁷⁹ Similarly, the General Principles of Civil Law adopted by the National People's Congress on April 12, 1986, provides, in article 142, that in the case of a discrepancy between this Law and treaties concluded or participated in by the People's Republic of China, the treaty shall prevail unless the applicable provision of the treaty shall be excluded

74. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Beijing: Foreign Languages Press, 1983) (English trans.).

75. See Wei Min & Lo Xiangwen, *The New Constitution of Our Country and Principles of International Law*, 1983 LAW MAGAZINE, No. 5, at 16.

76. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 74, at 20-21 (art. 18).

77. *Id.* at 27.

78. *Id.* at 39.

79. ZHONGHUA RENMIN GONGHEGUO FALU HUIBIAN 1979-1984 (COLLECTION OF LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1979-1984) 320 (Beijing: People's Press, 1985). See also the reference to international agreements or reciprocity in articles 202, paragraph 1 (international judicial assistance), 203 (enforcing judgments or arbitral awards abroad), and 204 (enforcing foreign judgments) of the Civil Procedure Law. *Id.* at 323-24.

by a reservation made by the PRC. Moreover, if a civil matter is neither governed by Chinese law nor a treaty concluded or participated in by the PRC, international customs may be consulted.⁸⁰ This principle of supremacy of treaty provisions over inconsistent municipal law is also provided in article 16, paragraph 2 of the Law on Income Tax of Enterprises of Joint Venture of September 10, 1980;⁸¹ article 17 of the Law on the Income Tax of Foreign Enterprises of March 13, 1981;⁸² article 9 of the Law of Trade-marks of August 23, 1982;⁸³ article 6 of the Foreign Economic Contract Law of March 21, 1985;⁸⁴ article 36, paragraph 3 of the Inheritance Law of April 10, 1985;⁸⁵ article 32 of the Law Governing the Entry and Exit of Foreigners of November 22, 1985; and article 18, paragraph 1, of the Law Governing the Entry and Exit of Citizens of November 22, 1985.⁸⁶

In view of the above mentioned provisions in several Chinese laws, a prominent Chinese scholar considers that "in China treaties are superior to municipal law, so that a treaty inconsistent with a law must be applied by Chinese organs, irrespective of whether the treaty is entered into before or after the enactment of the law."⁸⁷

80. ZHONGGUO FAZHI BAO (CHINESE LEGAL SYSTEM PAPER), NOV. 11, 1985, at 2. This article is similar to article 129 of the Fundamental Principles of Civil Legislation of the USSR and Union Republic. That article provides:

If other rules have been established by an international treaty or international agreement in which the USSR participates than those which are contained in Soviet civil legislation, the rules of the international treaty or international agreement shall be applied.

The same situation shall apply on the territory of a union republic if other rules have been established in an international treaty or international agreement in which the union republic participates than those provided for by the union republic civil legislation.

W. BUTLER, *THE SOVIET LEGAL SYSTEM* 429 (1978).

81. COLLECTION OF LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 1979-1984, *supra* note 79, at 212.

82. *Id.* at 261.

83. *Id.* at 338.

84. CHINESE LEGAL SYSTEM PAPER, March 22, 1985, at 2.

85. ZHONGHUA RENMIN GONGHEGUO FALU HUIBIAN 1985 (COLLECTION OF LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1985) 26 (Beijing: People's Press, 1986).

86. CHINESE LEGAL SYSTEM PAPER, NOV. 25, 1985, at 2; English translation in FOREIGN BROADCAST INFORMATION SERVICE, CHINA, NOV. 26, 1985, at K2-K6 (Foreigners), K6-K8 (Citizens).

87. Li Haopei, *A Comparative Study of the Internal Application of Treaties*, THE SYMPOSIUM ON CHINESE AND EUROPEAN CONCEPTS OF LAW 3 (Hong Kong Arts Center, Mar. 20-25, 1986). Li does not explain whether this principle of supremacy of treaty provisions over municipal law is applicable to a Chinese law which does not contain a supremacy clause. Only two Chinese writers discuss the question of whether international customs should be applied as part of the municipal law. They, however, take a negative view on the ground that international customs have not cleared the elements of colonialism and imperialism embodied in them during their long period of development and their contents are not very clear. Liu Fengming considers that where there is a conflict between municipal law and international law, "generally speaking, international law should prevail over municipal law." However, he made clear that what he meant by "international law" is "modern international law, which is premised on the recognition of state sovereignty; and not bourgeois international law." LIU FENG-MING, *supra* note 7, at 8.

Under certain circumstances, a statutory provision was enacted to implement a treaty provision. For instance, article 8, paragraph 4, of the Law of Trademarks of August 23, 1982, prohibits the use of "red cross" and "red crescent" or similar sign or designation as a trademark.⁸⁸ This provision was enacted to implement article 53, paragraph 1 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.⁸⁹ A statute may also be enacted to implement a treaty. Thus, on September 5, 1986, the Standing Committee of the National People's Congress adopted Regulations on Diplomatic Privileges and Immunities⁹⁰ to implement the 1961 Vienna Convention on Diplomatic Relations.⁹¹ Article 27 of the Regulations provides the exclusion of the provisions of the Regulations by international agreements. It states that "where there are other provisions in international treaties to which China is a contracting or acceding party, provisions of these treaties shall prevail, with the exception of those provisions on which China has expressed reservations. Where there are other provisions in agreements on diplomatic privileges and immunities between China and other countries, the provisions of these agreements shall prevail."⁹² With respect to representatives of foreign states coming to China to attend international conferences sponsored by the United Nations or its specialized agencies, visiting officials and experts of these organizations, or their offices and personnel in China, article 24 of the Regulations provides that "they shall enjoy such treatment as specified in the relevant international conventions to which China has acceded and agreements which China has concluded with [the] international organizations concerned."⁹³

Certain treaties concluded by the PRC also contain provisions for enacting a domestic law to implement the treaty. Thus, article 3, paragraph 12 of the Sino-British Joint Declaration on Hong Kong signed on December 19, 1984, provides:⁹⁴

The . . . basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be

88. COLLECTION OF LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1979-1984, *supra* note 79, at 338.

89. 75 U.N.T.S. 31. Article 53, paragraph 1, provides: "The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblems or the designation 'Red Cross' or 'Geneva Cross,' or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times." It should be noted that article 38 provides that "red crescent" is also recognized by the Convention as the emblem and distinctive sign of the medical service of the armed forces.

