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Legacy of Modern Chinese History: Its Relevance to the Chinese Perspective of the Contemporary International Legal Order

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MODERN Chinese history represents a broad spectrum of earth-shaking and kaleidoscopic changes in the nation-building process. In the space of one and a half century, China was reduced from a 'Middle Kingdom' at the center of the universe to a semi-colonial society at the hands of foreign imperialism; then it emerged as an independent republic and eventually becomes a major world power. Concomitant with such great changes was the radical and yet fundamental transformation of the Chinese perception of world order from the Sino-centralism¹ based on Confucian culturalism² into modern Chinese nationalism embracing

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1 For a long time in history, geographical barriers kept the whole region of East Asia separate from the West. To Westerners, East Asia was a remote and seemingly inaccessible land at the end of the earth. Even today, in the European parlance, 'the Far East' still remains in common use. However, the Chinese did not perceive their world the same way the Westerners did. The Far Eastern region in Chinese eyes became *Tianxia*, literally, 'all under Heaven', of which China perceived itself to be the very center. Thus, China's name, *Zhongguo*, denoted a sense of 'the central country' or Middle Kingdom which embraced the whole world known to it. Such traditional Chinese perception of its place in the world is what Western historians have meant by the term, 'Sinocentrism', which is used to characterize traditional China's relations with other nations generally. Of course, China's self-image as the center of the world is a false idea in modern geographical terms. Throughout history, however, such idea accorded closely with the facts of East Asian experience, and had seemed to be reinforced by practical reality. See Li Zhaojie, *International Law in China: A Legal Aspect of the Chinese Perspective of World Order*, SJD thesis at the University of Toronto, at 9-11.

2 Confucian culturalism, known also as Confucianism, is not a religion. Instead, it is a school of political and ethical philosophy founded by Confucius (551-479 BC) and his disciples. As it was reinstated in the Western Han dynasty (206 BC-24 AD) as the state ideological orthodoxy, Confucianist cosmopolitan outlook became integrated into the practical aspects of social and political life in China and formed the most dominant political and cultural force in shaping the traditional Chinese view of world order. See, John King Fairbank, 'A Preliminary

the idea of sovereign equality and independence. The climactic events representing the sequence of such transformation followed from the sneering rejection of the West in the pre-Opium War period to the Self-Strengthening Movement of 1861-95, to political reform and revolution of 1898-1912, to intellectual revolution around 1917-23, and finally to the rise of the People's Republic in 1949.³

The legacies of the past shape the present attitudes of all nation-states towards international relations. We human beings make our own history not, as Karl Marx once reminded us, just as we please, but only 'under circumstances directly encountered, given, and transmitted from the past.'⁴ But, in no country does history seem to be playing a role as decisively as in China.⁵ An often-asked question is thus what is the *leitmotif* that cuts broadly across the process of the transformation of the Chinese world outlook. As observed by a famous historian, it is certainly not a passive response to the onslaught of the West, but an active struggle of the Chinese to meet the foreign and domestic challenges in an effort to rejuvenate and transform their country from an out-dated Confucian universal empire to a modern nation-state, with a rightful place in the family of nations.⁶ This author fully agrees with this observation. The formation and development of the Chinese attitude towards international law is therefore a reflection, from a legal perspective, of this process of historical transformation.

As is well known since time immemorial, the conduct of China's 'foreign affairs' had been directed under the so-called Sino-centralism based on Chinese cultural supremacy and an idea of all-embracing unity. This traditional world outlook was further legitimized by Confucianist political philosophy that advocated peace and harmony in a hierarchical and anti-egalitarian social order. Such a socio-political *milieu* could produce no Chinese Grotius or Pufendorf. While certain

Framework', in John King Fairbank (ed), *The Chinese World Order: Traditional China's Foreign Relations* (Cambridge Mass: Harvard Univ Press, 1968), at 6. See also, Mark Mancall, *China at the Center, 300 Years of Foreign Policy* (London: Collier Macmillan Publishers, 1984), at 22-23.

3 Immanuel CY Hsu, *The Rise of Modern China* (New York: Oxford Univ Press, 1975), second ed, 12-13.

4 Karl Marx, 'The 18th Brumaire of Lois Napoleon' in *Basic Writings on Politics and Philosophy: Karl Marx and Friedreich Engles* (New York: Doubleday, 1959), Lewis Feuer (ed), at 320.

