

## The Peoples' Republic of China and International Law

Almost a quarter of a century has passed since the "agrarian reformers" led by Mao Tse-tung began sweeping away the old culture of China, a nation with a history of nearly four thousand years. For twenty years the Bamboo Curtain has been drawn around the Peoples' Republic of China. One-fourth of the world's population, more than seven hundred million people, have been sealed off by their leadership. Now ping-pong players have re-opened the lines of communication, the Chinese have taken seats in the United Nations and an American President has visited mainland China. It is a paradox of our time that the new China remains as remote and mysterious to many of us in the West, as the old China was to the Romans, who knew of the Chinese only as "the silk people."

Thus, all the greater has been the shock, at least in the United States, of recent political developments: A U.S. president who as a senator gained fame as an arch enemy of communism, visited Peking; the overwhelming vote in the United Nations to oust the Nationalist Chinese government on Taiwan, and seat the mainland Chinese as an influential world power after twenty years of more or less self-imposed isolation. But, can anyone deny that with the largest population in the world, estimated at more than seven hundred million—roughly one-fourth of mankind—and with the third greatest land area, by sheer size alone, China must inevitably play a leading role.

Despite the emergence of the Peoples' Republic of China as a nuclear power, and its already growing influence in world affairs, very little so far has been written on China's attitude toward international law.<sup>1</sup> Systematic

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<sup>1</sup>One, however, does find occasional articles on the subject in American political science and international law journals. A couple of examples of good articles would be: Hungdah Chui, "Communist China's Attitudes Toward International Law," *American Journal of International Law*, Vol. 60, No. 2 (April 1966), pp. 245-267; Carl Q. Christal, "Communist China

attempts have yet to be made to probe the pathology of Chinese contemporary behavior concerning international law observation. We know very little so far about China's present and future motivations or lack of them to play the role of a law-abiding country. The significance of Chinese legal studies on American campuses at the present cannot be overstated.

Lack of scholarship concerning China and international law unfortunately has allowed the students to form opinions on this subject based upon values rather than knowledge, on journalistic reports rather than a dispassionate enquiry. The result has been obvious. A generally negative and suspicious view of China's activities in the international arena is carried over in the field of law and, more often than not, the conclusion is drawn that China could not possibly have any respect for international law. One frequently hears oversimplified statements such as "since the Chinese have fought the United Nations peacekeeping forces in Korea and mistreated the American prisoners of war, they cannot be trusted to uphold international law."

Another frequent argument that has been advanced is that "since China is a socialist country which has borrowed much of its institutions and practices from the Soviet Union, it cannot possibly have an independent view of international law, that is independent of the Soviet Union." Similar statements continue to emerge. China's own frequent statements—often made on political grounds—suggesting that much of traditional international law, even the Western world's recent attempt to make individuals and international organizations as subjects of international law, are nothing more than a bourgeois scheme designed to continue the exploitation of the working classes of the world, have not helped matters any.<sup>2</sup>

These statements and the process of accusations and counter-accusations have unfortunately succeeded in pre-empting any meaningful and sustained debate on Chinese attitudes, current practices, and motivations concerning international law violations and observances. It is not being suggested that these statements are totally inaccurate but they are starkly inadequate and therefore misleading. This brief article is a small step in the direction of gaining some fundamental knowledge of China's and International Law—Strategy and Tactics." *The Western Political Quarterly*, Vol. XXI, No. 3 (September 1968), pp. 456-467. Reference will be made to both of these articles in the next few pages. Students are also encouraged to examine the works of several Chinese communist scholars on the subject, which are frequently translated into English by the United States Joint Publication Research Service.

<sup>2</sup>Consider for instance, the comments of Ying T'ao: "In the Western Capitalist world, suppression of the weak by the strong and eating of small fish by big fish are not only tacitly condoned by bourgeois international law but also are cloaked with a mantle of 'legality'," in an article entitled: "Recognize the True Face of Bourgeois International Law from a Few Basic Concepts," *Studies in International Problems*, No. 1 (1960), p. 42. Also cited by H. Chui *op. cit.*, p. 250.

views on international law and setting the record straight in some instances concerning China's actual behavior with regard to law.

Undoubtedly, the Chinese have always recognized the existence of international law. In recent years, they have embodied some of its principles in a number of international treaties of mutual friendship that they have signed with countries such as Afghanistan and Hungary.<sup>3</sup> They have frequently used international law whenever they felt it was to their advantage, and have ignored it when it appeared to them as detrimental to their national interest.<sup>4</sup>

They teach international law at their institutions of higher learning and write about it. However, an acknowledgement of the existence of international law, its teaching and even its invocation to serve specific foreign policy goals, does not necessarily imply acceptance to the Western view of international law or even that of the Soviet Union. A strong case can be made that major differences exist between the Chinese and Western views, and at least some significant differences have now appeared between the Chinese and Russian views of law as well.