90. People's Daily, Sept. 7, 1986, at 4.

91. 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

92. People's Daily, Sept. 7, 1986, at 4.

93. *Id.*

94. The text of the Declaration is reprinted in 23 I.L.M. 1366-87 (1984).

stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.⁹⁵

Only two Chinese writers discuss the question of whether international customs should be applied as part of the municipal law. They, however, take a negative view on the ground that international customs have not cleared the elements of colonialism and imperialism embodied in them during their long period of development and their contents are not very clear.⁹⁶

III. Chinese Participation in Intergovernmental Organizations and Lawmaking Multilateral Conventions

On October 26, 1971, the United Nations General Assembly adopted Resolution 2758 (XXVI) to transfer the seat of China from the Republic of China on Taiwan to the People's Republic of China in the United Nations and other affiliated agencies.⁹⁷ Despite the withdrawal of Republic of China representatives from all these organizations between late 1971 and 1972, except the four financial organizations—the International Bank for Reconstruction and Development (World Bank), the International Monetary Fund (IMF), the International Development Association (IDA), and the International Finance Corporation (IFC)—the PRC was very slow in participating in some of these organizations. Only after Mao's death in September 1976 did the PRC participate in the International Telecommunication Satellite Organization (INTELSAT),⁹⁸ World Bank, IMF, IDA, IFC,⁹⁹ International Labor Organization (ILO),¹⁰⁰ and International Atomic Energy Agency (IAEA).¹⁰¹ Moreover, the PRC has participated in other international organizations of which the Republic of China was not a member or which were created after the PRC's entry into the United Nations, such as World Intellectual Property Organization (WIPO),¹⁰²

95. *Id.* at 1372.

96. Sun Ang & Wang Liyu, *A Preliminary Discussion on the Validity of Treaties in Municipal Law*, 1986 FAXUE PINGLUN (LAW REVIEW), No. 5, at 82.

97. 8 UN MONTHLY CHRONICLE, No. 10, at 61 (Nov. 1971).

98. SHIJI ZHIZHI NIANJIAN 1984 (1984 Y.B. OF WORLD KNOWLEDGE) 476 (Beijing: World Knowledge Press, 1984). Agreement Relating to International Telecommunications Satellite Organization done Aug. 20, 1971, 23 U.S.T. 3813; T.I.A.S. No. 7532. The PRC acceded on August 16, 1978.

99. The PRC began its participation on April 17, 1980. See 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, 397, 472.

100. The PRC began its participation in June 1983. See *id.* at 395.

101. The PRC deposited its instrument of acceptance of the Statute of the IAEA on January 1, 1984. See *id.* at 474.

102. The Convention Establishing the World Intellectual Property Organization was signed on July 14, 1967, in Stockholm and entered into force on April 26, 1970. 21 U.S.T. 1749,

International Institute of Refrigeration,¹⁰³ International Maritime Satellite Organization (INMARSAT),¹⁰⁴ International Organization of Legal Metrology (IOLM),¹⁰⁵ International Fund for Agricultural Development (IFAD),¹⁰⁶ and Customs Cooperation Council.¹⁰⁷ Furthermore, the PRC has also participated in several regional organizations such as the Asian Reinsurance Corporation (ARC),¹⁰⁸ Asian and Pacific Development Center (APDC),¹⁰⁹ and Asian Development Bank (ADB).¹¹⁰

T.I.A.S. No. 6932. The PRC deposited its instrument of accession on March 4, 1980, which entered into force on June 4, 1980. *See* 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 475.

103. The International Agreement concerning the International Institute of Refrigeration, Dec. 1, 1954, 826 U.N.T.S. 191. On October 10, 1978, the PRC deposited its instrument of accession, which entered into force on the same date. 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 474.

104. Convention on the International Maritime Satellite Organization, Sept. 3, 1976, 32 U.S.T. 1, T.I.A.S. No. 9605. The PRC signed the Convention on July 13, 1979, which entered into force on July 16, 1979. *See* 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 477.

105. Convention Establishing the International Organization of Legal Metrology (as amended 1968), *done* Oct. 12, 1955, 23 U.S.T. 4233, T.I.A.S. No. 7533, 560 U.N.T.S. 3. The PRC acceded on March 26, 1985, *reprinted in* 24 I.L.M. 1501 (1985).

106. Agreement Establishing the International Fund for Agricultural Development, *done* June 13, 1976, 28 U.S.T. 8435, T.I.A.S. No. 8765. The PRC's instrument of accession was deposited on January 15, 1980, which entered into force on the same date. 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 477. The PRC also signed and deposited its instrument of approval on February 14, 1980, of the 1979 Constitution of the United Nations Industrial Development Organization (not yet entered into force). *Id.* at 478. It also signed and deposited its instrument of approval on September 2, 1981, of the 1980 Agreement Establishing the Common Fund for Commodities. *Id.*

107. Convention Establishing a Customs Cooperation Council, Dec. 15, 1950, 22 U.S.T. 230, T.I.A.S. No. 7063, 157 U.N.T.S. 129 (Convention), 160 U.N.T.S. 267 (Protocol). The PRC deposited its instrument of accession on July 18, 1983, 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 473. China, while not yet becoming a member of the General Agreement on Tariff and Trade (GATT), began to send official observers to GATT meetings in 1982 and joined the GATT arrangements regarding international textile trade in late 1983. FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA 6 (M. Moser ed. 1984).

108. Agreement Establishing the Asian Reinsurance Corporation was signed on April 20, 1977, the PRC approved its signature of February 23, 1979, on March 29, 1979, which entered into force on May 24, 1979. *See* 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 477.

109. The Charter of the Asian and Pacific Development Center was signed on April 1, 1982. The PRC signed the Charter on February 18, 1983, which entered into force on July 1, 1983. *See* 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 479.

