China's Challenge to Traditional International Law: An Exposition and Analysis of Chinese Views and Behaviour in International Law and Politics

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I. Introduction

Ever since the death of the great “helmsman”, father of the Chinese Communist Party, Mao Zedong, in 1976 and the fall of the “Gang of Four” China has entered a new era of socialist reconstruction characterized by a mass introduction of foreign capital and technology as well as capitalist methods of management. With its door wide open to the outside world for foreign investment, China has repeatedly expressed its desire to “do as the Romans do” and play by the rules of the world community. However, foreign businessmen and lawyers are still skeptical about China’s real intentions and its fulfillment of promises.

How far will China go to meet its international commitment? Will China honour its international treaties? What is the Chinese attitude toward traditional international law? Will China follow international trade practices in its dealings with the West? How does China look at the decisions of the International Court of Justice, international customs, and the opinions of the publicists? What is the Chinese criterion of international law? What do the Chinese intend to achieve in their so
called struggle for international legislative power? These and other questions are discussed and answered in the present paper by presenting the original views of a group of distinguished Chinese legal scholars who assembled in Beijing (Peking) in February 1980 to establish the Chinese Society of International Law under the sponsorship of the central government. The participants numbered about a hundred, most of them being former professors and instructors in schools of law and politics. Only a handful were those senior professors and researchers of international law who had received Western legal training back in the 1930's and 1940's.

At this inaugural meeting thirty-four papers were presented covering a wide spectrum of topics in international law and politics ranging from the definition and nature of international law to human rights problems. Included were discussions on nationality, state sovereignty, outer space, United Nations, hegemonism, international private law, international ocean law, as well as issues on the legal status of Antarctica, the Panama Canal, Sino-foreign joint ventures, international organisations, the legal status of Chinese abroad in the United States, etc. The meeting was out of bounds to the public. The papers were distributed only to the participants, and have never been published either inside or outside China. Fortunately, the author, being both the organiser and a participant in the inaugural meeting, was able to obtain a complete set of the papers distributed at the meeting.

It is the author's view that with the emergence of the People's Republic of China as a world power in the international arena, and as a potential economic power in the next decade or so, there is a greater need than ever before for the West to know the viewpoints and position of this Asian giant in international politics. Only by learning more about China, will one be better equipped to decipher the Chinese attitude toward international politics. The author takes pleasure in presenting to the West for the first time the inside views of Chinese legal scholars, some of them top-ranking government officials, on a variety of topics on international law and politics. In a country which is politically, economically and socially controlled by the central government, one cannot but suspect that the views aired by these scholars reflect to a certain extent the orthodox views of the Chinese Communist Party and government.

In view of the wide range of topics the author has had to be selective in the treatment of material contained in these thirty-four papers. Hence this article will concentrate on Chinese views and attitudes toward international law in general including China's ambitious move to restructure traditional international law in order to better serve its foreign policy objectives. The author will attempt to present the views of the
Chinese scholars in their true light giving his personal comments in the footnotes and the concluding part of the paper. Readers should be able to discern both the views of the original authors and those of the present author.

II. Overview of the Development of International Law

International law is now in a stage of great development and transformation. This is due to a number of events.

After World War II, with the victory of the Chinese revolution and subsequent collapse of the colonial systems, many nations in Asia, Africa and Latin America won independence. In order to safeguard their national independence and sovereignty, they strongly demanded that the old international order characterized by European and American centralism, colonialism and imperialism be ousted and replaced by new principles embracing the ideas of sovereign equality. They welcomed the Five Principles of Peaceful Coexistence initiated by China, as well as the

3. This section was abstracted from T.R. Shao's keynote address at the inaugural meeting of the Chinese Society of International Law in February 1980, Beijing.
4. The Chinese government claimed that "it was China that initiated the Five Principles of Peaceful Coexistence". (See Cohen & Chiu, People's China and International Law, at 119.)

The Five Principles are:
1. Mutual respect for each other's territorial integrity and sovereignty,
2. Mutual nonaggression,
3. Mutual noninterference in other's affairs,
4. Equality and mutual benefit, and
5. Peaceful coexistence.

China has recently put forward another Eight Principles governing its relations with the outside world. They are:
1. China is willing to establish and develop friendly relations with the countries of the world on the basis of the Five Principles of Peaceful Coexistence.
2. China will carry out its foreign policy independently and with the initiative in its own hands, and will not be subordinate to any big power or any state group, nor will it establish any strategic relationship with them, not to mention any alliance.
3. China is willing to work together with all the peaceloving nations and peoples of the world to oppose hegemonism and maintain world peace.
4. China will insist on its policy of opening its door to the outside world and is willing to develop economic and technical exchange and cooperation with the countries of the world including socialist countries, developing countries and Western developed countries on the basis of equality and mutual benefit.
5. China will forever stand side by side with the Third World countries and will extend mutual sympathy and support to each other.
6. China will never practise hegemony, nor will it subjugate itself to the pressure of any hegemonism.
7. China will adhere to principles and act in good faith and will not be closer to or farther from any state, nor will it cooperate with or abandon any state, on account of a transient gain or loss, or disparity in opinion, nor will it estrange or abandon old friends in order to make new friends. China will never play "card games" in utter disregard of principles.
8. China places great value on the friendly relations that have been established with
Ten Principles which were formulated at the Bandung Conference. At this conference, colonialism and racial discrimination were officially declared illegal while the struggle waged by the people, including military struggle, against colonial domination and foreign occupation became legitimate. The impact of the foregoing meant that such obsolete notions as "the spatial effect of international law was limited to civilized nations only" and "uncivilized nations were not the subject of international law", long advocated by Western nations, could no longer be disseminated.

Later, these newly independent countries came to realize that having political sovereignty was not enough because they were still exploited economically and their natural resources plundered. To achieve real independence, a nation must have economic sovereignty. In order to oppose super power hegemony in the realm of ocean resources, the Latin American countries were the first to claim 200 nautical miles of maritime right. Kenya first proposed the regime of exclusive economic zones.

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5. The Ten Principles were formulated at the Asian-African Conference convened upon the invitation of the Prime Ministers of Burma, Ceylon, India, Indonesia and Pakistan in Bandung from April 18, to 24, 1955. In addition to the sponsoring countries, 24 countries participated in the conference. The Ten Principles are:

1. Respect for the sovereignty and territorial integrity of all nations.
2. Respect for fundamental human rights and for the purposes and principles of the Charter of the United Nations.
3. Recognition of the equality of all races and of the equality of all nations large and small.
4. Abstention from intervention or interference in the internal affairs of another country.
5. Respect for the right of each nation to defend itself singly or collectively, in conformity with the Charter of the United Nations.
6. a) Abstention from the use of arrangements of collective defense to serve the particular interests of any of the big powers, and
   b) Abstention by any country from exerting pressures on other countries.
7. Refraining from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country.
8. Settlement of all international disputes by peaceful means, such as negotiation, conciliation, arbitration, or judicial settlement, as well as other peaceful means of the parties' own choice, in conformity with the Charter of the United Nations.
9. Promotion of mutual interest and cooperation.
10. Respect for justice and international obligations.

(see Cohen & Chiu, People's China and International Law, at 124.)

6. The author has not been able to locate the source of these statements. Most probably, they were taken indirectly from the works of Western international law scholars such as L. Oppenheim and Franz von Liszt. (See Cohen & Chiu, People's China and International Law, Part 1, at 33-46.) It is a common phenomenon in Chinese articles, whether legal or otherwise, that no sources are cited for the statements taken directly or indirectly from other authors, thus making the retrieval extremely difficult and time-consuming.
Maltese jurist, Dr. Pardo, put forward the proposal at the United Nations that the natural resources of the deep seabed are the "common heritage of mankind". These proposals have shaken the very foundation of the 1958 United Nations Conference on the Law of the Sea and precipitated the convocation of the Third United Nations Conference on the Law of the Sea 1973-1982, and the drafting of a new convention. It is in effect a revolution in the law of the sea.