5 Samuel S Kim, 'China and the World in Theory and Practice', in Samuel S Kim (ed), *China and the World, Chinese Foreign Relations in the Post-Cold War Era* (Boulder: Westview Press, 1994), at 12.

6 Hsu, *supra* note 3, at 14.

principles and rules were developed more than two thousand years ago to govern the relations between the then contending vassal states,⁷ they were no more than sporadic and isolated historical phenomena. Their relevance to the formation and the development of the Chinese attitude towards international law was rather marginal at best. Until the arrival of the expansionist Western powers on the Chinese scene in the middle of the 19th century, China's foreign relations had been managed under an indigenous system known as the 'tributary system,' whereby China, occupying the patriarchal position, assumed the leadership and, in return, tributary states came into contact with China as part of the Chinese family of nations but in a subordinate position.

Beginning with the Opium War (1839-1842),⁸ Western imperialist invasions in China broke down this Sino-centric world order and replaced it with an unequal treaty regime.⁹ Heavily burdened by the past, and

7 During the Spring and Autumn and Warring States periods (722-221BC).

8 At the beginning of the 19th century, British traders began illegally importing opium into China. In 1839, the Chinese government launched a campaign to stop opium trade and confiscated all opium warehoused at Guangdong (Canton) by British merchants. The Chinese government had every reason to do that, as the opium traffic was morally unjustifiable, legally indefensible, and economically detrimental. For the British government, however, the opium issue merely gave it an excuse to go to war against China – without it the conflict would still have occurred. The ultimate cause of the war lay in the conflict between the two diametrically opposed views of world order based on the two distinct cultural systems. China was in a defensive position. Britain took the offensive. As a result, China was defeated and was forced to sign the Treaty of Nanking on 29 Aug 1842 and the Treaty of the Bogue on 8 Oct 1843. These two treaties provided for the cession of Hong Kong to Britain, payment of a large indemnity by China, opening of five ports for British trade and residence, and the right of British citizens to be tried by British courts. The signing of the two treaties drove the first wedge of the Western colonial expansion into the wall of the exclusive Chinese world. It thus stirred up a strong feeling in the West to take similar actions at China's misfortune. Close to the heels of the British came the Americans and the French, who were anxious to obtain similar rights and privileges from China. See Hsu, *supra* note 3, at 245.

9 Up until the Opium War, the institutional arrangements for the relationship between China and the West were still the tribute system, even if it was under an increasing attack from outside. The end of the war precipitated the disintegration of the system. This process, however, was not accompanied by the establishment of a new system based on the principle of sovereign equality and independence. Instead it was the unequal treaties as exemplified by the Treaty of Nanking and Treaty of the Bogue which began to replace the tribute system. This development radically altered China's position in the world. China was no longer the center or apex of the world; its sovereignty and territorial integrity were severely damaged by various terms of the unequal treaties; its very survival was even in question.

as yet ignorant of the nature of the Western family of nations, the Chinese groped in the dark, seeking a way to survive in what was described as 'a great change in more than three thousand years of history.' It was against this background that international law was first formally introduced into China. The Chinese experience with this Western legal learning was, however, not an easy one. Indeed, it was nothing less than a traumatic encounter, creating lasting memories of the humiliation, domination, and oppression by foreign powers under the unequal treaty regime.

The Chinese were at first skeptical about the usefulness of the principles and rules of international law that owed its origin to European civilization. To the Chinese, international law functioned as no more than one of a few methods for restraining the 'wild foreign consuls.' On the other hand, the Western powers never intended to apply international law to their relations with China in the same way that they did among themselves, even if their demands were often couched in terms of the Western system of international law. They introduced this Western legal learning to China, but they did so largely as part of their efforts to destroy the traditional Chinese world order and place China under the domination of the Euro-centric system of international relations, making the Chinese follow the rules that a semi-colonial state was supposed to follow. Later, although the Chinese came to acknowledge the utility of international law in facilitating their participation in international relations, their eventual mastery of the Western doctrines and practices of international law made them increasingly aware of its limited value for a China that lacked national power. International law was reasonable but unreliable, as Chinese diplomats observed, 'If there is right without might, the right will not prevail.'