Speaking of law in general it should be remembered that in most Western societies law is frequently thought of as an objective body of rules, that have the understanding and uncoerced support of the people. By and large these rules are regarded as the outcome of a successful political process in which the people have some say. Once the rules have been established in a statutory form, their application, at least ideally, is divorced from political considerations. In the Peoples' Republic such a view of law simply does not exist.

In fact in the late 1950's, during the "Rectification Campaign" this Western view of law was ruthlessly criticized by Chinese scholars.<sup>5</sup> On the other hand, in the Soviet Union for instance, law is viewed primarily as an instrument of state policies. Law is subservient to the dictates of the state. It is accepted as a body of rules established by the state specifically to promote the Marxist social order. It seems difficult to ignore the fact that

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<sup>3</sup>The Sino-Afghanistan Treaty of Friendship and Non-Aggression was signed on August 26, 1960. Interestingly enough, the treaty cites the United Nations Charter in its preamble as follows: "... conclude the present treaty in accordance with the fundamental principles of the United Nations Charter..." 3 *Peking Review*, No. 51, 18 (1960). Quotation cited by H. Chui, p. 246, The Sino-Hungarian Treaty of Friendship and Cooperation, signed on May 6, 1956, in Article I also refers to International Law.

<sup>4</sup>A good example of Chinese use of international law in order to make a point for their position would be the harsh statement made by the Chinese embassy in Jakarta on the forceable house arrest of the Chinese Consul by the Indonesian security forces on May 13, 1960. The statement in part reads: "(The) forceable house arrest of the Chinese Consul Chiang Yen, the crude encroachment upon the functions and rights, the personal safety and freedom of the Consul... have violated the universally acknowledged international norms..." 3 *Peking Review*, No. 20, pp. 34-35 (1960), quoted by H. Chui, *Ibid*, p. 246.

<sup>5</sup>A number of articles appeared on this subject in the 1957 *Fa Shues* (Science of International Law), No. 5 and 6, in China.

the state's powers are also further enhanced and consolidated in this setting.

While the Chinese accept several principles of international law proclaimed by the Soviet Union and applied by Soviet jurists, nonetheless, they have also engaged in frequent criticism of Soviet views which they feel is increasingly becoming anti-revolutionary. They blame the revisionist attitude of the Soviet Union concerning international law on the Soviet desire to support the status quo in international politics, which benefits the Russians and the Americans because of their privileged positions as super powers. The following remarks made by a rather well-known Chinese law professor, Wu Te-Feng highlights Chinese sentiments:

Imperialism is the basic source of war, and American imperialism, moreover, is the most ferocious and ambitious aggressor ever to exist in the history of mankind, and it is the most flagrant violator of the principles of modern international law. Naturally, democratic legal workers in various countries should engage in the thorough exposure of, and determined struggle against, it. However, modern revisionists (meaning the Soviet Union) make great efforts to propagandize the carrying out of 'peaceful co-existence' with imperialism without being subject to any principles, disseminating the view that contemporary international law is the 'law of peaceful co-existence,' and to propagandize the carrying out of 'full cooperation' with American imperialism.<sup>6</sup>

Before Chinese present attitudes, their practices and motivations concerning international law are examined, it will be fruitful to examine very briefly the major characteristics of their classical internal legal system. Much of it is now history but it has left some marks on Chinese thinking. Jerome A. Cohn, in an interesting article, identifies four significant characteristics of this system: First, it was obviously a very old system, taking the Chinese society almost 2,000 years to develop it, expand it, and bring it to maturity. Second, despite the length of the tradition, Cohn argues, the influence of law on the interpersonal relations of a man in the street remained relatively mild.

There were several reasons for this; among them, certainly the vastness of the country itself, poorly developed, often non-existent channels of communication between the elite and the masses, the inability of the political system to institute effective internal and external controls, the prevailing value system and the heritage of Confucianism, must be considered as factors tending to minimize the role of government and law in the every day life of an average citizen. Although the people recognized the prevalent standards and rules of law, but apparently several factors worked to minimize their desire to become involved in legal proceedings.

<sup>6</sup>It will be interesting to note that Professor Wu is the president of the China Political Science and Law Association. This quotation, provided by H. Chui, *op. cit.*, p. 245, comes from a report delivered by the President on October 8, 1964, to the general meeting of the Association. It was reported in *Cheng-Fa Yen-Chia* (Studies in Political Science and Law), No. 4, p. 28.

For instance, their strong tradition which emphasized the virtues of persuasion rather than mandatory decisions that courts made, as a third party in disputes, was one. A high value placed on privacy coupled with the perennial fear of loss of face in the community was another. Cohn points out, "It was considered almost disreputable even for an innocent party to go to court to get help. These attitudes still appear to persist in large measure in China."<sup>7</sup>

Third, during an approximate period of 125 years of the dynastic rule that spread over parts of the 18th and 19th centuries this traditional legal system became thoroughly corrupted because of favoritism and long delays in handling the cases, and also because of newly acquired elements of harshness that are readily available in a regimented society. It finally crumbled.