110. Agreement Establishing the Asian Development Bank, with Annexes, *done* Dec. 4, 1965, 17 U.S.T. 141B, T.I.A.S. No. 6103, 571 U.N.T.S. 123. On February 20, 1986, the Executive Council of the Bank adopted resolution 176 to approve the membership application of the PRC. *See* Lien-Ho Bao (United Daily News), Feb. 21, 1986, at 1 (Overseas Edition). On March 10, 1986, the PRC's instrument of acceptance was deposited. 25 I.L.M. 1638 (1986). On May 8, 1985, the PRC signed the Agreement Establishing the African Development Bank, *done* Aug. 4, 1965, 510 U.N.T.S. 3, 569 U.N.T.S. 353, amended May 17, 1979, 24 I.L.M. 1502 (1985).

The PRC's acceptance of existing multilateral lawmaking conventions is indicative of its attitude toward the existing international legal order. Before the 1966 Cultural Revolution, the PRC ratified the four 1949 Geneva Red Cross Conventions (prisoners of war, protection of civilians, wounded, sick, and shipwrecked members of armed forces in the field and those at sea), accepted the 1930 International Convention on Load-line, and adhered to the 1929 Warsaw Convention on International Carriage by Air.¹¹¹

During the last stage of the Cultural Revolution period when Deng Xiaoping served as Vice-Premier (he was removed in early 1976) the PRC quietly, on November 25, 1975, acceded to the 1961 Vienna Convention on Diplomatic Relations.¹¹² According to article 18 of the 1975 Chinese Constitution, although such an action was in need of approval by the Standing Committee of the National People's Congress,¹¹³ it does not appear that this internal procedure was followed. Nevertheless, no one seems to question the validity of Chinese accession. The PRC also ratified the 1955 Hague Protocol to Amend the 1929 Warsaw Convention on International Carriage by Air in 1975.¹¹⁴

Following the death of Mao in September 1976 the PRC has accelerated its participation in many lawmaking multilateral conventions as indicated by the following table covering the period between 1977 and 1986:¹¹⁵

111. D. JOHNSTON & HUNGDAH CHIU, AGREEMENTS OF THE PEOPLE'S REPUBLIC OF CHINA, 1949-1967: A CALENDAR 275 (1968).

112. MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITARY FUNCTIONS, LIST OF SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. AS AT 31 DECEMBER 1978, at 55 (1979). The PRC made reservations on the provisions about nuncios and the representative of the Holy See in articles 14 and 16 and on the provisions relating to restriction on privileges and immunities of administrative and technical staffs and servants of paragraphs 2, 3, and 4 of article 37. On September 15, 1980, the PRC withdrew its reservation to article 37. 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 474.

113. See English translation of this article in M. LINDSAY, THE NEW CONSTITUTION OF COMMUNIST CHINA: COMPARATIVE ANALYSIS 333 (Taipei: Institute of International Relations, 1976).

114. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, *done* Sept. 28, 1955, 478 U.N.T.S. 371. PRC deposited its instrument of ratification on August 20, 1975, which entered into force on November 18, 1975. See 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 474, for PRC participation.

115. Unless otherwise indicated, all information comes from 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 471-79.

For those conventions ratified by the pre-1949 Chinese Government on the mainland, the PRC does not take the position of automatic succession. If the PRC decides to succeed, it will issue a statement of recognition. See HUNGDAH CHIU, THE PEOPLE'S REPUBLIC OF CHINA AND THE LAW OF TREATIES 91-96 (1972). On May 30, 1984, the State Council of the PRC declared its recognition of the following International Labor Conventions ratified by the Republic of China Government between 1930 and 1947: Convention Nos. 7, 11, 14, 15, 16, 19, 22, 23, 26, 27, 32, 45, 60, and 80. See 1985 CHINESE Y.B. OF INT'L L. 676-720.

*Name of the Convention in
Chronological Order*

Metric Convention, signed on May 20, 1875, at Paris and entered into force on January 1, 1876.

International Convention for the Publication of Customs Tariffs, signed on July 5, 1890, and entered into force April 1, 1891.

Convention on the Privileges and Immunities of the United Nations, done on February 13, 1946, at New York and entered into force on September 17, 1946.

International Convention for Regulation of Whaling, signed on December 2, 1946, at Washington and entered into force on November 10, 1948.

Convention on the Privileges and Immunities of the Specialized Agencies, done on November 21, 1947, at New York and entered into force on December 12, 1948.

Convention on the Prevention and Punishment of the Crime of Genocide, done on December 9, 1948, and entered into force on January 12, 1951.

Convention Relating to the Status of Refugees, done on July 28, 1951, and entered into force on April 22, 1954.

Vienna Convention on Consular Relations, done on April 24, 1963, at Vienna and entered into force on March 19, 1967.

Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done on September 14, 1963, at Tokyo and entered into force on December 4, 1969.

Date of PRC Participation

On May 5, 1977, PRC notified France of its decision to participate in this convention.

On May 3, 1978, PRC notified Belgium of its recognition of this Convention, which was formerly ratified by the Nationalist Government.

On September 11, 1979, PRC deposited its instrument of accession with reservation to article 8, section 30 on the binding force of the advisory opinion of the ICJ.

On August 28, 1980, the PRC notified the U.S. of its recognition of this Convention, which entered into force for the PRC on September 24, 1980.

On September 11, 1979, the PRC deposited its instrument of accession with reservation to article 9, section 32 on the binding force of the advisory opinion of the ICJ.

On April 18, 1983, the PRC deposited its instrument of ratification, which entered into force on July 17, 1983, with reservation to article 9.

On September 24, 1983, the PRC deposited its instrument of accession, which entered into force on December 23, 1982, with reservation to article 14, second part and article 16, p. 3.

On July 3, 1979, the PRC deposited its instrument of accession, which entered into force on August 1, 1979.

On November 14, 1978, the PRC deposited its instrument of accession, which entered into force on February 12, 1979, with reservation to article 24, p. 1.

*Name of the Convention in
Chronological Order*

International Convention on the Elimination of All Forms of Racial Discrimination, done on March 7, 1966, at New York and entered into force on January 4, 1969.

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, opened for signature on January 27, 1967, at London, Moscow and Washington, and entered into force on October 10, 1967.

Protocol Relating to the Status of Refugees, done on January 31, 1967, at New York and entered into force on October 4, 1967.

International Convention on Tonnage Measurement of Ships, done on June 23, 1969, at London and entered into force on July 18, 1982.