Modern international law as part of Christian civilization, while beneficially structuring the relations between states of European background, proved more destructive than constructive in the initial confrontation between China and the West. It was the challenge of survival in the face of national subjugation and extinction at the hands of Western imperialism that forced the Chinese to accept such international law concepts as sovereignty, nation, state, independence, and equality. In the Chinese quest for national salvation and regeneration, external aggression as invited by the internal decay became a focal point. Hence, the Chinese made serious efforts to bring international law into full play in their struggle to shake off the yoke of the unequal treaty regime and to create and maintain a strong and unified China, that is no longer the 'central realm' based on Confucian culturalism but a nation state – with a rightful place in the family of nations.

Today's achievements are built upon yesterday's experience. Given the state's pivotal historical role in advancing China's civilizational greatness and in maintaining its territorial integrity, and contrasting this historical glory with a century of foreign humiliation, oppression, and domination, the Chinese perspective of international law that is sovereignty-centred and state-strengthening can hardly be surprising. Indeed, since the overthrow of the *Qing* dynasty in 1911, the ability to maintain China's sovereignty over its internal and external affairs has become the *raison d'être* of any Chinese government regardless of its ideological persuasion.¹⁰

China steadfastly and insistently upholds the principle of sovereignty and, in its diplomatic announcements professes to be the most enthusiastic champion of that principle.¹¹ Indeed, faithful adherence to the principle of inviolability of state sovereignty has become a distinctive feature of the Chinese attitude towards international law.¹²

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- 10 It is remembered that, even during the heyday of Sino-Soviet alliance in the 1950s, Chinese leaders made it clear that China's policy was to form an alliance on the basis of sovereign equality and independence rather than a petition for membership in the bloc. Premier Zhou Enlai repeatedly admonished that 'the Chinese people must use their own brain for thinking and their own legs for walking.' 'We adhere to a basic position in the conduct of China's foreign affairs,' said Zhou, 'that is to maintain China's national independence. No country is permitted to intervene in China's internal affairs.' Xue Mouhong (ed), *Dangdai Zhongguo Waijiao* (Diplomacy in Contemporary China) (Beijing: China Social Sciences Academy press, 1986), at 30. In talking about China's restoration of its sovereignty over Hong Kong, Chinese paramount leader Deng Xiaoping said clearly on record in 1982 that China takes the firm resolution to resume exercise of its sovereignty over Hong Kong, otherwise the present Chinese government would become another *Qing* government and Chinese leaders would become Li Hongzhang's followers; the Chinese people would have every reason to overthrow them. *Remin Ribao* (*People's Daily*), overseas edition, 23 Mar 1994. As revealed earlier, for most of his time in the *Qing* government, Viceroy Li Hongzhang took charge of China's negotiations with foreign powers. Many unequal treaties were personally executed by him. The most notorious one was the 1895 Treaty of Shimonoseki between China and Japan, which forced China to cede Taiwan to Japan. Therefore, in modern Chinese political parlance, 'Li Hongzhang' is a symbol of being a traitor.
- 11 Wang Tiewa, 'International Law in China', 221 *Receuil Des Cours* (Collected Courses of The Hague Academy of International Law), No II, 1991, at 288.
- 12 As noted by one scholar, 'If China's foreign policy pronouncements and protestations are taken at face value, sovereignty remains the *lingua franca* of its international comportment and the chrysalis of international order. Despite the twists and turns in international conduct over the years, the Chinese Government has remained compulsively sovereignty-bound on most basic global issues and problems. In the normative domain of global politics, China is perhaps

The Chinese are a history-conscious people. Today, although international law has become part of China's efforts to catch up with the rest of the world, early Chinese experience with international law still remains a key to the understanding of the present Chinese attitude towards international law. Indeed, the perennial concern with its status, security, and sovereignty, as shaped by its historical legacies still overshadows China's legal behavior in the conduct of its foreign affairs. Chinese policy of openness to the outside world and its participation in global interdependence has followed a sovereignty-centered and state-empowering model under the mantle of the legitimizing principles of China's independence and equality. The logic is simple enough. China must engage itself in international co-operation for the enhancement of a so-called 'comprehensive national strength' – national security and economic prosperity – with little trade-off in its sovereignty. Accordingly, national political independence and global economic interdependence have become two ways towards the same sovereignty-centered end.¹³