Fourth, viewed from the Western perspective, the Chinese traditional system had some grave deficiencies. For instance, it never adequately provided a client the right to a lawyer, even for purposes of defense to say nothing of advocacy, or even simply to ascertain the crucial facts in the case and point the finger to the applicable legal doctrines. Chinese tradition, again, emphasizing the need to preserve "face" under all circumstances, enabled the courts to use mediational or arbitral techniques far more freely and to a far greater extent, than practiced in the West in resolving disputes.<sup>8</sup>

Some of the marks left by the traditional legal system that still persists in Chinese thinking today are, an attitude of aloofness from law perpetuated by a sense of irrelevance in everyday life, and at the same time a fear that officials who invoke and implement law are corruptible. To submit to law is to submit to the mercy of officials without an appropriate "adversary" system, etc. The Chinese view of the role of international law, at least in part, continues to be influenced by this sort of thinking.

With the eventual acceptance of Marxist-Leninist-Maoist political ideology a new set of values was introduced in the Chinese legal system and as the "cultural revolution" picked up momentum, a great many, if not all, classical and Confucist values were set aside if not totally destroyed. Today the Peoples' Republic is an ardent supporter of a socialist philoso-

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<sup>7</sup>J.A. Cohn, "The Chinese Legal System," *Chicago Today*, 3 (Spring 1966), p. 13. See also some of the relevant literature: "The Peoples' Republic of China and International Law—Observations," *Proceedings of the American Society of International Law*, Vol. 61, 1967, p. 108.

<sup>8</sup>Cohn points out that whenever a litigant found himself involved in a court proceeding, he was "expected to rely completely on the tender mercies of officialdom." *Ibid.* pp. 10-11. In the same vein, see also G. Michael, "The Role of Law in Traditional, Nationalist and Communist China," *China Quarterly* (January-March 1962), pp. 126-127.

phy in its political, economic and social activities. Its internal structure with certain exceptions is essentially totalitarian in nature.

Acceptance of Soviet proletarian institutional innovations has also meant acceptance of Soviet political and legal doctrines, but not fully. In fact the case seems to be with the continuing conflict between the Soviet Union and China, both on ideological and political grounds, the two countries are moving away in opposite directions from their earlier somewhat limited commonality of attitudes concerning international law. Chui, among several other scholars, points out "law in Communist China is considered to be an instrument of the state, undergoing successive adaptations to make it conform to communist party dictated policies."<sup>9</sup>

In much of the communist world the party of course remains the most powerful force. In the case of China there is something unique as far as the party's foreign policy is concerned. This uniqueness may well be in part responsible for China's own typical view of international law. Most importantly, since the emergence of the Peoples' Republic, the party's foreign policy has been consistently directed to eradicate China's past humiliations incurred in its rather brief history of subservience to Western powers and to become the new strong center of the emerging proletarian world. History tells us that traditionally Chinese have been lovers of culture, proponents of great ethical systems, and bound by an elaborate etiquette designed to smooth human relationships (which puzzled and seemed hypocritical to Westerners), yet the Chinese were capable of outbursts of anarchy and cruelty.

While brilliant inventors in the past, the Chinese never developed science because they did not wish to master nature but to live in harmony with it. Very proud of their long history, self-sufficient as an agricultural people, static and satisfied, and convinced of their great society, they simply wished to be left alone. This was China on the brink of invasion by an alien culture armed with technology. Unlike previous invasions from "barbarians" this one was to be by sea. Its impact on the Flowery Kingdom, the Central Nation, the Celestial Empire, could not have been more profound had it come from another planet.

Two factors combined to humble proud China—her refusal to treat Western nations as sovereign equals, and opium. China's attempts to eliminate the growing trade in the one product the Chinese were eager to buy

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<sup>9</sup>H. Chui, *op.cit.*, p. 24. In support of his position the author directs attention to an article recently published in China, entitled: "Some Questions on the Peoples' Democratic Legal System in Our Country." The article states: "Since the policy of the party is the soul of the legal system, legal work is merely the implementation and execution of party policy . . . the new law of our country is a changing law, adopted to the perpetual revolution." (1959) *Cheng-Fa Yen-Chiu* (Studies in Political Science and Law), No. 2, p. 3.

brought her into armed conflict with the British in 1839. The Anglo-Chinese war, the so-called "Opium War," quickly revealed the superiority of Western military technology, and the astonishing impotence of the Manchu government. Under the provisions of the Treaty of Nanking in 1842, four ports besides Canton were opened for the West to trade with China, extra-territoriality—the jurisdiction of foreign powers over their own nationals—was recognized, and a "most-favored-nation" clause requiring that any concession granted to one nation was automatically granted to all, was imposed.