International Convention on Civil Liability for Oil Pollution Damage, done on November 29, 1969, at Brussels and entered into force on June 19, 1975.

Convention for the Suppression of Unlawful Seizure of Aircraft, done on December 16, 1970, at The Hague and entered into force on October 14, 1971.

Convention on Psychotropic Substances, done on February 21, 1971, at Vienna and entered into force on August 16, 1976.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done on September 23, 1971, at Montreal and entered into force on January 26, 1973.

Convention on the Prohibition of the Development, Production and

Date of PRC Participation

On December 29, 1981, the PRC deposited its instrument of accession, which entered into force on January 28, 1982, with reservation to article 22.

On January 12, 1984, the PRC deposited its instrument of accession.

On September 24, 1982, the PRC deposited its instrument of accession with reservation to article 4.

On April 8, 1980, the PRC deposited its instrument of accession, which entered into force on July 18, 1980.

On March 1, 1980, the PRC deposited its instrument of acceptance, which entered into force on May 30, 1980.

On September 10, 1980, the PRC deposited its instrument of accession, which entered into force on October 10, 1980, with reservation to article 12, p. 1.

On August 23, 1985, the PRC deposited its instrument of accession. (25 I.L.M. 245 (1986)).

On September 10, 1980, the PRC deposited its instrument of accession, which entered into force on October 10, 1980, with reservation to article 12, p. 1.

On November 15, 1984, the PRC deposited its instrument of accession,

*Name of the Convention in
Chronological Order*

Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow on April 10, 1972, and entered into force on March 26, 1975.

Convention on the International Regulations for Preventing Collisions at Sea, done on October 20, 1972, at London and entered into force on July 15, 1977.

International Convention for Safe Containers, done on December 2, 1972, at Geneva and entered into force on September 6, 1977.

Customs Convention on Containers, done on December 2, 1972 at Geneva and entered into force on December 6, 1975.

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, done at Washington, London, Mexico City, and Moscow on December 29, 1972 and entered into force on August 30, 1975.

Convention on International Trade in Endangered Species of Wild Fauna and Flora, done on March 3, 1973 at Washington and entered into force on July 1, 1975.

International Convention on the Suppression and Punishment of Crime of Apartheid, done on November 30, 1973, at New York and entered into force on July 18, 1976.

United Nations Convention on a Code of Conduct for Liner Conferences, done on April 6, 1974, at Geneva and entered into force on October 6, 1983.

Date of PRC Participation

which entered into force on November 15, 1984. (1985 CHINESE Y.B. OF INT'L L. 672).

On January 7, 1980, the PRC deposited its instrument of accession.

On September 23, 1980, the PRC deposited its instrument of accession, which entered into force on September 23, 1981.

On January 22, 1986, the PRC deposited its instrument of accession. (25 I.L.M. 765 (1986)).

On November 5, 1985, the PRC deposited its instrument of accession. (86 DEP'T STATE BULL., No. 2106, at 80 (Jan. 1986)).

On December 25, 1980, the PRC deposited its instrument of accession which entered into force on April 8, 1981.

On April 18, 1983, the PRC deposited its instrument of accession which entered into force on May 18, 1983.

On September 23, 1980, the PRC deposited its instrument of accession, which entered into force on October 6, 1983.

*Name of the Convention in
Chronological Order*

International Convention for the Safety of Life at Sea, done on November 11, 1974, at London and entered into force on May 25, 1980.

Convention Revising the Paris Convention of March 20, 1883, for the Protection of Industrial Property, done on July 14, 1976, at Stockholm.

Protocol Additional to the Geneva Convention of 12 August 1949 Relating to the Protections of Victims of International Armed Conflicts (Protocol I), done on June 8, 1977, at Geneva and entered into force on December 7, 1978.

Protocol Additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done on June 8, 1977, at Geneva and entered into force on December 7, 1978.

Protocol of 1978 Relating to the 1974 International Convention for the Safety of Life at Sea, done on February 17, 1978, at London and entered into force on May 1, 1981.

Convention for the Prevention of Pollution from Ships, done on February 17, 1978, at London and entered into force on October 2, 1983.

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, done on July 7, 1978, at London and entered into force on April 28, 1984.

Convention on the Elimination of All Forms of Discrimination Against Women, done on December 18, 1978, at Copenhagen and entered into force on September 3, 1981.

Date of PRC Participation

On January 7, 1980, the PRC deposited its instrument of approval, which entered into force on May 25, 1980.

On December 19, 1984, the PRC deposited its instrument of accession, which entered into force on March 19, 1985. (1985 ZHONGGUO BAIKE NIANJIAN (1985 YEARBOOK OF ENCYCLOPEDIA OF CHINA) 133 (1986)).

On September 14, 1983, the PRC deposited its instrument of accession, which entered into force on March 14, 1984, with reservation to article 88, p. 2.

On September 14, 1983, the PRC deposited its instrument of accession, which entered into force on March 14, 1984.

On December 17, 1983, the PRC deposited its instrument of accession, which entered into force on March 17, 1983.

On July 1, 1983, the PRC deposited its instrument of accession, which entered into force on October 2, 1983.

On June 8, 1981, the PRC deposited its instrument of approval, which entered into force on April 28, 1984.

On November 4, 1980, the PRC deposited its instrument of ratification, which entered into force on December 4, 1980, with reservation to article 29, p. 1.

*Name of the Convention in
Chronological Order*

International Convention on Maritime Search and Rescue, done at Hamburg on April 27, 1979, and entered into force on June 22, 1985.

International Rubber Agreement, done on October 6, 1979, at Geneva and entered into force on April 15, 1982.

The United Nations Convention on Contract for the International Sale of Goods, done on April 11, 1980, at Vienna and to be entered into force on January 1, 1988.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, with Protocols I, II and III, done on October 10, 1980, at Geneva and entered into force on December 3, 1983.

International Telecommunication Convention, done on November 6, 1982, at Nairobi and entered into force on January 1, 1984.

Date of PRC Participation

On June 24, 1985, the PRC deposited its instrument of approval, which entered into force on July 24, 1985. (85 DEP'T STATE BULL., No. 2103, at 61 (Oct. 1985), and Sept. 12, 1985, at 4).