China has consistently appraised sovereignty as the basis of the contemporary international relations and the cornerstone of the entire edifice of international law.¹⁴ Such sovereignty-bound thinking explains the self-conscious avoidance of the term 'world order' (*Shijie Zhixu*)

beyond compare. Some wayward stranger from another planet, doing a content analysis of the annual UN debate on the state of the world, could easily take sovereignty as a quintessentially Chinese idea.' Samuel S Kim, 'Sovereignty in the Chinese Image of World Order', in R St J Macdonald (general ed), *Essays in Honour of Wang Tieya* (Dordrecht: Martinus Nijhoff Publishers, 1994), at 428.

- 13 Thus, although the frequency and saliency of sovereign-bound policy pronouncements have been softened over years, particularly in the economic and functional domain of international politics, the fundamental point still remains – that opening to the outside world and participation in global interdependence are thought as a cost-effective way of accelerating nation-enhancing and state-empowering march towards the promised land of modernity, rather than to any supranational world order. Noticeably, the 1982 PRC Constitution incorporated not only an independent foreign policy line but also, for the first time, a global interdependence theme: 'The future of China is closely linked with that of the whole world.' In the light of this, it can be argued that the impact of the changes in China's present foreign policy on its international legal behavior has been more in the nature of conceptual adjustment and redefinitions, rather than that of fundamental break or transformation.

14 Wang, *supra* note 11, at 288.

in Chinese foreign policy pronouncements.¹⁵ Thus, whereas 'world order' is deemed as basically a set of world regulations, and therefore a potential threat to state sovereignty, the Chinese feel the term 'international order' (*Guoji Zhixu*) a more auspicious notion, embodying certain statist norms needed to ease transactions without a supranational Leviathan.¹⁶

Whether the Cold War ended or not, the United Nations, for China as for so many other countries, is still a state-centered organization founded on such principles as state sovereignty, state equality, and state rights maintained by and for states.¹⁷ In tune with this line, the Chinese argue that peace-keeping and peace-creating operations of the United Nations which have become a topical issue in the recent world order discourse can only be established and conducted under the principle of non-interference in internal affairs as the UN Charter does not authorize involvement in the internal disputes of its Member States.¹⁸

The sovereignty-bound thinking in the Chinese perception of the contemporary world order therefore has lent more prominence to the Five Principles of Peaceful Coexistence (FPPC).¹⁹

In Chinese eyes, the FPPC possess a higher degree of normative strength and flexibility because (1) they are the core principles of international law; (2) they are identical with the purposes expressed in the UN Charter and compatible with other principles of international law; (3) they have stood the test of time since their initiation in the mid 1950s; (4) they represent a new development in the fundamental

15 Kim, *supra* note 12, at 430.

16 Therefore, in its response to the UN Secretary-General Boutros Boutros-Ghali 1992 'Agenda for Peace,' proposing the revitalization of the global collective security system as envisioned in the UN Charter itself, the Chinese government put on record: 'UN reform should contribute to maintaining the sovereignty of its Member States. Sovereign States are the subjects of international law and the foundation for the formation of the United Nations. The maintenance of State sovereignty serves as the basis for the establishment of a new international order.' The speech of Foreign Minister Qian Qichen at the 46th Session of the United Nations General Assembly. *Remin Ribao* (People's Daily), 25 Sep 1992.

17 Kim, *supra* note 12, at 435.

18 This proposition strikes a contrast with China's publicly expressed support for UN peacekeeping between 1982 and 1989. Apparently, the shift is due to the fear that, in the wake of the demise of the Soviet Union, the United Nations may become an instrument for big states or group of big states to intervene in internal affairs of a member state under the guise of collective security.