With a view to total dismantling of the old international economic order, and at the suggestion of the developing countries, the United Nations passed resolutions concerning the establishment of the International Economic Order, a Charter of Economic Rights and Duties of States, etc. The developing nations strongly demanded a re-evaluation of the existing international economic and trade systems. These demands include a relaxation of trade restrictions imposed by the developed countries on imports of products from developing countries, a transfer of technology in terms favourable to developing countries, acknowledgment of a nation's permanent sovereignty over its natural resources, and opposition to multinational companies becoming "a kingdom within a kingdom". All of these developments have brought important, in-depth changes in international law.

Other important factors essential to the development and change in international law include advances in science and technology. As a result, the earth becomes smaller and international relations closer. Thus, there is a greater interdependence among nations. The scope of international law is broadened due to the utilization of atomic energy, outer space exploration, and development in ocean science. The launching of man-made satellites into outer space prompted the study of space law. The progress in deep seabed technology has sparked national claims to continental shelves, economic zones and deep seabed resources. The old concept of the freedom of the seas has changed. The legal problems of the Antarctic, the moon and other celestial bodies, nuclear weaponry, pollution, hijacking, and so on, have all contributed to the creation of new issues in international law.

Additionally, the development in international economic relations has given rise to radical changes in international economic law. This is mainly due to changes in the function of the state. Not only are socialist states involved in the management of economic and trade affairs, but also

7. Declaration on the Enlightenment of a New International Economic Order was adopted by the 29th U.N. General Assembly on May 1, 1974. See General Assembly Resolution 3101, (S-VI) of May 1, 1974.
8. The Charter of Economic Rights and Duties of States was adopted by the U.N. General Assembly on December 12, 1974. General Assembly Resolution 3281 (XXIX) of December 12, 1974.
capitalist countries are increasingly involved in economics and trade, to such an extent that they directly operate commercial enterprises and financial institutions in their own countries.

Thus, there are now no longer capitalist societies in the traditional sense of the word. Due to governmental involvement, many businesses which were formerly operated by international businessmen have now become affairs between nations. The contracts entered into between the host country and foreign businessmen become international treaties. As a result, the scope of public international law is broadened and the demarcation between public and private international law becomes nebulous.

Furthermore, there is a rapid increase in international organisations and conventions, contributing to the growth of international law. According to the "Yearbook of International Organisations" published in 1978, there were 8200 organisations in which intergovernmental organisations consisted of 2800. In contrast, there were only 160 intergovernmental organisations in 1951. Thus, more than 2600 organisations were created during the 27 years from 1951 through 1978. Some of the conventions created during this period were law-making treaties enriching the body of international law.

Due to ever increasing international relations and contacts some old rules need to be updated and codified, and new ones added to the existing body of international law. This has been done in the case of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Convention on the Law of Treaties.

Several thousand years have passed since the initial emergence of international law norms. International law as a science dates back more than 300 years from the time of Hugo Grotius. The most rapid and significant changes occurred after the Second World War. International relations and social progress dictate such changes in international law, which is the natural course of history.

III. The Source, Nature and Function of International Law

Although the main sources of international law are international treaties and international custom, not all treaties are the source of international law. For more than a hundred years from the opium war in 1840 to the establishment of the People's Republic of China in 1949, international imperialism in collusion with Chinese compradors and the feudal class turned China into a colonial, semi-colonial country. During this period, imperialism imposed on China a great number of unequal treaties which because of its reactionary nature New China will never recognize as
valid, nor will they become the source of international law. Only those law-making treaties (either bilateral or multilateral) which are based on sound international rules and principles can be regarded as sources of international law. In judging what are the sources of international law, we must not only look at titles but more importantly at substance. This is one of the fundamental differences between our concept of international law and that of bourgeois international law.9

On the question of when international law was created, Western scholars have held that international law was the product of civilized nations and Christianity, that it was applicable only to the relations between civilized nations and not between sovereign states and colonial states, and that international law came into being after 1609. That was the year Hugo Grotius, the so-called “father of international law”, published his book “Mare Liberum”. However, from the point of view of historical materialism, international law existed as early as slave society. Although some of the bourgeois scholars recognized the existence of international law in Greece and Rome, they did not recognize its existence in China, India and other Asian countries.

According to Marxism and historical materialism, the state and law is the product of the irreconcilability of class contradictions, and is an instrument of one class oppressing the other. Where there is a state, there will be law. Where there are relations between states, there are bound to be rules of interstate relationship and there will be international law. The historical facts show that there existed international law in its crude form even in slave society, though it cannot be compared to international law as understood by present-day scholars.10

According to Marxism, law is the expression of the volition of the governing class. The volition of the governing class is determined by its material living condition. Hence international law expresses the volition of the governing class and is determined by its socio-economic foundation. It follows that every type of class society and state has its own unique style and content of international law. There has been in the history of mankind an international law of the slave society, of feudal society and of capitalist society. Every type of international law expresses the volition of a given governing class and serves the given socio-economic foundation of that class. For example, in bourgeois

international law there were principles of sovereign independence, non-interference with internal affairs, freedom of the seas, etc., which expressed the volition of the bourgeois class of the free capitalist era and served the economic system of capitalism.\textsuperscript{11}

With the emergence of socialist states on the international scene, human society has undergone an epoch-making transformation, and there now exists the coexistence of both capitalist and socialist countries in the international community. There have been struggles and cooperation between capitalist and socialist countries, and this kind of relationship needs laws to adjust their inter-relationships. Thus, bourgeois international law which originally adjusted the relations between capitalist countries has gradually transformed into present-day international law which adjusts relations not only between capitalist and socialist countries but also between countries of diverse social systems. Present-day international law is now recognised by a vast majority of nations as the body of legal rules adjusting the relations among them. Because of this, present-day international law possesses dual class nature, capitalism and socialism. It expresses the volition of the governing classes of states of different social systems and serves their differing interests. For example, the United Nations Charter basically expresses the volition of, and upholds the interests of, the governing classes of states with different social systems. It has the dual class character of capitalism and socialism.\textsuperscript{12}

The Chinese version of the function of international law can be summarized as follows:

(a) to establish international principles and institutions to adjust relations between states of different social and economic systems;
(b) to develop international economic relations and promote friendly cooperation;
(c) to guarantee the vested right of the governing classes of different countries;
(d) to mobilize public opinion in the international community to support people’s struggle; and
(e) to safeguard world peace and security, and oppose imperialist aggression.

Thus international law has actually become a sharp weapon to

\textsuperscript{11} Although the principle of sovereign independence, non-interference with internal affairs, freedom of the seas, etc. emanate, as this author said, from bourgeois international law, they are nonetheless universally accepted and applied by all states, whether socialist or capitalist. Could it be interpreted as a mingling or reconciliation of bourgeois and proletariat interests on an international scale? It awaits the answer of the marxists.

implement China’s foreign policy and to carry out its policy of struggle and cooperation in the international arena.\(^\text{13}\)

With regard to the enforcement of international law, since there is no supranational body to implement the rules of international law, the burden of enforcement falls back on the individual or collective action of the countries concerned.

International law can also be implemented through municipal law. Once a state concludes a treaty or recognizes a certain international custom, it undertakes the duty to make its municipal law consistent with its international obligations and should take necessary steps to implement these obligations through municipal legislation.\(^\text{14}\) The legal rationale for this is that because international law is formed by a consensus of opinions on a voluntary basis, the state concerned should not make any domestic law contrary to its obligations in international law. International law and municipal law should be consistent. Any state which makes its municipal law inconsistent with international law would constitute a contravention of international law, and would be internationally responsible for the contravention.\(^\text{15}\)

Violation of international law originates in the social and economic system. Nations of exploiting classes, because of the interaction of their internal economic laws, must adopt methods of plunder and slavery in their external policies, thus unavoidably trampling upon international law.\(^\text{16}\)

IV. *Transition from Modern International Law to Present-Day International Law*\(^\text{17}\)

First of all, a distinction should be made between modern international law and present-day international law.\(^\text{18}\) The victory of the Russian

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\(^{15}\) This statement is consistent with the current practice if one takes a look at the provisions of the recent Foreign Economic Contract Law in which it is provided that the international treaties to which China is a Party will prevail over municipal law in case of a conflict in application.