On September 15, 1980, the PRC deposited its instrument of approval, which entered into force on April 15, 1982.

The PRC deposited its instrument of approval on December 11, 1986. (26 I.L.M. 595 (1987)).

On April 7, 1982, the PRC deposited its instrument of ratification, which entered into force on December 2, 1983.

On August 19, 1985, the PRC deposited its instrument of ratification. (25 I.L.M. 763 (1986)).

The PRC has also signed two conventions that have not yet entered into force. They are the 1982 United Nations Convention on the Law of the Sea¹¹⁶ and the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.¹¹⁷

One important lawmaking convention that the PRC has neither signed nor ratified is the 1969 Vienna Convention on the Law of Treaties.¹¹⁸ Nevertheless, one Chinese scholar expressed the view that "the greater

116. U.N. Doc. A/CONF.62/122 (Oct. 7, 1982), reprinted in 21 I.L.M. 1261-1354 (1982). The PRC signed the Convention on December 10, 1982. See 1984 Y.B. OF WORLD KNOWLEDGE, *supra* note 98, at 479, for PRC participation.

117. Done September 26, 1986, at Vienna, reprinted in 25 I.L.M. 1377-86 (1986). On September 27, 1986, the PRC signed the Convention. 25 I.L.M. 590 (1986).

118. U.N. Doc. A/CONF.39/27 (May 23, 1969); United Kingdom T.S. No. 58 (1980), Cmnd. 7964.

part of it is codification of existing international customary rules, though it also contains some new contents."¹¹⁹

Finally, since the early 1980s the PRC has begun to participate in the international legislative and judicial process. In 1982, ten years after its entry into the United Nations, the PRC finally nominated a candidate, Ni Zhengyu, to the membership of the United Nations International Law Commission, and in 1984 he was nominated as judge to the International Court of Justice.¹²⁰ Because the PRC is a permanent member of the United Nations Security Council, the nomination without anything further ensures the candidate's election.¹²¹ A Chinese was elected to serve in the United Nations International Trade Law Commission in late 1982 and later was elected by the Commission as one of its Vice-Chairmen.¹²²

IV. The Study of International Law in China

In the last stages of the Cultural Revolution, in 1974, legal education was partially restored in a few Chinese universities, and international law was among the subjects taught in law schools. The actual contents of the international law course, however, is not clear. The only sizable international law publication in this period was a *Collection of Materials on the Law of the Sea* compiled by Professor Wang Tieya and published for internal circulation in 1974.¹²³ Following the death of Mao in the fall of 1976, significant progress has been made in restoring and expanding the study of international law in China between 1978 and 1987.

In 1979 instruction and research in international law was restored to universities and colleges, and Beijing University established the PRC's first international law section in the Department of Law.¹²⁴ Jilin University

119. Wei Min, *Vienna Convention on the Law of Treaties*, in THE GREAT ENCYCLOPEDIA OF CHINA, LAW, *supra* note 10, at 585. The chapter on International Treaties in Wang & Wei, *supra* note 10, makes frequent reference to the Convention as evidence of existing rules of international law. *Id.* at 319-62.

120. See *Chinese Judge Chosen for World Court*, N.Y. Times, Nov. 8, 1984, at A9, col. 5; Chen Wu, *An Interview with Famous Jurist Mr. Ni Zhengyu*, 1985 LAW MAGAZINE, No. 2, at 27. Ambassador Jiahua Huang, a PRC diplomat, was elected to fill his vacancy in the 1985 session of the International Law Commission. See McCaffrey, *The Thirty-Seventh Session of the International Law Commission*, 80 AM. J. INT'L L. 185 (1986).

121. Shi Jiuyon is now the Chinese member of the International Law Commission. See Shi Chaoxu, *Making Effort for the Progress of International Law—An Interview with the Newly Elected Member of the United Nations International Law Commission Professor Shi Jiuyon*, 1987 LIAOWAN ZHOUKAN (THE OUTLOOK WEEKLY), No. 31, at 34 (January 19).

122. See *Elections and Appointments*, 20 UN CHRONICLE, No. 1, at 13 (Jan. 1984) and *Trade Law Commission Adopts Model Law on International Commercial Arbitration*, 22 UN CHRONICLE, No. 6, at 57 (June 1985).

123. WANG TIEYA, HAIYANG FA ZILIAO HUIBIAN (1974). This publication is for PRC internal use.

124. Wang Tieya, *Teaching and Research of International Law in Present Day China*, 22 COLUM. J. TRANSNAT'L L. 77 (1983).

and Wuhan University followed by establishing such a section; other universities may follow.¹²⁵ Each university has its own specialization in international law. Beijing University emphasizes public international law, Wuhan international trade law, and Jilin private international law. Beijing University also offers a graduate program in international law.¹²⁶

Before the Cultural Revolution an Institute of International Law was jointly established by the PRC Foreign Ministry and the Chinese Academy of Sciences. The Institute was abolished, however, soon after the outbreak of the Cultural Revolution in 1966. Now an Institute of International Law has been established at Beijing University, and a program for conferring doctorate degrees was started in 1983.¹²⁷

In 1980 the Chinese Society of International Law was established, and by 1982 it had about 250 members. In 1982 the Society began to publish *The Chinese Yearbook of International Law*.¹²⁸ The *Yearbook* includes articles, comments and notes, special features, reports on major international events or activities, book reviews, and documentary materials. Some articles in the 1982 Volume (Vol. 1) were translated into English and published as a separate volume.¹²⁹ By 1983 the Society also convened three discussion meetings attended by a wide range of Chinese university professors and by specialists in international affairs. The first meeting discussed recent Chinese developments in the area of maritime law and the second meeting concentrated on the Draft Convention on the Law of the Sea. The third meeting was planned to discuss the question of sovereign immunity of states.¹³⁰ Besides the *Yearbook*, many Chinese law journals also publish articles on international law. Between 1979 and 1984 an estimated 700 long and short articles on international law were published in China.¹³¹

In addition to journal articles on international law, literature on international law in the post-Mao period can be classified into four categories.

125. Wang Tieya, *Science of International Law*, in *Current Status and Outlook on Ten Branches of Law of China*, 1984 ZHONGGUO FAXUE (LAW OF CHINA), No. 1, at 152.