China attempted to ignore the treaty and, in 1856, Britain and France used this as a pretext to launch another war. A series of treaties after this war in 1858 opened still more ports, levied more indemnities, brought to Europeans their long-sought diplomatic recognition, the protection for missionaries who followed the soldiers and the right to travel freely in China. Still China was not reconciled to the political realities of her times. In 1860, after the Europeans sacked Peking and burned the Summer Palace, China agreed to a new convention widening the provisions of all the others she had been brought by the scruff of the neck to sign.

In 1858, Russia had wrested Manchuria from the Chinese totaling 185,000 square miles. Two years later, for using his "influence" with the allies, the czar received an additional 133,000 square miles, including the port of Vladivostok. In the mid-19th century, not only the Western powers but chronic floods and successive famines and a phenomenon known as the Taiping Rebellion ravaged China. It took Manchu rulers almost a decade and a half to put it down and when it was all over it had claimed twenty million lives.

Of all the humiliations the Celestial Empire suffered in the 19th century, the worst was defeat by the "dwarfs from beyond the Eastern Sea." In 1894, newly industrialized Japan launched a major war. In a relatively short period of time Japan showed herself as the most brutal of all the invaders to enter China. This, of course, set off a new scramble of trade concessions and "spheres of influence." Fearful of commercial consequences if China were carved up into colonies, the United States in 1900 enunciated the principle of the "open door."

Though essentially an extension of the most-favored-nation clause guaranteeing equal rights of exploitation to all powers, it had the effect of preserving China as a territorial and political entity. For this China was grateful. By this time, it was quite clear to many Chinese that their country was doomed unless it rapidly modernized, and so the process of modernization started in the middle of many political upheavels including the communist takeover and continues today.

The net effect of China's past history of humiliations on the present Chinese régime has been to overcome its own sense of inadequacy, and to hide a lack of self-confidence in international relations. This has frequently meant talking tough, picking fights, providing foreign aid to friendly countries and encouraging communist revolutions. Some of this international activity has gotten them into trouble in a number of countries, particularly in Africa, where they tried to encourage counter revolutions in the 1960's.

The question that needs to be posed here is does the Chinese government, as in the case of the Soviet Union, regard international law as a convenient tool of a state's foreign policy to be used whenever desirable, or is there more than meets the eye? An answer to this question will, hopefully, clarify the differences, not only between the Chinese and Western views of international law, but also between the Chinese and Russian views.

A response to this question should be sought at several levels. 1. At the *level of attitude* that China has toward international law. This can be determined from several factors, *e.g.*, official statements of public policy which may have some relevance to law, espousal of ideological preferences concerning law, and national expressions of expectations and hopes concerning the future role of international law in world affairs. 2. At the *behavioral level*, that is, an analysis of actual practices of the Peoples' Republic as viewed from the perspective of international law. What is the Chinese records as far as international law is concerned? 3. At the *level of national motivations*, particularly the motivations of national decision-makers concerning law observance or violation in the future.

### **Attitude and Ideological Position**

There is sufficient evidence to suggest that, at least verbally, the Chinese attitude is one of respect for international law. A determined probing of what the Chinese have been saying for some time about Western and Soviet attitudes toward international law reveals this: There appear to be three important positions China has adopted at the attitudinal level.<sup>10</sup> *Firstly*, along with the Soviet Union, in recent years the Chinese have decided to assign overwhelming significance to the concept of peaceful co-existence, though their interpretation of the concept is somewhat different than that of the Russians.

Nonetheless, it is a concept generally consistent with the principle of contemporary international law. *Secondly*, following the initial lead of the Soviet Union, but later on travelling an independent path more suitable to

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<sup>10</sup>These three positions have also been recognized by C. Q. Christal, *op.cit.*, p. 458.



their own circumstances, the Chinese have attempted to develop some unique theories of international law. These are based on their own preferred understanding of socialist ideology. Broadly speaking, they have argued that there are several systems of international law, *e.g.*, Socialist, Western, and what appears to them a sixth of these, one that is followed by the Soviet Union. Relying quite heavily on their understanding of socialism and their own brand of "peaceful co-existence" they have been able to generate some formidable challenges to the popular view that there is a general or universal international law. In this challenge they have been able to muster frequent support from a number of "Third World" countries.

*Thirdly*, while recognizing multiple systems of international law, they have however, never attempted to hide their hopes, and at times faltering confidence, that their own view of international law will eventually be accepted universally, and thus eliminate the necessity of multiple legal systems. Chinese scholars, as indicated earlier, have never hesitated to criticize Western international law as an imperialistic device designed for the exploitation of the working classes of the world. The Soviet view of international law is regarded as purely revisionist in nature, designed to appease the West—a betrayal of Marxism-Leninism.