\(^{17}\) This section was abstracted from Professor Wang Tieya’s paper entitled *Present Trends in International Law* delivered at the inaugural meeting of the Chinese Society of International Law, February 1-5, 1980, Beijing.

\(^{18}\) Chinese legal scholars made a distinction between modern international law and present-day international law. The former developed in the early 17th century from the time of the Peace Treaty of Westphalia and publication of Hugo Grotius’ famous treatise *De Jure Belli Ac Pacis*, 1625. The latter began to develop after the Russian October Revolution in 1917. Modern international law is sometimes called bourgeois international law by Chinese legal scholars. For further details, see F.-M. Liu, *Outline of Present-Day International Law* (in Chinese), (Beijing: Masses Publishing Co., 1982) at 11-35.
Socialist October Revolution was the landmark of the beginning of present-day international relations. It marked the turning point for modern international law, transforming it into present-day international law. In other words, traditional international law (or so-called “classic” international law) with Europe as its centre, and characterized by its capitalist nature, has been continuously challenged since the First World War. This constitutes a crisis for international law. Presently, international law is in a state of flux, and traditional international law is giving way to present-day international law.

The following facts account for such transformation:

1. **Emergence of New Independent States**

After the Second World War the new independent states (numbering about 90) represented more than half of the world's community. These newly independent states, in addition to those already becoming independent before the War, formed the backbone of the Third World countries representing more than 70% of the world's population and 58% of the earth surface.

Because of this dramatic increase in the number of newly independent states, the structure of international society has undergone a significant change. Coupled with this change are the principles and rules of international law which likewise have undergone a change. This does not mean that the newly independent states demand total “annulment” or “abolition” of traditional international law. Such age-old concepts of international law as the principle of sovereignty may still have to be inherited. However, under the new circumstances the principle of sovereignty should be applicable not only to the political but also to the economic sphere. This is evidenced by the passage in 1962 at the United Nations of the Declaration on Permanent Sovereignty over the Natural Resources. The Declaration states that the peoples of all nations enjoy permanent sovereignty over their natural resources.

2. **Rapid Increase in the Number of International Organisations**

It is estimated that during the ten years from 1957 to 1967 the number of international organisations has increased by 64 percent. This also has exerted impact on traditional international law which regards states as the only subjects of international law. It is now universally recognised that international organisations can also become subjects of international law, and there has emerged an important branch of international law called “international organisation law”.

3. **Development of the International Economic Order**

The recent development of the international economic order also calls for a change in traditional international law. Modern international law is the product of a capitalist economy. Without the development of vast world markets by the then newly emerged industrial capitalists, and the worldwide developments in industry, commerce and communications, there would have been no modern international law. But these factors also accounted for the plundering and exploiting nature of modern international law. International legal relationship as a part of global international relationship is, at the bottom, dictated by international economic relationship. The newly independent states are the moving force behind the new international economic order. They not only demand political independence but also economic emancipation. They are poor and backward, and bear the brunt of colonialism. They want economic development, industrialization and modernization. This is in fact a universal demand of all Third World countries.

Because of the change in international economic relations and international economic order, the scope of international law is enlarged. During the past decade or so, international economic law has emerged and become a branch of international law. However, its context and scope is still under discussion.

4. **Unprecedented Advancement in Science and Technology**

The rapid progress in science and technology has produced a far-reaching impact on international relations which in turn reflects upon international law. We have now entered into the atomic and nuclear age, and the space and cosmic age. The consequent technological developments have necessitated a corresponding change and development in international law. Hence, we now have air law, space law, environmental law, law of the deep seabed, etc.

In view of these developments, international law is undergoing a transition from being merely "an instrument of recognizing status quo" to "that of promoting reformation," and Chinese international law scholars are called upon to make positive contributions to the establishment of the new international legal order.\(^\text{20}\)

V. **China's Contributions toward International Law**

China's contributions toward international law have been meagre in terms of its status as a major world power. The contributions most often

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\(^{20}\) This paragraph was from Y. Sheng, *Prospect in International Law Research during the 1980's*, paper presented at CSIL, Feb. 1980 (unpublished paper).
quoted are the Five Principles of Peaceful Coexistence, the Ten Principles put forward by the late Premier Zhou EnLai at the Bandung Conference in 1955, the Eight Principles for China’s Aid to Foreign Countries, and more recently the principle of anti-hegemony which was later written into the Sino-Japanese Treaty of Peace and Friendship concluded on August 12, 1978 as well as the Shanghai Communiqué of 1972 and Joint Communiqué on the Establishment of Diplomatic Relations between the United States of America and the People’s Republic of China in January 1979.

The Five Principles of Coexistence were set forth in the Agreement between the People’s Republic of China and the Republic of India on Trade and Intercourse between the Tibet Region of China and India, April 29, 1954. The Prime Ministers of China and India later issued a joint statement reaffirming these principles stating that they should be applied in their relations, not only with other countries in Asia, but also with other parts of the world. They also believed that if these principles were applied in international relations generally, “they would form a solid foundation for peace and security, and the fears and apprehensions that exist today would give place to a feeling of confidence”.

22. Supra note 5.
23. Eight Principles for China’s Aid to Foreign Countries:
   (1) The Chinese Government always bases itself on the principle of equality and mutual benefit in providing aid to other countries. It never regards such aid as a kind of unilateral alms but as something mutual.
   (2) In providing aid to other countries, the Chinese Government strictly respects the sovereignty of the recipient countries, and never attaches any conditions or asks for any privileges.
   (3) China provides economic aid in the form of interest-free or low-interest loans and extends the time limit for the repayment when necessary so as to lighten the burden of the recipient countries as far as possible.
   (4) In providing aid to other countries, the purpose of the Chinese Government is not to make the recipient countries dependent on China but to help them embark step by step on the road of self-reliance and independent economic development.
   (5) The Chinese Government tries its best to help the recipient countries build projects which require less investment while yielding quicker results, so that the recipient governments may increase their income and accumulate capital.
   (6) The Chinese Government provides the best-quality equipment and material of its own manufacture at international market prices. If the equipment and material provided by the Chinese Government are not up to the agreed specifications and quality, the Chinese Government undertakes to replace them.
   (7) In giving any particular technical assistance, the Chinese government will see to it that the personnel of the recipient country fully master such technique.
   (8) The experts dispatched by China to help in construction in the recipient countries will have the same standard of living as the experts of the recipient country. The Chinese experts are not allowed to make any special demands or enjoy any special amenities. (Peking Review, No. 17, April 28, 1972.)
The Ten Principles were formed at the Asian-African Conference convened upon the invitation of the Prime Ministers of Burma, Ceylon, India, Indonesia and Pakistan in Bandung from April 18 to 24, 1955. In addition to the sponsoring countries, twenty-four countries participated in the conference.25

The late Premier Zhou En-Lai on his visit to 14 friendly nations in April 1964 declared the “Eight Principles for China’s Aid to Foreign Countries” and stated that they were the principles China had followed and would continue to follow in giving aid to foreign countries.26

VI. Criticism of the Soviet Pattern of International Law

China refutes the international law definition propounded by the Soviet Union and East European countries which advocates peaceful coexistence as the primary function and aim of international law. Their definition has been criticized as having degraded and distorted the actual function of international law.27

It is ironic to note that what the Soviets criticized today was what they insisted on yesterday and vice versa. Out of their ambition to carry out hegemonic policies on a world-wide scale, they, while defending the legality of Tsarist Russia in infringing upon the territorial sovereignty of other countries, concocted the so-called theories of “limited sovereignty”, “Socialist Commonwealth”, “voluntary allegiance”, etc., to serve the aggressive and expansive policy of Tsarist Russia. It goes without saying that today’s Soviet theories on international law are in reality bourgeois theories of international law in socialist disguise.28