126. Wang Tieya, *supra* note 124, at 78. A recent visitor from China has reported that both the Shanghai Institute for Foreign Trade and Beijing Institute for Foreign Trade have a Department of International Economic Law.

127. *Id.* at 79, 152.

128. See 1982 CHINESE Y.B. OF INT'L L., *supra* note 5.

129. See *id.*

130. Wang Tieya, *supra* note 124, at 152.

131. Wang Zhongfang, *On the Situation and Task of Current Law Front of China*, 1984 LAW OF CHINA, No. 1, at 122. A bibliography of articles on international law (in a broad sense, i.e., including private international law and other new areas) compiled by Kong Fanyin lists 358 articles published between 1979 and 1984. *Index of Articles on the International Law in Newspapers and Periodicals from 1979 to 1984*, 1986 CHINESE Y.B. INT'L L. 627-43.

The first category contains books or pamphlets on international law in general or specific topics. Such publications include treatises on international law in general by Zhou Gengsheng,¹³² Wang Tieya and Wei Min,¹³³ Liu Fengming,¹³⁴ Zhu Lisun,¹³⁵ Lu Yinghui,¹³⁶ and Wei Min,¹³⁷ which have been mentioned above.

Specific topics that deserve mention as well are: Li Haopei's *A Comparative Study of the Question of Nationality* (1979);¹³⁸ Jing Qiu and Li Zepei's *Introduction to Nationality Law* (1981);¹³⁹ Zhao Lihai's *New Developments in the Law of the Sea* (1981) and *The Question of Amending the United Nations Charter* (1982);¹⁴⁰ Shen Damin, Feng Tatong, and Zhao Hongxun's *International Commercial Law* (1982);¹⁴¹ Sheng Yu and Wei Jiajui's *A Concise Introduction to the New Areas of International Law* (1984);¹⁴² Liu Ding's *Some Legal Questions Concerning International Economic and Technical Cooperation* (1983) and *International Economic Law* (1984);¹⁴³ Liang Xi's *Modern International Organizations* (1984);¹⁴⁴ Liu Yumian's *Introduction to International Labor Law* (1985);¹⁴⁵ Liu Longheng's *International Tax Law* (1985);¹⁴⁶ Chen Tiqiang's *Collected Essays on International Law* (1985);¹⁴⁷ Shen Yu's *Introduction to International Monetary Law* (1985);¹⁴⁸ Yao Meizhen's *International Investment Law* (1985);¹⁴⁹ Ni Zhengyu's *The Question of Judicial Jurisdiction in International Law* (1985);¹⁵⁰ Zhou Ziya and Yang Zhixiong's *Law of the Sea* (1985);¹⁵¹ and Li Yaping's *International Criminal Law and In-*

132. ZHOU GENSHENG, *supra* note 15.

133. See Wang & Wei, *supra* note 10.

134. LIU FENGMIN, *supra* note 7.

135. ZHU LISUN, *supra* note 22.

136. LU YINGHUI, *supra* note 25.

137. Wei, *supra* note 7.

138. GUOJI WENTI DI BUJIAO YANJIU (Beijing: The Commercial Press, 1981).

139. GUOJI FA QIANTAN (Beijing: The Law Press, 1981).

140. HAIYANG FA DI XIN FAZHAN (Beijing: Beijing University Press, 1984), reviewed by Chen & Silk, 80 AM. J. INT'L L. 1034-38 (1986); LIANHEGUO XIANZHANG DI XIUGAI WENTI (Beijing: Beijing University Press, 1982).

141. GUOJI SHANGFA (Beijing: Foreign Trade Education Press, 1982, reprinted in 1985).

142. GUOJI FA XIN LINGYU JIANLUN (Jilin: Jilin People's Press, 1984).

143. GUOJI JINGJI JISHU HEZUO DE RUOGAN FALU WENTI (Beijing: The Law Press, 1983); GUOJI JINGJI FA (Beijing: Chinese People's University Press, 1984).

144. XIANDAI GUOJI ZUZH (Wuhan: Wuhan University Press, 1984).

145. GUOJI LAOGONG FA GAIYAO (Beijing: Labor Personnel Press, 1985).

146. GUOJI SHUIFA (Beijing: Current Event Press, 1985).

147. GUOJI FA LUNWEN JI (Beijing: The Law Press, 1985).

148. GUOJI HUOBI FA GAILUN (Beijing: Law Press, 1985).

149. GUOJI TOUZI FA (Wuhan: Wuhan University Press, 1985).

150. GUOJI FA ZHONG DI SIFA GUANXIA WENTI (Beijing: World Knowledge Press, 1985). This book was first published in 1964 and was reviewed by Hungdah Chiu in 14 AM. J. COMP. L. 346-48 (1965).

151. HAIYANG FA ZHISHI (Shanghai: Knowledge Press, 1985).

ternational Crimes (1986).¹⁵² Li Haopei is completing his manuscript entitled "A General Treatise on the Law of Treaties."¹⁵³

The second category of international law books is contained in study aids, such as dictionaries or terminology books. Several books in this category deserve mention: The first is *Public International Law* edited by Zhou Ziya (1981), which translates different items on international law appearing in several Encyclopedias;¹⁵⁴ the second one is *English, French and Chinese Glossary on International Law* compiled by Wang Tieya (1983),¹⁵⁵ and the third is a translation of the Japanese *Dictionary of International Law* compiled by the Japanese Association of International Law in 1975.¹⁵⁶ *The Great Encyclopedia of China, Law* (1984)¹⁵⁷ and the *Law Dictionary* (1980 and 1984)¹⁵⁸ also contain many terms on international law.