19 As noted by Kim, the FPPC has become the defining criterion of Chinese characteristics in the recent world order debate. *Ibid*, at 431.

principles of international law.²⁰ In a recent foreign policy statement, the FPPC are peremptorily declared as constituting 'the most fundamental norms governing international relations.'²¹

In the world order debate, the doctrine of state sovereignty has been subject to the relentless criticism by many publicists of Western origin.²² According to these Western commentators, it seems that, sovereignty as a concept is devoid of any legal merit and even becomes the very source of the sin in international relations.²³

20 There is no alternative, as argued by the Chinese government, to the FPPC, in view of the structural reality of the international community. As Foreign Minister Qian Qichen stated at the 46th Session of the United Nations General Assembly,

'The turbulent and complex international situation has further awakened all countries and people of the world to the demand for the establishment of a new international order, making it more urgent and stronger. In the future world, it is impossible to only maintain the interests and power of big states or groups of big states; nor should it be allowed to let big, strong, and rich states monopolize and manipulate international affairs. The old order founded on the unequal relations [among states] will not do.

A new international order should be established on the basis of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. Nations, big or small, strong or weak, rich or poor, should have the right to choose their own social systems and ways to development, which fits into the circumstances of their own countries. States should respect each other, treat each other equally, and adhere to peaceful solution of their disputes through negotiations. Only when all states promise to implement these principles will it be likely to establish genuine democracy in international relations. We are convinced that, as the world is going towards multi-polarity, a peaceful, stable, just, and reasonable international new order will finally be established.'

21 *Remin Ribao* (People's Daily), 26 Sep 1991.

22 Jenks, a well-known internationalist, for example, attacks the doctrine as holding no promise of world order, because 'It [state sovereignty] affords no prospect of defence. It provides no assurance of justice. It gives no guarantee of freedom. It offers no hope of prosperity, It furnishes no perception for welfare. It hardens the opposition to orderly and peacefully social change. It disrupts the discipline without which scientific and technological innovation becomes the Frankenstein of our society (but a remorseless Frankenstein perpetually making new monsters). It is a mockery, not a fulfillment, of the deepest aspirations of humanity. The most eloquent refutation of the concept of sovereignty in the sphere of international relations is its futility, as tested by the professed purposes of contemporary politics.' CW Jenks, *A New World of Law?* (London: 1969), At 134.

23 Wang, *supra* note 11, at 289. A more recent attack on the principle of state sovereignty comes from a contemporary American publicist Louis Henkin. He

These arguments, however rhetorical, have at least missed an important point. For those newly independent nations, including China, which form an overwhelming majority of the international community, state sovereignty is a hard won prize in their long struggle to shake off the yoke of colonial domination and oppression. 'We are just in a position to exercise sovereignty, and you are trying to eradicate it, now,' a typical Third World critic goes. In fact, sovereignty is not a myth but a practical necessity.²⁴ It does not so much connote unbridled premises as it is a legal claim for State equality and independence. It is not a claim of supreme authority in international relations but rather sets the political limits, prescribing the statist parameters of world order. As long as the world is composed of nation-states, as Anand reminds us, 'it is not possible to wish away sovereignty from the realm of international law.'²⁵

In this regard, what must be opposed is the doctrine of absolute sovereignty. To Chinese publicists, sovereignty is meaningful only in terms of mutuality, that is, the sovereignty of one state is restricted by that of others and the sovereignty of all states are equally respected by all.²⁶ Indeed, China's sovereignty-centered attitude towards international law conceives the exercise of sovereignty as within the parameters set out by international legal rules.

In the recent sovereignty discourse, however, many Western scholars hold that the concept of state sovereignty, from a so-called perspective of global human interest, becomes increasingly problematic.²⁷ They

considers the concept of state sovereignty as 'mythology'. In his criticism, sovereignty raises iron curtains to resist international cooperation; sovereignty *per se* is not a normative conception of international law; it is a mistake that is often empty and sometimes destructive of human values; it is an anachronism as applied to the contemporary international relations, for it is commonly trumpeted today as a basis for resisting external intervention, even by the UN Security Council. He therefore suggests to do away with the 'S' word and replace it with the term, 'social contract', *mutatis mutandi*. Louis Henkin, 'The Mythology of Sovereignty', Notes from the President, American Society of International Law, Newsletter, March-May 1993, at 1, 6-7.

24 Brierly stated clearly that sovereignty 'does stand today for something in the relations of states which is both true and very formidable.' JL Brierly, *The Law of Nations* (Oxford: 1963), 6th ed, by Sir Humphrey Waldock, at 47.