The Soviets regard the safeguarding of coexistence among nations as the primary aim of international law. On the other hand, Chinese legal scholars argue that international law was developed in the process of struggle and cooperation among nations of different social systems. Under the existence of two different social systems, the struggle against imperialism and hegemonism was the precondition to assuring world peace and promoting international cooperation. We should by no means give up our struggle against imperialism and take the assurance of peaceful coexistence as the primary aim of international law. We will never regard international law as a law of peaceful coexistence. We

25. Supra, note 5.
26. Supra, note 23. These Eight Principles stem from China’s adhesion to proletarian internationalism. China feels that when the developing countries become stronger economically, there is a better chance of preserving world peace which would serve the interest of its modernization program.
27. Supra, note 13.
advocate peaceful coexistence, but we will never make it our cardinal principle for external affairs.29

VII. Criticism of Oppenheim's "International Law"

Oppenheim's "International Law" was published between 1905-1906 when Oppenheim was teaching international law at Cambridge University. The author analyzed the international situation and international custom from a bourgeois pragmatic viewpoint. After his death, the book (which was then the most popular textbook on international law) was revised several times by his students. In 1935 it was published as "Oppenheim's International Law" revised and edited by H. Lauterpacht (1897-1960). Many revisions and additions made by Lauterpacht greatly reduced the scientific value of the book and caused the science of bourgeois international law to retrogress appreciably. Bourgeois international law thus became a theoretical instrument serving more directly the interests of bourgeois monopoly. The distinction between "civilized" and "uncivilized" nations as subjects of international law was one example showing that international law theories served the interests of imperialism and colonialism. The principle of sovereignty was wantonly attacked on the basis that sovereignty was incompatible with international law, and the divisibility of territorial sovereignty was actively advocated. It was alleged that cessation and occupation were lawful means to obtain sovereignty over another nation's land. The nature and source of war was muddled stating that it originated from small nations striving to become big nations, or from their inability to cope with the ever increasing population pressure.30

As a matter of fact, the bourgeois definition of international law was much criticized among legal circles in China because it regarded international law as a body of customary and agreed rules having legal binding force and only applicable between civilized nations. The bourgeois definition vainly tried not to touch upon the social context and the substance of class nature. In addition, the definition smacked of Western prejudice and was full of chauvinism because it limited the application of international law to civilized nations only and excluded those countries that had a long history of civilization. It was also

29. Supra, note 12. This view does not seem ot be congruent with the current Chinese domestic and foreign policy which lays much emphasis on the coexistence of two different social systems in order to generate a peaceful environment for China's modernization. The notable example is the solution of the Hongkong problem which is based on the concept of the existence of two different social systems under one sovereignty. The Hongkong solution also provides a model for the solution of the Taiwan problem. See International Daily (Chinese ed.) pub. in the U.S., Oct. 22, 1984, at 18.
30. Supra, note 9.
prejudiced against Third World countries and nationalities in Asia, Africa and Latin America, and created a legal basis for imperialist expansion and aggression.31

VIII. **Efforts to Define International Law**

International law constitutes an important part of China’s socialist legal system. It is the embodiment of foreign policies and guidelines of the Communist Party and the State, and is the summation of the Chinese people’s international struggles.

International law should be studied in accordance with Mao’s teaching of “practice is the only criterion to test the truth”. The outdated old theories should be refuted and the new problems arising from today’s reality studied. We should also absorb good things from Western international law in order to expedite our four modernizations, strengthen our struggle against hegemonism and make contributions toward world peace.

One of the most prominent and widely recognized authorities on international law in the People’s Republic of China was the late Professor Zhou Geng-Sheng, who wrote a two-volume book on international law in peace time. He gave the following definition of international law:

International law is a body of rules of conduct including principles, rules and institutions which are binding on the states in their international relations. They are formed in the process of conducting international relations and recognized by all nations, and express the volition of the governing classes of the states.32

Most Chinese legal scholars seem to regard this definition as the near perfect one because it embodies the idea of class struggle.

It is a universal rule in a socialist state that law serves politics and therefore possesses class nature. International law, as a branch of law, is no exception. International law, like any other law, has a class nature and is the upper structure of the society. In a slave society there were rules of interstate relations that were consistent with the economic structure of that society. The same applies to feudal and capitalist societies. In capitalist society there was a demand for rules of international relations which would serve the economic system of the newly developing society, i.e., an international law of capitalism. Thus, freedom of the seas, the principle of non-interference with domestic affairs, and rules protecting neutrality and commerce in time of war were created. They all originated from consideration of the interests of capitalism and were materialized...

through advocacy and struggle of the capitalist class. These rules of international law are most expressive of their class nature.

Although international law possesses, like any other law, class nature, it is different from municipal law. Municipal law is formulated by the legislative organ of a state and represents only the volition of the governing class of that state; international law is universally recognised and therefore cannot represent just the volition of a governing class of one state but the volition of governing classes of many states. Not all the governing classes of states with different political and social systems have the same volition. Therefore, the statement that international law represents the volition of the governing classes of all states can only mean that it represents their coordinated volition.33

International law is also defined as a “law among the equals”. Hence, the universally recognised rules and principles of international law can be utilized by different nations to serve their national interests but not their illegitimate acts, policies of aggression and war, and hegemony.34

Socialist countries are now uniting with Third World countries35 and the oppressed and humiliated nations to oppose the superpower hegemony, and to prevent future world war through international struggle and cooperation in accordance with the rules of international law. International law will thus play an increasingly active role in the construction of a socialist utopian human society.36

IX. Methodology in Studying International Law37

It is advocated that dialectical materialism and historical materialism are powerful ideological weapons in understanding and reforming the world.

From the point of view of Marxism there can only be two ideological institutions in the science of international law, i.e., the proletariat and the bourgeoisie. Although we recognize that there are certain international law principles and rules which are universally recognized and applicable, we do not recognize the existence of a generally recognized body of international law.

X. Is the Human Rights Issue an Internal Affair?

It was argued that the protection of human rights was an internal affair

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33. *Id.* at 8.
34. *Supra,* note 10.
35. Since the dismantling of the socialist camp in the late 1950's following an ideological split between Chinese and Soviet Communist Parties, China has developed a “three world theory”. The United States and the Soviet Union belong to the First World, the majority of the Asian, African and Latin American countries belong to the Third World (mostly developing countries), and those between the two are developed countries of the second World.
37. This section was abstracted from R.-Q. Qiu's paper, see supra, note 10.
before the Second World War. However, after the Second World War many international documents emphasized fundamental human rights, such as the 1945 “Charter of the United Nations”, and the 1948 “Convention on Prevention and Punishment of Genocidal Crimes”. Thus the question of human rights protection is no longer an issue of internal affairs and assumes international dimensions.\footnote{The author of this section seemed to have struck a different note when he said that the protection of human rights was no longer an internal affair of a state. In the article entitled “A Criticism of the Theories of Bourgeois International Law Concerning the Subjects of International Law and Recognition of States”, the author argued that the fact that the United Nations general Assembly has adopted the ‘Declaration of Human Rights’ and ‘Draft Covenant of Human Rights’ does not mean, as described by certain bourgeois jurists (such as Lauterpacht and Jessup), that the United Nations Organisation, its Economic and Social Council, or its Commission on Human Rights can bypass states to protect the “human rights” of individuals in the various states and thus make individuals subjects of international law. (See Cohen & Chiu, People’s China and International Law, Vol. 1, at 98.)

According to this author, the principle concerning fundamental human rights as prescribed in the U.N. Charter is that “the various member states are obligated to guarantee that individuals under their rule enjoy certain rights”. (Id. at 98.) In another article entitled “A Criticism of the Views of Bourgeois International Law on the Question of Population”, the author noted that “imperialism often uses the pretext of respecting and protecting human rights to launch aggression and carry out intervention in the internal affairs of nationalist countries”. (Id. at 608.)