The third category of international law literature is published in articles or books translated from Western countries and other Communist countries. Chinese law journals frequently publish translated articles. Two journals, however, are devoted entirely to publishing translated articles: *Series of Translated Legal Literature*¹⁵⁹ and *Foreign Law*.¹⁶⁰ Several Western treatises on international law by Oppenheim,¹⁶¹ J. G. Starke,¹⁶² Michael Akehurst,¹⁶³ and Alfred Verdross,¹⁶⁴ Satow's *Guide to Diplomatic Practice*,¹⁶⁵ R. G. Feltham's *Diplomatic Handbook*,¹⁶⁶ a Japanese

152. GUOJI XINGFA YU GUOJI FANZUI (Beijing: Mass Press, 1986).

153. See Liu Liang, *An Interview with Famous Jurist Professor Li Haopei*, 1984 LAW MAGAZINE, No. 5, at 27.

154. GUOJI GONGFA (Shanghai: Knowledge Press, 1981).

155. YING FA HAN GUOJI FA CIHUI (Beijing: China Translation & Publishing Corporation, 1984).

156. GUOJI FA CIDIAN (Beijing: World Knowledge Press, 1985).

157. See *supra* note 10.

158. See *supra* note 23.

159. FAXUE YI CONG, bimonthly, compiled by the Institute of Law of The Chinese Academy of Social Sciences and published by Chinese Social Science Press since 1979.

160. GUOWAI FAXUE, bimonthly, compiled by the Department of Law of Beijing University and published by the Beijing University Press since 1979.

161. 1 INTERNATIONAL LAW (8th ed. 1955) and 2 INTERNATIONAL LAW (7th ed. 1952) (AOBENHAI GUOJI FA (Beijing: The Commercial Press, 1981) (4 vols.)).

162. AN INTRODUCTION TO INTERNATIONAL LAW (8th ed. 1977) (GUOJI FA DAOLUN (Beijing: The Law Press, 1984)).

163. A MODERN INTRODUCTION TO INTERNATIONAL LAW (3d ed. 1978) (XIANDAI GUOJI FA GAILUN (Beijing: China Social Science Press, 1981)).

164. VOLKERRECHT (1964) GUOJI FA (Beijing: The Commercial Press, 1981) (2 vols.)).

165. SADAOKI WAIJIAO SHIJIAN ZHINAN (Lord Gore-Booth ed. 5th ed., Shanghai: Shanghai Translation Press, 1984).

166. WAIJIAO SHOUCHE (4th ed., Beijing: China Translation & Publishing Corporation, 1984).

treatise on international law edited by Terayawa Hajime and Yamamota Soji,¹⁶⁷ and a Soviet treatise on the modern law of the sea¹⁶⁸ were also translated into Chinese.

The fourth and last category of literature consists of a compilation of treaties, diplomatic documents, or municipal laws and decrees relating to foreign relations. While *The Compilation of Treaties of the People's Republic of China* has been published on a more regular basis,¹⁶⁹ there appears to be no plan to resume the publication of *Collected Foreign Relations Documents of the People's Republic of China*.¹⁷⁰ The publication of *International Treaty Series* has also been resumed, although on an irregular basis.¹⁷¹ In 1982 Wang Tieya's three-volume *Collection of Old Agreements, Regulations and Treaties Between China and Foreign Countries, 1689-1949*, which was first published in 1962, but was out of print for a long period, was republished.¹⁷² Because many original source materials on international law are not readily available in China, in 1982 a huge volume of *Selected Materials on International Law*¹⁷³ was also published. In addition, in 1984 a bilingual collection of marine pollution law was published under the title *The Corpus of Anti-Mar-Pol Legislations* [sic].¹⁷⁴ A PRC scholar is in the process of compiling a comprehensive collection of all conventions relating to private international law between 1889 and 1984.¹⁷⁵ In 1985 a collection of law of the sea legislations entitled *Selected Laws and Regulations on Territorial Sea and Contiguous Zone of Various States* was published.¹⁷⁶

167. GUOJI FA JICHU (Beijing: China People's University Press, 1983); KOKUSAIHO NO KISO (Terayawa Hajime & Yamamota Soji, eds., Tokyo: Kabushikigaisha Seirin Shoin Shinsha, 1979).

168. XIANDAI GUOJI HAIYANG FA (Tianjin: Tianjin People's Press, 1981). AKADEMIJA NAUK SSR INSTITUT GOSUDARSTVA I PRAVA, SOVREMENNOE MEJDUNARODNOE MORSKOJE PRAVO (Moskva 1974).

169. 28 ZHONGHUA JENMIN GONGHEGUO TIAOYUEJI (1981) (Beijing: World Knowledge Press, 1985), is the latest available one at the time of writing this article.

170. 10 ZHONGHUA RENMIN GONGHE GUO DUIWAI GUANXI WENJIANJI (Beijing: World Knowledge Press, 1964).

171. GUOJI TIAOYUE JI (Beijing: World Knowledge Press). Thirteen volumes covering the period 1917 to 1971 were published. The latest available one at the time of writing this article is published in 1984, covering the period 1648-1871.

172. ZHONGWAI JIUYUEZHANG HUIBIAN (Beijing: Joint Publishing Co., 1982) (3 vols.).

173. GUOJI FA ZILIAO XUANBIAN (Beijing: The Law Press, 1982), reviewed by Hungdah Chiu in 77 AM. J. INT'L L. 979 (1983).

174. FANGZHI HAIYANG WURAN FAGUI HUIBIAN (Beijing: The Law Press, 1984). This is the first volume of this collection. Several volumes are in the process of preparation.

175. LU JUN, GUOJI SIFA GONGYUEH JI (COLLECTION OF CONVENTIONS RELATING TO PRIVATE INTERNATIONAL LAW) (forthcoming); see Kuo Siyong, *On Famous International Jurist Professor Lu Jun*, 1985 LAW MAGAZINE, No. 6, at 12.

176. GEGUO LINGHAI JI PILIANQU FAGUI XUANPIEN (Beijing: The Law Press, 1985).

V. Conclusions

Post-Mao China's attitude toward international law appears to be a relatively positive one. Never, since the Communists came to power in China, has China shown such an interest in international law. This changing attitude is the result of the new political and economic policy of the post-Mao Chinese leaders, who are more interested in modernization than world revolution. To achieve the goal of modernization, the introduction of Western technology and investment into China is indispensable. International law serves as a useful tool to facilitate such intercourse between China and the outside world. This truth also explains the reason why China's interest in international law has now gone beyond the traditional scope of international law and includes international economic law and related fields.