25 RP Anand, *Sovereignty of States in International Law*, in RP Anand (ed), *Confrontation or Co-operation? International Law and the Developing Countries* (New York: 1987), at 72.

26 Wang, *supra* note 11.

27 'As the world is thought as formed biologically, material, ecologically, and even spiritually, in a way that makes the unity of the human species the starting point for trend analysis and positive prescriptions.' Cited in Kim, *supra* note 12, at

view the world as going in the direction of the progressive delegitimation of the State system as an obsolete system in an increasingly interdependent but fragile world, since 'with the ongoing revolution in communication, the growing complexity and interrelatedness of human life, and the proliferation of sovereignty-free actors, the State's capacity to satisfy steadily increasing expectations about the requirements of humane governance is in relative decline.'²⁸ Thus, 'trickle down sovereignty' becomes the watch word. Such a post-modern notion about humane governance represents at most only one side of the coin.

For China, the internal aspect of the concept of state sovereignty is of vital importance for today's drastic social transformation in Chinese society. While the economic reform and opening to the outside world has generated an immense momentum to China's modernization drive and resulted in splendid achievements in economic development and people's livelihood, it has engendered tremendous negative repercussion on Chinese society. On the one hand, rapid economic development has brought about great changes in social structure, cultural identity, and value commitments, thus inevitably creating social instability. On the other hand, political stability is the precondition for the development of economic modernization. Whereas modernity brings about political stability, modernization precipitates instability. While these problems were solved step by step in the early modernization process, they are impacting simultaneously on China at present. This situation has led to the phenomenal developmental perplexity and dilemma in China. In the face of such a paradox, 'trickle down sovereignty' will easily trigger societal breakdown and give rise to social chaos and political turbulence, which China can no longer withstand, after the 'Cultural Revolution.'²⁹ Indeed, if China, which contains nearly one

426. This discourse has been the focus of the recent years' annual meetings of the American Society of International Law. For the various arguments, see The American Society of International Law, Proceedings of the 86th, 87th, and 88th Annual Meetings.

28 Kim, *ibid*, at 427.

29 Its full name is Great Proletarian Cultural Revolution (1966-1976). The 'Cultural Revolution' is now officially depicted as a ten-year turmoil in China. It was launched by Chinese Communist Party Chairman Mao Zedong during his last decade in power. His original intention was said to renew and purify the spirit of the Chinese revolution out of the fear that capitalism might be restored in China. Mao initially pursued his intention through a massive mobilization of the country's urban youths. This actually threw the whole country into turmoil which lasted ten years. As a result, all the existing legal and administrative systems were smashed. The 'Cultural Revolution' has brought to China tremendous losses in all aspects of social life.

quarter of the world's population, was plunged into turmoil, what adverse repercussions this would bring to the peace and stability of the international community! Therefore, from the perspective of China's internal development and its international responsibility, it has become more urgent and imperative to strengthen government authority and powers of control, to maintain internal stability.

Here, China's sovereignty-bound thinking is most persistent and resonant in the domain of international human rights. The most recurring theme in the Chinese human rights discourse is the primacy of state sovereignty – no state sovereignty no human rights. This argument, in part at least, rests on historical and cultural ground. A century of humiliation, domination, and oppression at the hands of foreign imperialism has convinced the Chinese that without national independence, there would be no guarantee for their basic human rights. Noticeably, even the Chinese acceptance of the Western concept of human rights in an iconoclastic atmosphere at the beginning of this century was aimed at national salvation.

Traditional Chinese culture located the meaning of human beings from their social being in an intricate web of social relationship rather than from their atomized autonomy. Thus, values such as liberty and autonomy were not prized as ends in themselves in the way as they have been in the Western nations. This does not suggest that there is no respect for human dignity in the Chinese cultural context, but rather a different basis. Respect for human dignity as viewed by the Chinese, lies in the integrity of harmonic and orderly social bonds and is meant to be exercised for the purpose of fostering collective welfare through moral exhortation internalized in the individual rather than by means of the legal formality of government power *vis-à-vis* individuals.³⁰