In a recent article published in People’s Daily entitled “The History and Status Quo of Human Rights”, the author recognized the fact that the human rights issue has transcended the scope of municipal law and become a principle of international law. However, he felt that the definition of human rights is now still governed by Western concepts and criteria and that any states or individuals can take advantage of this beautiful term to benefit themselves or to attain their own objectives, such as to use it as an instrument to compete for world hegemony. He argued that the exercise of human rights is predicated upon national independence, economic development and cultural progress. Without these pre-requisites it is useless to talk about human rights. (People’s Daily, April 13, 1982, at 5.)

This section was abstracted from T.R. Shao’s keynote address, see supra, note 3.}

XI. \textit{Struggle for International Legislative Power}\footnote{This section was abstracted from T.R. Shao’s keynote address, see supra, note 3.}

The general trend of international law is development and change. In what direction will it develop, and how will it change? At present, the most vital issue is to fight for legislative power of international law. To whom international law legislation will be most advantageous is an issue of great importance. The struggle is now being waged between the two superpowers and the Third World countries, and it is very intense.

The Third World, which consists of more than 100 nations, is the reforming force in international law, especially with the inclusion of China. It clearly is in an advantageous position politically. At any international conference, the Third World represents the majority attendance. If Third World countries can unite together and adopt
various strategies such as those of the Group of 77 in the fight for legislative power, the result would be very effective.

In recent years, a number of conventions and resolutions have been passed which truly embody sovereign equalities among nations. It would be of great significance if international law could be oriented to develop in the direction of democracy. There are of course some problems in the Third World. First, there is the complexity of the situation in the Third World regarding political status. There are socialist countries, newly independent nations, and countries which are followers of the United States and the Soviet Union. Many inherent contradictions exist among them, rendering unity among them a very difficult task. Secondly, most Third World countries are concentrating more attention on economic benefits, and the safeguard of natural resources. They express great interest in economic law, trade law and sea law, with less attention paid to politics. They have muddled ideas about disarmament and detente as advocated by the two superpowers. Thirdly, most Third World countries level their attacks against the United States and other Western countries of the Second World\textsuperscript{40}, and rarely against the Soviet Union. This same situation existed in their struggle against colonialism as well as in the present struggle against the old economic order. The Third World countries had little understanding of the true nature of Soviet hegemony and have even entertained some illusion about the Soviet Union. These shortcomings will gradually be overcome with the progress of struggle in the years to come.

The two hegemonist powers, the United States and the Soviet Union, were both victorious nations after the Second World War. They had vested interests to protect. That is why they want to maintain the old international law and order. These nations are the conservative forces against reformation. Collectively, they established the Yalta system and drafted the United Nations Charter, but only after much struggle and compromise. They both struggle for world hegemony and legislative power, but their methods are different.

The United States is the most demonstrative in its protection of traditional international law. This was especially true during the time when it controlled the voting machine in the United Nations, but was also the case after its loss of influence over that body. The United States stood firm on a number of key issues concerning its economic and military interests and never wavered on such issues as the breadth of the territorial sea, the passage through straits, fishing in economic zones and the exploitation of deep seabed resources. The United States made no concessions of any substance with regard to the new international

\textsuperscript{40} Supra, note 35.
economic order and tried to entice the Second World to endorse its beliefs. On occasion, the United States collaborated with the Soviet Union in order to collectively oppose Third World countries. The United States also attempted to monopolize the legislative power in the new realm of international law by virtue of its superiority in strength and technology. However, it was attacked on many fronts from the Third World and the Soviet Union. The United States was in a passive position and could hardly hold its ground against them.

The Soviet Union is the more ambitious, and its means of realizing its goals are treacherous and cunning. It is most active in the fight for legislative power. Although it is armed to the teeth and practices hegemony daily, it appears to be like a peaceful angel. The Soviet Union grasps at every opportunity to put forward proposals and draft resolutions at international conferences such as those concerning principles of international relations, the definition of aggression, mutual nonaggression, mutual abandonment of the use of military force, and disarmament. A motion regarding anti-hegemony was even submitted.

Through these means, the Soviet Union fished for political assets to put international law legislation within its own sphere of influence. The Soviet Union portrayed itself as a “natural” ally for the Third World when the latter attacked the old international order and traditional law, representative of the United States and Western interests. It took advantage of the Third World in the attack. On occasion, the Soviet Union colluded with the United States in confrontation with the Third World with a view to monopolizing legislative power in the United Nations.

It should be especially noted that in order to adapt to its aggressive policy and hegemony ambitions, the Soviet Union has recently come up with new tricks. It devised a set of new laws, the basis of which it proclaimed, is “proletariat internationalism”. Thus, its aggression against and interference with members of the “big family” has become its legitimate right. By further analogy, its participation in the dismemberment of Pakistan, intervention in Angola and its aggression in Afghanistan all become legitimate actions consistent with international law.

Overall, the main forces presently fighting for legislative power in international law consist of the above three forces. The Second World is in the state of being divided. A portion of these countries follow the United States, and some are under the control of the Soviet Union. There are a few Second World countries, such as Canada, Australia, New Zealand, which support the Third World on certain issues, but they do not form an independent force.

The foregoing is an analysis of the international situation. In sum, the struggles and contradictions are interwoven making international
relations extremely complicated. On the whole, the situation is developing in favour of Third World countries.

XII. Shortage of International Law Scholars

There are very few senior researchers of international law in China, and international law researchers were scarce before the Cultural Revolution. This lack of researchers can be ascribed to the low position in which law was held during that period. The ideology of nihilism and abolitionism long prevailed in the sphere of international law. This state of affairs was also accountable for the scarcity of international law works by Chinese scholars.

With China's increasing involvement in world affairs and economic relations with foreign countries, China needs more international law experts than ever before. Chinese scholars have been called upon to devote more time and energy to the research of international law in order to cope with the tasks of political and economic struggle in the international arena. China's most powerful man, Deng Xiaoping, was quoted as saying: we must attach importance to and strengthen the research work of international law.

There do exist some worries among Chinese legal scholars in a free and open discussion of academic topics, especially in the field of public international law. In order to correct this situation, Chinese scholars are encouraged to liberate their minds and go all out for free participation in the discussion of certain theoretical problems in international law which were off-limits for Chinese legal scholars for almost thirty years, and to air their views without inhibition.

Chinese legal scholars are called upon to criticize indepth the leftist ideology prevailing in international law research work, such as nihilism and abolitionism, in order to rid themselves of spiritual bondage. They are encouraged to activate all positive factors in order to develop in a major way the research work of international law. International law scholars should coordinate their research with the current diplomatic struggle to serve the four modernizations and pay attention to current international law development and trends. Marxism, Leninism and Mao Zedong thought are still our guides in the international law research, and we will strive to gradually build up a body of international law with distinct Chinese characteristics.

41. This section was abstracted from Huan Xiang, On Strengthening Our International Law Research Work, talk delivered at the inaugural meeting of the Chinese Society of International Law, Feb. 1-5, 1980, Beijing. The paper, with some alterations, was later published in Legal Studies, No. 2, 1980, Beijing.
42. Id. Legal Studies, at 11.
XIII. *Tasks Ahead for Chinese Legal Scholars*43

The task facing us is as arduous as it is urgent. Since the establishment of the People’s Republic of China, we have made tremendous achievements in the field of foreign affairs under the leadership of Chairman Mao Zedong and Premier Zhou Enlai. Our government has put forward a series of important principles governing international relations, and has made important contributions to the development of international law. However, due to the interference of the “leftist” line over the years, legal work was not given sufficient attention, for quite a long time. Not much research work has been done in the area of international law, especially in some of the new fields. We are short of researchers because of a lack of legal training. The research level on the whole does not correspond with the position of our country in the world community.

Since the fall of the “Gang of Four”, the central government has attached great importance to legal work generally, and to research work in international law in particular. We must now catch up and upgrade our research level in a planned and systematic way.

There are many tasks facing us, and the following three aspects should be given special attention.