In December 1986 students in several Chinese cities demonstrated against the PRC government and demanded more "democracy" and "freedoms."¹⁷⁷ This prompted the Communist Party of China to launch a campaign against the so-called "bourgeois liberalism" and the removal of several key government or party officials who were allegedly sympathetic to the students' demands. The most important one is the demotion of Hu Yaobang from the position of party general secretary in January 1987.¹⁷⁸ Chinese leader Deng Xiaoping, however, has reassured foreigners that this campaign will not change China's "modernization" and "open door" policy to the outside world.¹⁷⁹ If that is the case, then it seems that the recent political turmoil in China will not have any significant impact on Chinese attitude toward international law, although it is still too early to make any definite assessment of this issue.

Another reason for China's more favorable attitude toward international law is the rapid change the world has undergone in the last twenty years.

177. See, e.g., Gargan, *Thousands Stage Rally in Shanghai Demanding Rights*, N.Y. Times, Dec. 21, 1986, at 1, col. 1, 19 col. 1; Gargan, *China Denounces Student Protests as "Illegal Acts,"* id., Dec. 22, 1986, at A1, col. 6, 14, col. 1; *Beijing Imposes Rules Banning Protests in City*, id., Dec. 27, 1986, at 1, col. 3, 4, col. 4; Gargan, *Chinese Officials Criticize Protests*, id., Dec. 30, 1986, at A5, col. 1; Gargan, *Chinese Students End Their Marches*, id., Dec. 31, 1986, at A8, col. 1.

178. See Gargan, *Clues Clarifying Shifts in Beijing Remain Elusive*, N.Y. Times, Jan. 18, 1987, at 1, col. 3, 18, col. 1; Butterfield, *Hu's Ouster: Deng's Role?*, id., Jan. 17, 1987, at 1, col. 4, 4, col. 1; Gargan, *Leader of Party in China is Ousted for His "Mistakes,"* id., at 1, col. 1, 4, col. 5.

179. See *Deng on Recent Events in China*, 30 BEIJING REVIEW, No. 13, at 34 (March 30); *Adhering to Four Basic Principles to Wholeheartedly Engage in Four Modernizations—Deng Xiaoping's Comments on the Internal Situation*, 1987 OUTLOOK WEEKLY, No. 17, at 4-6 (April 27); Bonavia, *Deng Says Anti-Bourgeois Campaign Is Over, Return to Moderation*, 135 FAR EASTERN ECONOMIC REVIEW, No. 11, at 12-13 (March 12, 1987); She Duanzhi, *Schultz Finds an Unchanged China*, 30 BEIJING REVIEW, No. 11, at 5-6 (March 16, 1987).

With the Third World countries now in control of the international legislative machinery—the United Nations and its affiliated agencies¹⁸⁰—China is living in a more favorable legal environment and has no need to challenge the existing legal order by advocating different systems of international law as Chinese scholars did in the mid-1950s.

While writings on international law by Chinese scholars have reflected their interest in a wide scope of international law, there is one area of international law on which they take a skeptical attitude: the international law of human rights. They view this law, except when used to criticize Western countries, South Africa, Israel, or other countries unfriendly to China, as an attempt by Western countries to interfere in the internal affairs of socialist countries.¹⁸¹ Similarly, they also reject the prevailing Western view that individuals are, to a certain extent, limited subjects of international law.

Finally, post-Mao China's leaders allow limited freedom of expression within the so-called four basic principles, i.e., keeping to the socialist road, upholding the dictatorship of the proletariat, Communist Party leadership, and Marxism-Leninism-Mao Zedong thought. The views of Chinese scholars are thus more diversified, and do not necessarily reflect the official position of the Chinese government.¹⁸² If the Chinese government

180. See generally Wang Tieya, *The Third World and International Law*, in 1982 CHINESE Y.B. OF INT'L L., *supra* note 5, at 9-36, translated in SELECTED ARTICLES FROM CHINESE YEARBOOK OF INTERNATIONAL LAW, *supra* note 5, at 6-40; see also THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY DOCTRINE AND THEORY 955-76 (J. Macdonald & D. Johnston eds. 1983).

181. A Chinese scholar recently wrote: "China opposes any external interference in a country's internal affairs on the pretext of safeguarding human rights." Guo Shan, *China's Role in Human Rights Field*, 30 BEIJING REVIEW, Nos. 5 and 6, at 23 (February 9, 1987). He did not explain why China frequently criticizes the human rights situation in other countries. In November 1986 China reportedly was considering signing the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, and the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171. *PRC Likely to Sign UN Human Rights Conventions*, FOREIGN BROADCAST INFORMATION SERVICE, CHINA, Nov. 28, 1986, at A1-A3. However, at the time of this writing in April 1987, China has not done so.

182. An interesting case illustrating this point is the Chinese attitude toward Republic of China's membership in the Asian Development Bank. On May 3, 1983, a Chinese scholar Chen Tiqiang argued that since Taiwan (Republic of China) is no longer recognized by the United Nations and many countries in the world, it should automatically lose its membership status at the Bank. See Chen Tiqiang, *Taiwan Shouldn't Hang On in Asian Development Bank*, People's Daily, May 3, 1983, at 7 (English translation in China Daily, May 4, 1983, at 4). Both newspapers are published under the auspices of the Chinese Communist Party, so one may get the impression that the view expressed by Chen should reflect the official PRC policy. However, this turned out to be almost totally wrong. On June 26, 1983, Chinese leader Deng Xiaoping told a Chinese-American Professor, Winston Yang of Seton Hall University, that Taiwan could retain its membership at the Asian Development Bank by changing its name to "China, Taipei." See Li-yu Yang (Winston Yang), *Deng Xiaoping's New Idea on Peaceful Unification—A Two Hours Talk with Deng Xiaoping*, 1983 QISA1 NIANDAI (THE SEVENTIES), No. 8, at 17-19. In March 1986 the PRC was admitted to the

takes a position on a certain issue of international law, however, Chinese writings, if any, always give full support to the government's position in terms of international law.

Bank without demanding the expulsion of Taiwan, though the Bank, under PRC pressure, would use "Taipei, China" to refer to the Republic of China in its official documents or correspondence. The Republic of China on Taiwan refused to accept this change, so it did not send a delegation to the Bank's 1986 meeting, though it still maintains its membership. *See People's Republic of China Joins ADB as its 47th Member Country*, ADB NEWS RELEASE No. 33/86 (March 10, 1986) and *Official Protest Lodged with ADB Over Name Change*, Free China Journal, March 17, 1986, at 1.