The Chinese are apparently convinced that the present ideological struggle between socialism and capitalism will conclude in their favor, at least in the sense that many of the "Third World" countries, out of economic necessity and temperament, will end up accepting a socialist philosophy. Therefore, they feel they have a great deal of support to gain by extending this struggle to the field of international law. They say they have now formulated a "Chinese" socialist view of international law, which, of course is the logical outcome of their own newly acquired ideological independence from the Soviet Union. This view is strongly influenced by their own concept of "peaceful co-existence" which can be found in the broad theoretical discussions, official policy pronouncements, etc.

A more sustained examination of China's present attitude toward existing international law, reveals some inconsistencies which can be attributed to two important factors that have not been given sufficient attention in the past literature. 1. The significance of the present period of transition China is now going through from a relatively poor, weak and internationally ineffective nation to a strong, well-developed and powerful nation in world affairs. 2. China's own persecution complex, a sense of being deprived, that it acquired during the period of humiliation by the Western powers.

There have been times, since the establishment of the Peoples' Republic,

when the Chinese were not sure of themselves, and have felt they could live with the present general international law, provided the Western powers clearly renounce their earlier outmoded definition of law which suggested international law regulates relations of only the "civilized" nations. The Chinese feel that a truly universal international law should govern the relations of all nations, civilized or uncivilized. Besides, they argue, in the light of history the "older" nations' expressed right to be called "civilized" is suspect.

Apparently, no formal renunciation that could satisfy the Chinese has ever been attempted by the West. Apart from semantics and historical judgments, what the Chinese are evidently afraid of is, that if the current definition of international law is not challenged it may be used at some future time to deny the Peoples' Republic, along with other countries of the "Third World," equal protection under the law. Knowing the impact upon our thinking of 19th century evolutionary social theory, notions of the "white man's burden," the eloquence of Kipling's thought, and passions of Teddy Roosevelt, etc., and realizing the fact that most nation states still possess strong propensities to make invidious distinctions, one can sympathize with China's concern.

The Chinese, for the time being at least, regardless of their claims of multiple systems of international law, would very much like to remain in a position to use the existing international norms, both contemporary and classical, to their benefit, *e.g.*, they would like to continue to invoke them in support of their own foreign policy objective, and against those who may wish to disregard these norms to the detriment of Chinese interests.

On the question of multiple sources of international law, the Chinese feel the most important source remains the international treaties of consensus. Although they have respected custom as a source of international law in procedural, non-controversial areas, they have generally rejected this source in more substantive areas, particularly in contemporary political disputes. However, since the requirements for the establishment of international law through custom, are multiple, complex and demand valid precedents, the Chinese have shied away from passing a definite negative judgment on this source.

On other traditional sources of international law, China's attitude has also not been very clear and consistent. At times it has criticized famous judicial decisions, ridiculed the writings of renowned law professors, and yet on other occasions it has praised the decisions of international tribunals including the International Court of Justice. In recent years it has cheered various resolutions of the General Assembly of the United Nations, as having implications for contemporary international law, including the one

that admitted its delegate as the rightful representative of China to the U.N. Part of the thrust of contemporary international law has been to consider individual human beings as direct subjects of international law, both for purposes of law protection and responsibilities, obligations, etc.

Some considerations in law are also given to international organizations as bodies having jurisdiction. Both of these developments have tended to undermine the traditional concept of state sovereignty, the state's right to be unpredictable and the state's claim of being the most important, perhaps the only subject of international law. The Chinese have a negative attitude toward these developments. Their view, consistent with their philosophy of the role of the state, is that nation states are the only proper subject of international law. Most socialist countries have the same position, at least till the state "withers away" according to marxist philosophy. Certainly the Soviets still subscribe to this view.<sup>11</sup>

At the attitudinal level, one can conclude that the Chinese position concerning international law is in a period of transition. This is the result of their rapidly changing status in world affairs. At best their thinking is inconsistent. For instance, a number of Chinese scholars and statesmen in recent years have argued that international law is universal, at the same time asserting the existence of their own special view of law which does not coincide with the views of much of the rest of the world. As far as the universality of law is concerned, their attitude is pragmatic.

It is conditioned by their desires to use international law in the service of their foreign policy, and by their fears that an all too vehement rejection of it may result in the denial of its protection to them. Assertion of the existence of their own "socialist" view of international law, is an expression of their ambitions and hopes that some day international political circumstances will make its acceptance by other nations, particularly the countries of the "Third World," possible. This view is based on their own somewhat unique understanding of Marxist-Leninist-Maoist philosophy, proletarian internationalism, and most importantly, their own principles of peaceful co-existence.