Against this background, the proposition that individuals have finally become subjects of international law after World War Two is ruled out on all counts in Chinese international law literature and policy pronouncements. It is considered both theoretically untenable and practically infeasible because it pits the principle of state sovereignty against the principle of human rights. For the Chinese, the principle of sovereignty is always prior and superior to the principle of human rights because only the former can guarantee the implementation of the latter. 'Although theories advocating the supremacy of human rights abound in the world, modern international law is still centered

30 James C Hsiung, *Human Rights in East Asia: a Cultural Perspective* (New York: Paragon House, 1985) at 11.

on national sovereignty and the nature of international relations still rests on the balance and coordination of interests between national states.³¹

All the same, by the early 1980s, China had recognized human rights as an integral part of global normative politics and decided to participate in the work of the UN Human Rights Committee in Geneva. Since then, China has acceded to all major UN-sponsored multilateral human rights conventions, mostly on collective or group human rights treaties with regard to women, racial discrimination, refugee, apartheid, torture, and children. In this respect, the most remarkable development is reflected upon China's signing of the two human rights covenants, of which one, namely, the International Covenant on Economic, Social and Cultural Rights, has been ratified by the Chinese government recently. The classical Westphalia notion that the way in which each state mistreated its own citizens was not a matter for international concern gradually became less compelling. China's apparent acceptance of the proposition that a country's human rights performance was inextricably linked with its international image and reputation was manifest in its incremental modification and expansion of the concept of human rights, its greater participation in the activities of UN human rights forums, and its increasing emphasis on rule of law in its domestic domain.³²

While it is an undeniable fact that modern international law owed its origin to European civilization and the history of international law in China is rather short, this 'exotic Western plant' has taken root in Chinese cultural soil. China's sovereignty-centered attitude towards international law, which has close linkage with its unique nation-building history and cultural tradition, has not affected, and will not affect, the recognition of its necessity and usefulness in governing international relations.

China's international legal behavior has vindicated the observation that ideological, political, economic, or social affinities among states are not a prerequisite of international law. Moreover, the concept that any one culture has a monopoly of legal wisdom is no less an anachronism

31 Yi Ding, 'Upholding the Five Principles of Peaceful Coexistence, *Beijing Review*, 26 Feb – 4 Mar 1990) at 16.

32 See Li Zhaojie, 'Cultural Relativity and the Role of Domestic Courts in the Enforcement of International Human Rights: A Survey of the Practice and Problems in China', in *Human Rights: Chinese & Canadian Perspectives*, edited by EP Mendes & A-M Traehold, Human Rights Research & Education Centre, University of Ottawa, 1997, at 185-220.

than the concept that any one culture is the centre of the Universe.³³ The Chinese practice in international law has shown that cultural differences among states do not hamper the formation and development of a universal international legal system. On the contrary, if the differences can be well accommodated, they can yield even more fruitful results.³⁴

Furthermore, a state's international legal behavior tends to be more consistent and stable than its foreign policy behavior. While China's practice in international law follows overall guidelines of its foreign policy, as most of the countries do, it never intends to act as it pleases outside the parameters of recognized international legal norms and rules.

Indeed, international law as an aggregate body of international principles, norms, rules, and institutions serves, or can be made to serve, as a positive, empowering instrument in the formulation and promotion of national interests. It provides a useful frame of reference for Chinese foreign policy-makers in their assessment of international facts and formulation of Chinese responses. International law as a fact of contemporary international political life is thus playing a role in the input, output, and feedback processes of the Chinese foreign policy system.

In this regard, it is noteworthy that, despite frequent references in and out of China to 'Chinese international law', there is no such thing as 'Chinese international law' any more than there is such a thing as 'Chinese mathematics;' there can only be a Chinese theory and practice of international law. In other words, there is greater continuity and stability in any state's international legal behavior than its foreign policy behavior.

International law has undergone a process from quantitative change to qualitative change. In this process of transformation, the rise of Third World countries has played a decisive role. It is because of them that the traditional international law of the West is changing into a new and modern international law that is in keeping with the fundamental interests of the world peoples. China has made its contribution to the development of this new international law. This new international law in return serves Chinese interests as well. What comes with this perception of a new international law is the growing tendency to conceptualize Chinese and world interest and responsibilities in mutually complementary terms. What is good for China is good for the world and what is good for the world is also good for China.

33 Jenks, *supra* note 18, at 84.

34 Wang, *supra* note 11, at 356.