We should closely coordinate in our diplomatic struggle, unite the Third World, oppose hegemonism, safeguard world peace and work for creation of an international environment favourable to the Four Modernizations.44

We should keep abreast of current affairs and make use of this weapon of international law to expose and attack the aggressive and expansive policy of the superpowers including hegemonism. We should first oppose Soviet hegemonism. In coordinating our diplomatic struggle, we should utilize international law to safeguard our territorial sovereignty and legitimate interests. We should direct our research effort in a down-to-earth manner to such issues as our claims to sovereignty over the Xisha (Paracel) Islands, the Nansha (Spratly) Islands45 and the Tiaoyutai (Senkaku) Islands46. Delimitation problems with our neighbouring

43. This section was abstracted from T.-R. Shao’s keynote address, see supra, note 3.
44. The “Four Modernizations” program was first put forward in 1975 by the late Premier Zhou Enlai at the National People’s Congress. It aims at modernization in the four sectors of agriculture, industry, national defense, and science and technology to turn the country into an advanced industrialized nation by the year 2000.
45. China claims sovereignty over the Xisha (Paracel) Islands and the Nansha (Spratly) Islands in the South China Sea. These islands are also disputed by neighbouring coastal states, notably Vietnam. The Philippines to a lesser extent is also involved in the dispute. For details, see P. Yuan’s *China’s Offshore Oil Development: Legal and Geopolitical Perspectives* (1983), 18 Texas International Law Journal, and *China’s Jurisdiction over its Offshore Petroleum Resources* (1983), 12 Ocean Development and International Law.
46. China’s claim of sovereignty over the Tiaoyutai Islands in East China Sea is contested by
countries on the continental shelf, and in the economic zones should also be given attention.

We should carefully study the various issues confronting our present day struggle in the field of international law and support the struggle waged by the Third World for the establishment of a new international order, both politically and legally. For instance, the statement made by Premier Zhou Enlai in 1971 in support of a 200 nautical mile maritime right generated an important impact in this struggle. Again, in 1974 Vice Premier Deng Xiaoping’s address at the United Nations General Assembly on the question of the establishment of a New International Economic Order had also created far reaching impacts. This is political support. We should also strive to give legal support on concrete issues so as to produce better results.

Because of our lack of knowledge in international law and affairs, coupled with a shortage of appropriate cadres, we have participated very little in international law conferences. Even when we did we usually took the position of standing aloof from the issues discussed because we did not know much about the situation, and had done little research on some of the concrete problems involved. But this state of affairs should not exist for long. If China, as a big power, does not actively become involved in discussion, and express its position on concrete issues, it will disappoint the Third World countries even to the degree of producing misunderstanding. In order to do a good job, we need not only capable leading cadres, but also a group of experts having solid training in international law. We also need strong support from the international law community.

Some of the areas to which we need to direct our research efforts are disarmament, human rights, the legal status of the Antarctic, the height of territorial air space, outer space, the moon and other celestial bodies, and environmental protection. All merit our in-depth research.

Although the Four Modernizations will primarily depend on our own efforts, we also need to develop our foreign trade and technical cooperation with foreign countries. This necessarily involves many legal questions. The task is becoming more burdensome and urgent with the rapid increase in international trade. A lot of research must be done in

Japan, who claimed that the Islands belonged to them. The crux of the issue is the claim to the mineral resources (oil and gas) which are believed to exist under the continental shelf appurtenant to the islands. The islands are in themselves insignificant, being eight uninhabited islands situated northeast of Taiwan. Thus, the state which enjoys sovereignty over the island has the legal right to exploit them. For details, see article cited in note 45; C.H. Park, “Offshore Oil Development in the China Seas: Some Legal and Territorial Issues,” Ocean Yearbook 2, ed. by E. M. Borgeses and N. Ginsburg, 1980; and C.H. Park, Continental Shelf Issues in the Yellow Sea and the East China Sea, Occasional Paper No. 15, Law of the Sea Institute, Univ. of Rhode Island, Sept. 1972.
this area. The emphasis here should be on private international law, and some of its special laws.

It is very urgent that our international law staff actively participate in legislative work. If this is well done, it will accelerate the pace of the Four Modernizations. For instance, before we promulgated our joint venture law, foreign businessmen hesitated to invest in our country because of the lack of legal protection. We promptly promulgated the joint venture law, and the reaction was most favourable. Patent law is also very important to us, as well as to foreign investors.

China has made important contributions to the development of international law, such as the Five Principles of Peaceful Co-existence, the Ten Principles, the Eight Principles for China’s Aid to Foreign Countries, and more recently the principle of anti-hegemony, etc. They are all very important documents of international law. Our experience in the application of international law to the diplomatic struggle has been rich and fruitful. All of these need careful evaluation and codification in order to build up a new science of international law based on the theories of Marxism, Leninism and Mao Zedong thought. We need to study things foreign to our culture in order to come to understand them, whether they are Western, Japanese, Russian or the Third World. They should be studied and analyzed in order to serve China, but without us becoming “prisoners” of foreigners.

We should create an atmosphere of free discussion, emancipate our minds, enliven our thoughts and “let a hundred schools of thought contend”. We should criticize the traditional bourgeois viewpoint of international law, as well as those advocated by Soviet socialist imperialism. Viewed from an overall strategy, the criticism should be mainly directed toward the latter. It is of course not an easy task, but we should cherish such lofty aspirations and high aims.

XIV. Conclusion

According to Marxism, law is but an instrument of one class oppressing

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47. This refers to the "Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment" adopted by the 2nd Session of the 5th National People's Congress on July 1, 1979 and promulgated on July 8, 1979. The law sets forth the general principles governing the establishment and operation of joint venture enterprises. It contains only 15 articles and is ambiguous in many important respects. The Joint Venture law is being supplemented by a series of more detailed regulations promulgated from time to time, such as the joint venture registration regulation, and joint venture labour management regulations, which were promulgated on July 26, 1980. For details, see P. Yuan's article China's Offshore Petroleum Resources Law: A Critical and Interpretive Analysis (1982), 16 The International Lawyer 647-669.
48. Supra, note 4.
49. Supra, note 5.
50. Supra, note 23.
the other and serves the particular interest of that class. Viewed from a traditional Chinese perspective, law has always been held in low regard in Chinese society. In the ancient Chinese feudal society there were two kinds of codes, the code of honour known as “li” and the code of punishments known as “fa” (laws) or “hsing” (punishments). The former governed the aristocrats, the latter the common people. According to the Book of Rites, the “li” do not descend to the common people; the “hsing” do not go up to the ministers. Thus, laws and punishments were used to subjugate the ruled to the ruler. In other words, the Confucian concept of “li” embodies the rules of proper conduct which were enforced by social sanction while the “fa” or law represented by the Legalists was enforced by legal sanction with the coercive power of the state.

When the Chinese Communists took power in 1949, they abrogated all the laws promulgated by the Nationalist Government and labeled them as serving the interests of the reactionary government and the exploiting class. Hence, for a considerable period of time China was ruled by the Communist Party’s policies, as promulgated or confided to the cadres as internal or classified documents by the Party’s Central Committee. This practice of the Party’s policies substituting for law persisted for almost 26 years, and not until the fall of the “gang of four” can it be said that China reinstituted its legal system in earnest. The policies and directives were issued by the Party’s Central Committee and implemented through the Communist cadres at all administrative levels. The cadres usually played the role of supervising, directing and controlling the masses by issuing orders and directives in accordance with the Party’s policies. Gradually, they identified themselves with the Party as the Ruler, rather than the ruled. Their roles were quite similar to those in ancient China where the “hsing” did not go up to the ministers. Don Biwu, the most prominent Chinese Communist jurist, speaking of the problem of disobedience toward the law by government cadres, said:

In the work of government bodies we have often found contraventions of the law, disruption of order and discipline, and encroachment upon the democratic rights of the people. Some people even regard themselves as special, thinking that the law controls only the masses, and that they themselves are beyond the reach of the law. (The emphasis is the present author’s.)

In this connection, an analysis of the Chinese Communist perception of law and policy and its inter-relationship in actual practice might be useful.