### **Actual Practices**

As far as fairly routine and procedural international law is concerned, China's record of law observance is good. Certainly it is no worse than any

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<sup>11</sup>The Soviet position can be understood from the writings of scholars such as Y. A. Korobin amongst others. For instance, he argues: "International law can be defined as the aggregate of rules governing relations between states in the process of their conflict and cooperation, designed to safeguard their peaceful co-existence expressing the will of the ruling classes of these states and defended in case of need by coercion applied by states, individually or collectively." In F. Y. Kozherniko (ed.), *International Law* (1957), p. 7.

other country including Western countries. The presence of mutual interests among states coupled with an ever-increasing requirement of interdependence in world affairs, has obliged China like all other states, to conform readily to every basic principle of international law and come to expect and demand compliance from other states. However, at the same time, what Christal has called "another level of discourse" meaning where crucial national interests are involved, the Chinese record is inconsistent. They have clearly disregarded some of the most cherished principles of international law, while observing others to the letter of the law.

At the procedural level, even though most laws tend to be traditional in the sense of their deep roots in Western heritage, the Chinese have been one of the most law-abiding nations. For instance, they have exchanged diplomatic representatives with many countries, insisting on proper protocol, and protesting bitterly whenever they felt their representatives were denied rights under international law. Now that the Chinese have formally signed the United Nations Charter and have been able to establish diplomatic relations with many western countries, chances are that they will be drawn in ever more closely into the community of nations. As a result, it appears reasonable to say their record of procedural law observance will further improve.

International treaties developed and ratified through international consensus remain the most important source of international law for the Chinese. Since their emergence to power in October 1949, the Chinese have signed several treaties of mutual friendship and respect. In fact, as early as October 1, 1949, Chinese leaders declared: "Our government is the sole legal government representing the entire people of the Chinese Peoples' Republic. Any foreign government which is willing to observe the principles of equality, mutual benefit and mutual respect for territorial sovereignty, is welcome to enter into diplomatic relations with our government."<sup>12</sup>

The Peoples' régime, with what appears to be some minor reservations, has also upheld many important conventions of this century, e.g., the 1925 Geneva Protocol Prohibiting the Use in War of asphyxiating, poisonous or other gases, and bacteriological methods of warfare; the 1949 four most important Geneva Conventions pertaining to the use of warfare in general; the 1930 Load Line Convention in London; and other London convention concerning prevention of collisions at sea, signed in 1948.<sup>13</sup>

<sup>12</sup>Cited by J. Chester Cheng, "The Chinese Communist View of International Law," mimeo, private circulation, January 28, 1961, p. 2. Cheng was cited by Christal, *op.cit.*, p. 463.

<sup>13</sup>For a complete list of treaties signed by the Peoples' Republic and ratification of other existing legal documents consult the Chinese official publication entitled: *International Treaty Series*, 10 volumes.

In their bi-lateral treaties they have consistently attempted to incorporate their five principles of peaceful co-existence. It seems clear these principles are important to them, and they would like to see them accepted by most if not all nations as one of the enlightened sources of international law. Their incorporation in treaties is a step in that direction.

On the other side of the coin, Chinese reliability in upholding a number of their legal commitments has been widely questioned. There are several Chinese violations that have not escaped criticism. For instance, in 1953, the Chinese clearly disregarded their commitments undertaken during the Korean Armistice, refused to implement their promise made in 1955 that they will facilitate the return of American citizens held in Chinese prisons, etc. On the question of treaty obligations and Chinese practices, Christal has this to say: "Apparently the Chinese do not subscribe so much to the sanctity of treaties although this would seem to be desirable in order not to lose face in the world community—but rather are inclined to examine the power relationships of the signatories in determining if the agreements should be kept."<sup>14</sup>

Writing on the question of respect for treaties in the socialist countries in general, another scholar puts it this way: "All treaties and agreements concluded between capitalist and socialist countries are reached only after a fierce struggle between the two parties, resulting in a compromise which reflects not common values but the realities of the power balance between them."<sup>15</sup> Chui's comment is tantamount to saying that the only thread that unites the capitalist and socialist states on a common set of contemporary treaty international laws, is not the commonality of attitudes and beliefs, but rather a community of pragmatic interests forged together on specific issues.

Presumably, if this community of interests withers away, the temptation to violate relevant laws would become irresistible. Indeed, this is a shaky basis for future law development. There are a number of old treaties that the Chinese have now dismissed as simply "unequal treaties," presumably consented to under unfavorable circumstances, and therefore not worthy of support. Yet other treaties signed during the same periods of Chinese history are honored. The real difference seems to be the continued interest of China in a particular treaty rather than the circumstances of its original acceptance—an observation that supports Chui's fears.

However, it must be admitted that the expedient position of the Chinese concerning the binding nature of some treaties signed essentially before the emergence of the Peoples' Republic, is no different from the position taken

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<sup>14</sup>C. Q. Christal, *op.cit.*, p. 463.

<sup>15</sup>H. Chui, *op.cit.*, p. 253.

by many developing countries today concerning their legal obligations undertaken during colonial days.<sup>16</sup> It must also be pointed out that there are no known significant violations of treaties that the Peoples' Republic has signed in recent years. Even during the early days of the Peoples' Republic, in September 1949, it was stated by the communist régime: "Concerning the various treaties and agreements signed between the nationalist and foreign governments, the Central Peoples' Government of China's Peoples' Republic shall examine them, and shall, according to the contents and separately, grant their recognition, abrogation, revision or renewal."<sup>17</sup>

There are specific areas of international law where Chinese practices can be judged. For instance, on the question of laws of territorial asylum, the Chinese have a good record: on several occasions they have provided political asylum to individuals of various nationalities. Article 99 of their national constitution adopted in September 1954, clearly states the responsibility of the state to provide political asylum to individuals. It reads: "The Chinese Peoples' Republic shall confer the right of residence upon any alien who received persecution on account of his support of a righteous cause, his participation in a peace movement or his pursuance in a scientific work."

On the question of "territorial waters," it should be recalled that during the important 1958 Geneva conference on the Laws of the Sea, when delegates were unable to agree on a common limit and there were demands for the recognition of from 3 miles to 250 miles, the Peoples' Republic argued that the classical notion that the "sea is the heritage of all mankind" must be respected. It unilaterally declared on September 4, 1958: "The breadth of the territorial sea of the Chinese Peoples' Government is 12 nautical miles. This regulation is applied to all territories of the Chinese Peoples' Republic, including the Chinese mainland and its coastal islands by the high seas, such as Taiwan, and its surrounding islets, the Pescadores Islands, the Tung-Shau Islands, the Hsi-Sha Islands, the Chung-sha and Nan-sha Islands, and the other islands belonging to China."<sup>18</sup> Still another

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<sup>16</sup>Many developing countries have illegally nationalized foreign investments and properties in their territories after independence. Consider for instance, the nationalization of the Suez Canal by the late President Nasser of Egypt, and the nationalization of the oil industry in Iran by the late Premier Mussaddag in the mid-fifties.

<sup>17</sup>Quoted by J. C. Cheng, as reproduced by C. Q. Christal, *op.cit.*, p. 464.

<sup>18</sup>J. S. Cheng, *op.cit.*, p. 4. It is interesting to note in this context that on a number of occasions Chinese authorities have declared that the Chinese people will never allow aggression by U.S. Armed Forces on Chinese territories meaning various islands. At times this has meant to "fight to the finish" American attempts to neutralize the Taiwan Straits by force. At other times this is supposed to mean to "continue" the bold task of liberating the islands of Taiwan and the Pescadores, etc.

area is the protection of rights of Chinese nationals living abroad. In this area China has observed international legal norms. She has signed a number of treaties consistent with international law, and invoking the law when she felt the rights of these individuals were violated.<sup>19</sup>

On balance, the Peoples' Republic's record of law observance is perhaps no better, no worse than many other states. China, not too unlike other countries that are active in the international arena, has extensively used diplomatic techniques and procedures that carry the weight of law, in order to brand others as violators of legal norms. On the other hand, China has occasionally used international law to justify otherwise generally unpopular courses of action.

Thus, she made a legal case in the justification of her recourse to the use of force in her border dispute with India in 1962. The Chinese argued convincingly that the 1914 Siula Convention that laid down the McMahan line dividing the Chinese and Indian territories, was never ratified by China, and therefore no legally valid boundary between the two countries existed. Interestingly enough, in this claim they were supported by the Nationalist Chinese government in Formosa. In those situations where Chinese national interests were at stake they have transgressed international law as if it never existed.

### **National Motivation for the Future**

There are several domestic and international variables that continue to influence the Chinese attitude toward international relations in general. There seems little doubt that constant internal convulsions, power struggles, and a general lack of self-confidence in their ability to pursue a successful foreign policy have contributed to a sense of insecurity. The Soviet military threat coupled with the past policy of United States' efforts to keep China isolated from the rest of the world has resulted in an attitude of suspicion. These developments have some important bearing on Chinese motivations to uphold or violate international law in the future.

Clearly there is not much motivation to abide by those principles of customary international law that the Chinese consider as discriminatory. Any nation with a history of Western exploitation, however brief it may be,

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<sup>19</sup>Consider for instance, China's treaty of April 22, 1955 with Indonesia. This treaty permitted persons of Chinese extraction to decide, within two years of the date of ratification, whether they wish to apply for Chinese citizenship or become Indonesians. The treaty further specified that after the expiration of the two year period an individual will be considered the citizen of either his father's or mother's country of citizenship. This provision can be cited as an example of China's preference for the international role of *jus sanguinis* in determining the nationality of people. Incidentally, as a result of this treaty most of the Chinese in Indonesia either retained Chinese nationality or became nationals of mainland China.

can hardly be expected to exhibit a high degree of motivation to uphold a philosophy, legal or otherwise, that is regarded as one of the basic evils of the past. Chinese hostility toward some of the customary norms and a lack of motivation as far as classical, non-procedural law observance is concerned, is starkly reflected in the writings of contemporary Chinese scholars and jurists.