Chinese leaders believe that law and politics are closely linked, and it is the politics which governs the law and not *vice versa*. The policies are politics in concrete form and guide the formulation and administration of law. The Party’s policies give directions as to how the law should be implemented. In a word, policies precede the formation of law. Starting from this premise it was no wonder that when the United States posed a new quota on the import of Chinese textiles in 1983, China immediately retaliated by cancelling its contract to buy 6 million tons of American grain annually. This action prompted former U.S. National Security Adviser, Brzezinski, to urge China to form a “greater respect for contractual obligations,” and former U.S. Treasury Secretary, Donald Regan, to stress to the Chinese “the importance of implementing old agreements before going on to others.” When Pan Am wanted to resume flights to Taiwan in 1983, the Chinese formally warned the U.S. that the flight of Pan Am to Taiwan would have “severe repercussions” on Sino-American relations.

Many cases can be cited to illustrate the point. This difference in attitude toward law originates in ideological and political beliefs. To the Communists, law is but an instrument of one class oppressing the other and serves the particular interest of that class. The Party’s policies are the “life and blood” of the Communist Party, and it is the policies which direct domestic and international affairs. Policies and law should always be consistent because law originates in policies. In case of conflict, the policy should prevail over the law.

The current Chinese attitude toward law or, for that matter, international law is characterized by its flexibility, inconsistency and pragmatism, all of which are inter-related but each has its own role to play according to policy demands at a given time. Since present-day international law serves the interests of both the socialist and capitalist states, China will abide by those rules and principles of international law that are congruent with its national policies and interests, while rejecting those that are not. Let us start with an analysis of Article 38 of the Statutes of International Court of Justice and see how the Chinese react toward each of the sources of international law.

1. **Definition of International Law**

In the Western jurisprudence international law has been generally defined as “the body of legal rules governing the relations of international

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persons, that is, entities such as sovereign states and international institutions endowed with the capacity to have rights and duties in international law”.57 Such a definition sheltered the class nature of international law and looked at the law from its legal form rather than from its true nature.

As mentioned previously, China has a different perception of international law as understood and recognized by most states in the international community. China does not recognize traditional international law as binding upon it simply because she regards it as serving the interests of the capitalist countries. Chinese legal scholars have written numerous articles since the fifties on the class character of international law. International law, as they see it, reflects “not only the will of the ruling class of a state, but also the will of the ruling classes of the respective states participating in the agreement”58. International law is a tool for a state to implement its external policy. When occasion demands, states will use their own interpretation of international law to carry out their own foreign policy. Neither does China recognize the existence of so-called “socialist international law”. However, it is actively participating in modifying and developing modern international law so as to serve the interests of the Third World countries including China itself. Chinese legal scholars are advocating taking over from the two superpowers the legislative power in international law-making.59 This has been treated in detail in the previous section.

China rejects socialist international law as advocated by the USSR. The Soviet Union has been degraded into a socialist-imperialist country, and has been instrumental in the consequent dismantling of the socialist camp. Due to this drastic change in the world pattern there has evolved a three-world theory with the United States and the Soviet Union belonging to the First World and the majority of the Asian, African and Latin American countries belonging to the Third World. Those between the two are the developed countries of the Second World. With the participation of states of different social systems in the world affairs and necessary adjustment in their mutual relations, traditional or bourgeois international law has undergone a gradual change and given way to the emergence of present-day international law or generally recognized international law. Present-day international law has dual class character. It expresses the will of the ruling class of states with different social

58. Cohen & Chiu, People's China and International Law, Vo. 1, at 33 (Hereinafter cited Cohen & Chiu); Supra, note 12 at 11.
59. Supra, note 3.
systems. The norms of present-day international law are common to both capitalist and socialist states and possess the "dual class character of capitalism and socialism".  

2. International Treaties and Conventions

With regard to international treaties as a source of international law, Chinese legal scholars distinguish between international treaties in which the Third World countries played a major role, and those participated and controlled by a handful of maritime powers. This sharp distinction finds its full expression in the Chinese attitude toward the two United Nations Law of the Sea Conventions. China has repeatedly attacked the 1958 Geneva Law of the Sea Conventions as serving the interests of a few maritime powers in carrying out their hegemony in the world’s oceans, while it warmly hailed the passage of the new 1982 United Nations Law of the Sea Convention as the great victory of the Third World countries in their struggle against superpower maritime hegemony. Chinese views toward international treaties had a strong political overtone. They were regarded as being concluded "under the guidance of the external policy of capitalist countries, in accordance with the demand of the bourgeoisie and through diplomatic means and arbitrary external practices". From the Opium War in 1840 up to the founding of the People’s Republic of China in 1949, a large number of unequal treaties were imposed upon the Chinese people by imperialism. China has categorically refused to recognize the validity of these treaties, and consequently there is no way of their being recognized as a source of international law.

3. International Custom

Chinese scholars analyzed the formation of international custom from the class point of view and said that “the bourgeoisie has never considered, and will never consider, as custom the resistance of weak and small countries and colonies, the socialist countries’ anti-aggression and anti-imperialist wars and opposition to imperialist intervention in internal

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63. F. Li, supra, note 9.
affairs of other countries, and other just actions, and has never given support to these activities”. They cited as an example the 1856 “Declaration of Paris” which was enacted mainly by the big powers — Britain, France, Austria, Prussia, Czarist Russia, etc.. The principles concerning the handling of maritime blockades and contraband of war as embodied in the Declaration were later invoked as a custom of maritime warfare. Hence, whether international custom can be accepted as a source of international law will depend on the class nature of the custom.

4. The Definition of “Civilized Nations”

The wording “. . . recognized by civilized nations” in Article 38, Item “C”, raises the question of what is the definition of “civilized nations”. Chinese legal scholars vehemently attacked the term “civilized states” as used by some Western publicists to mean “Christian states” only. Non-Christian states, which were composed mainly of oriental states, were labeled “uncivilized states”. Excluded from the “civilized states” were also colonial and semi-colonial countries. The purpose of the exclusion, as one writer put it, was to subject these countries to the domination and oppression of imperialism. The use of the term “civilized states” is indicative of a Western bias toward the Third World countries and smacks strongly of chauvinism. The bourgeois international law scholars, by confining the application of international law to the so-called “civilized nations”, ruthlessly excluded many of the world’s oldest civilized countries from the international law community, and discriminated against them so as to create a legal basis for expansion and aggression policies.

These criticisms of “civilized states” may not be valid in the context of present-day international relationships as the distinction between Christian and non-Christian states, as a criterion for judging a state being civilized, has long become obsolete. However, the attacks leveled by Chinese scholars against the use of the term as recently as 1980 pointed to the deep-rooted aversion to the Western concept of international law.

5. Judicial Decisions of the International Courts

With regard to judicial decisions of international courts, theory and state

64. Ying Tao, supra, note 62.
67. F. Li, supra, note 9.
practice in China do not go hand in hand. Generally, they are regarded as being the result of manipulations by big capitalist powers. Consequently, the decisions would reflect their will and demands. However, it would be interesting to note that China took a ‘pick and choose’ attitude toward some of the judicial decisions of the International Court of Justice. For instance, China expressed great interest in the ICJ’s judgment on the North Sea Continental Shelf Cases. The principle of the natural prolongation of land territory was of special interest because it reinforced China’s argument for applying the natural prolongation theory in the boundary delimitation with its neighbours, while ignoring the Court’s dictum concerning the applicability of median line rule in the case of opposite states. However, Chinese attitude was less enthusiastic toward the arbitral decision in the Anglo-French Continental Shelf Arbitration Case because the decision plays down the role of the principle of natural prolongation in shelf delimitations. In commenting on the arbitral decision, one Chinese scholar stated:

both the natural prolongation principle and the equitable principle are important principles in shelf boundary delimitations, and under certain circumstances and to a certain extent it is permissible and sometimes necessary to emphasize the application of equitable principles. However, viewed from the theoretical point of view, it would be more appropriate to place the natural prolongation principle in the predominant position.

Thus, the Chinese attitude toward international judicial decisions is ‘pick and choose’ rather than total rejection. It picks what serves its own interest.