For instance Professor Kung-meng, writing in the early 1960's, warned the world in no uncertain terms that the Western—particularly American—efforts to include individuals and international organizations as appropriate subjects of international law is a poorly disguised unholy trick to provide a “legal basis for imperialist intervention in the internal affairs of other countries or to facilitate the establishment of the world hegemony of the United States.”<sup>20</sup> Another mainland scholar of high reputation, Chiang Yang, has interpreted the writings on international law in the United States, particularly writings on such well-known topics as: “world government through world law,” etc., as another effort to initiate a new imperialistic order. To this scholar, the concept of “universalism” and its objective: “. . . is to destroy state sovereignty to facilitate the establishment of a world government under the domination of American imperialism.”<sup>21</sup>

It can be concluded from these writings of Chinese men of scholarly fame that, first, they believe in what they write, and, second, what they write is accepted uncritically by many who read it, and this in turn provides psychic support to the writers—that they are not alone in their assessment of American intentions concerning the role of law in future world affairs. Thus, the process goes on, in the form of thought control, typical of totalitarian societies. The outcome is a great deal of suspicion of any new concepts, regardless of how earnestly and hopefully inspired, such as “a world without war,” “world government through world law,” “international law of an organized world,” etc. These ideas are regarded as capitalist schemes, pure and simple.

It is difficult to know with great accuracy the psychological configuration of an average educated citizen on the mainland, that is someone who has a position on foreign affairs, concerning motivations to observe international law. However, from the continued writings of Chinese scholars and from the history of Chinese foreign policy, one could, on balance, tentatively conclude that for the time being at least, the Chinese government and its

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<sup>20</sup>Kung-meng, “A Criticism of the Theories of Bourgeois International Law and the Recognition of States,” 2. *KEWTYC* (1960), pp. 46–49. Quotation is provided by Chui, *op.cit.*, pp. 250–51.

<sup>21</sup>Chiang Yang, “The Reactionary Thought of ‘Universalism’ in American Jurisprudence,” *Peoples Daily*, December 17, 1963.



men of scholarship do not possess a high motivation for respect and support of international law.

There are some bright spots in the picture however. Many doors to China's entry in world affairs as an important player are now opening. There has been some warming up of Chinese-American relations. China is now a member of the United Nations. All of these factors will undoubtedly work toward alleviating some of the Chinese fears of Western or American "designs" to use law to harm China and other socialist states. They will also provide a sense of security and a certain measure of confidence in their foreign policy decision-making. Though it is too early to tell, it appears that the "Chu-en-lai faction," which is known for a relatively conciliatory attitude toward Western powers, seems to have won an important struggle against the militants. These developments are positive ones and will enhance the Chinese motivation to respect international law.

### Conclusion

It is clear from the preceding remarks that: *first*, differences of significance can be found between the Peoples' Republic of China's view and the Soviet Union's view of international law. The Chinese tend to be more dogmatic in applying Marxist-Leninist philosophy to international law. They are far less responsive to the recent developments of international law both in and outside of the Western community. Many Chinese scholars continue to argue that the basis for a separate *Chinese* philosophy of international law has been formulated and it is only a matter of time when it will be recognized by others. This is contrary to the Soviet view which insists that the socialist system of international law is still in the process of development.

As far as the role of "peaceful co-existence" in this area is concerned, the Chinese view is different from the Soviet view. The differences can best be explained in terms of their different foreign policy objectives. The Soviet Union, being a "have nation," and having attained a very privileged position in the contemporary international arena, exhibits many signs of being status-quo oriented—a status quo that can be preserved only by drawing closer to the West. This the Soviets are doing. Its effect for international law has been a Soviet Union more responsive to the Western philosophy of law, in order to develop essentially a common system of law with binding qualities that they need and the West wants.

The Chinese, on the other hand, are still caught up in the somewhat earlier steps of the same old path that Soviets have already travelled, that is, the engagement in intense denunciation of "American imperialism." To

be sure, they, like the Russians, will come out of it. *Second*, China's past experiences are a strong factor in the present Chinese attitude toward international law, particularly the notion that international law is a law among "civilized" nations, is certainly a reaction to humiliations of the past. *Third*, the formulation of the Chinese socialist philosophy of international law, despite claims to the contrary, remains in a very primitive state of development.

Much of the incentive for its development has come from anti-American or anti-Western attitudes, rather than a genuine desire to develop a new theory of law based upon original research. Thus, roughly half of the Chinese scholarly effort in this field is spent on "exposing" Western intentions for world domination, and the other half of the energy is taken up by simply compiling or editing old documents.