China’s exultation at the recent election of a Chinese law professor to the bench of the International Court of Justice was another example of how China adopts two-prong policy toward the international judicial body. On the one hand, China does not recognize and accept decisions of the ICJ as binding upon itself. On the other, it had been trying to seat

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69. Shao Jin, Decision of the International Court of Justice on the North Sea Continental Shelf Cases and the Principle of Continental Shelf Delimitation (1980), 2 Beijindaxue Xuebao (Peking University Journal) 36; also P. C. Yuan’s article China’s Jurisdiction Over its Offshore Petroleum Resources (1983), 12 Ocean Development & International Law 199.
71. China did much publicity when a former professor and legal adviser to the PRC Foreign Ministry, Ni Zhengyu, was elected to the bench of International Court of Justice in November 1984. Premier Zhao Ziyang personally wrote a letter of congratualtions to him. People’s Daily, Nov. 9 at 4 and Dec. 1 at 1 and 4, 1984.
72. China refused to accept the mandatory jurisdiction of the International Court of Justice on the ground that state sovereignty should be respected, and said that China has consistently held this position. Thus, China proclaimed that it would make reservations to Article 48 of the Single Convention on Narcotic Drugs and Article 31 of the Convention on Psychotropic
a Chinese judge in the World Court for a long time. This reflects part of China’s effort to gain international legislative power through direct participation in the decision-making process at an international level.

6. **Teachings of Eminent Publicists**

China does not look with great regard on the teachings of eminent publicists as one of the subsidiary sources of international law because these “publicists” were educated by the bourgeoisie and therefore served their interests. Their teachings are formulated to carry out the will of the bourgeoisie.

7. **United Nations General Assembly Resolutions**

From a recent article published in China’s Daily, it seems that China is inclined to regard United Nations General Assembly Resolutions as “a kind of legal form of agreement between member states”. However, it also recognizes that these resolutions are “soft laws” under its present form and they would not become “hard laws” unless through persistent world efforts. The article noted that there is a growing trend to affirm the legal meaning of such resolutions, such as the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, the Declaration on Granting Independence to Colonial Countries and Peoples, and the Declaration on Establishing a New International Economic Order. This view seemed to coincide with some of the Western views that U.N. General Assembly resolutions, if supported by a large number of states, “may be regarded in some circumstances as indications of a general consensus amounting to a norm of general international law” or “should be viewed as evidence of emerging customary law”.

Substances, in which it was provided that in case of a dispute relating to the interpretation or application of the convention and if such dispute cannot be settled in the manner prescribed, such as by negotiation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice, the dispute shall be referred to the International Court of Justice for decision. See *People’s Daily*, June 14, 1985, at 2; Also United States Treaties and Other International Agreements, Vol. 18, Part 2, 1967 at 1429, and Vol. 32, Part 1, 1979-80 at 569.

73. Ying Tao, *supra*, note 62.
75. *Id.* Q.-Z. He, “International Law Guides Way of the World.” The author is a member of the governing board of the Chinese Society of International Law and member of the National Committee of the Chinese People’s Political Consultative Conference.
76. O. Lissitzyn, (1965), International Law Today and Tomorrow 34.
The above tirades against traditional international law, though made about 20 years ago, are by no means obsolete today if one takes a casual look at the papers presented at the inaugural meeting of China’s International Law Society in 1980. They still represent the main trends in Chinese international law circles. Although some attacks may be couched in a milder tone in view of China’s participation in the United Nations, and many other international organisations, the basic methodology in analyzing international events and politics must remain essentially Marxist, i.e., the application of class analysis. Thus, from the viewpoint of class analysis, the Charter of the United Nations represents the wills of the State ruling classes of two different social systems and protects the interests of the State ruling classes of both socialist and capitalist systems. It therefore possesses dual character.

What finally, is the Chinese criterion for accepting or refuting the principles of international law? The following paragraph carried in the authoritative Chinese Communist party organ People’s Daily is characteristic of the Chinese attitude toward international law:

International law is one of the instruments for settling international problems. If this instrument is useful to our country, to the socialist cause, or to the cause of peace of the people of the world, we will use it. However, if this instrument is disadvantageous to our country, to the socialist cause, or to the cause of peace of the people of the world, we will not use it and should create a new instrument to replace it.

This statement made 28 years ago is still a valid norm by which Chinese behaviour in international law and politics can be judged and understood.

78. In the January 1984 issue of Dalhousie Law journal, late Professor Chen Tiqiang, a prominent international law scholar in the People’s Republic of China, reiterated China’s commitment to Marxism and Leninism in the study and application of international law when he said:

The lesson from the past boils down to this: Marxism has still to be studied in connection with international law. We must not discard Marxism-Leninism because of our disagreement with Soviet international lawyers. We must not throw away the baby with the baby water. We must not divorce international law from Marxism-Leninism. (1984), 8 Dal L. J. 16.

79. An article published in 1983 in the Guangmin Ribao (Beijing) and republished in abridged form by the People’s Daily insisted on the application of Marxist theory to the ideological and theoretical front. It stated that corrupt bourgeois ideas have been infiltrated into China over the years through import of Western art and scholarly works. The article stressed that Chinese people must use the Marxist weapon of criticism to distinguish between what is good and what is bad for them. Renmin Ribao (People’s Daily), Oct. 9, 1983, at 3.


A prominent Chinese international law scholar noted in a recent article that

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

How similar the two statements are in content though they were uttered in two different periods 26 years apart!

In assessing Chinese behaviour toward international law, we must also take into account the pragmatic approach of current Chinese leaders in dealing with matters involving foreign investment. In order to attract foreign capital and technology, China has forsaken certain Communist values and tried to follow Western practice. This has been amply reflected in the recent promulgation of foreign economic contract law in which labour strikes may comfortably fall under the definition of force majeure.  

The law also provides that the contracting parties are free to choose applicable law in their contracts, in the absence of which “the law of the country with the closest relation to the contract” may be applied. Thus the parties to a contract can choose any law which they elect to choose, whether it has any relations with the transactions or not and no matter how repulsive that law might be from the Marxist point of view. With regard to international treaties, the law provides that the international treaties to which China is a party will prevail over municipal law in case of a conflict in application. The new law also permits arbitrators and judges to apply the rules of international practice where Chinese domestic law should be applied, but does not contain any

82. T.-Q. Chen, supra, note 78 at 18-19.
83. Foreign Economic Contract Law of the People's Republic of China, Article 24, para. 3. The law was adopted at the 10th Session of the Standing Committee of the National People's Congress on March 21, 1985. The English translation of the law was published in China Economic News, No. 12, April 1, 1985. The traditional concept of force majeure accepted by the Chinese includes war, fire, flood, typhoon, earthquake, etc.. However, in actual practice the coverage is now much broader, which also includes labour disturbances and other causes beyond the reasonable control of the parties. See S.B. Lubman, Trade Contracts and Technology Licensing, Legal Aspects of Doing Business in China, (New York: Practising Law Institute, 1983) at 56-57. Labour strikes were not accepted by the Chinese as force majeure before because according to Marxism labor strikes were justifiable reaction by workers against capitalist exploitation and oppression and should not be regarded as an event that cannot be avoided.
84. Id. Art. 5, para. 1.
85. Id. Art 6.
provisions relevant to the dispute. Countries differ in their approach toward international practice, and the Chinese have apparently taken a positive stand. Thus, under the new law international practice may apply without authorization and limitation and regardless of whether or not the international practice would serve the interests of capitalism.

The above are some of the examples showing that China has taken a compromising attitude toward international business practices and pursued a more liberal policy in foreign investment legislation. These compromises reflect China's eagerness to create a favourable business atmosphere for foreign investors who would prefer application of generally accepted international legal practices. Another factor that compels China to take a more compromising attitude is its weak economy. When a country is weak economically, it is apt to pursue a more conciliatory policy both at home and abroad. It is therefore foreseeable that as China grows stronger economically, there will be less compromises in its dealings with the outside world.

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86. Id. Art. 5, para. 3.
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NOTE: The above data, with the exception of Professor Zhou Geng-Sheng, were compiled from the list of participants in the inaugural meeting of the Chinese Society of International Law held February 1-5, 1980, Beijing, People's Republic of China.