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China's Approaches to the Western-dominated International Law: A Historical Perspective from the Opium War to the South China Sea Arbitration Case

Anlei Zuo*

Abstract:

China's approaches to international law are an example of non-Western peoples' perspectives towards the Western-dominated international law. How has China understood and interacted with the Western-dominated international law since its modern history? This research provides a historical and evolutionary framework for "China and international law" to reveal China's approaches to the Western-dominated international law since the Opium War. It finds that China is historically critical and culturally conservative, and since the Opium War, it has interacted with the Western-dominated international law in a reluctant, instrumental and pragmatic way. The research concludes that the final goal of China's participation in international society and interaction with the Western-dominated international law has always been national rejuvenation. The South China Sea arbitration case illustrates the growing divergences between Chinese perceptions of international law and the Western-dominated international law that result from clash of ignorance" rather than a "clash of civilizations." Structural biases and systematic violence of Eurocentrism in the Western-dominated international law and international legal scholarship are integral components of the "clash of ignorance," and the rise of China could be an opportunity to rectify them with a more democratic and balanced approach.

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Introduction

China, a great power in its long history, has been a resistor, taker and maker of the existing Western-dominated international law since the nineteenth century.¹ It is thus analytically representative and methodologically effective to take China's engagement and interaction with the existing Western-dominated international legal system as an example for the relationship between "the Rest" and international law. It is also a unique and significant case study on a potential superpower and reformer of Western international law in view of the rise of China in the new millennium.² More importantly, "China and Western international law" provides an opportunity to historically and critically reexamine the evolution of the Western-dominated international law and nature of global governance by exposing the structural biases and systematic violence of Eurocentrism in Western-dominated international law for a more democratic and equitable world order.

There are already many thought-provoking research works on China and Western international law regarding China's engagement and interaction, application and observation, potential challenges and contributions to Western international legal system since late Qing.³

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1. See, e.g., Patrik K. Meyer, *Why China Thinks It Can Build a Utopian World Order*, THE NATIONAL INTEREST, Nov. 23, 2016; See Jacques DeLisle, *China's Approach to International Law: A Historical Perspective*, 94 AM. SOC'Y INT'L L. PROC. 267 (2000) In this paper, the "Western-dominated international law" refers to the current international legal system that has been mostly established and dominated by Western powers, namely, the Westphalian system; and "international law" also refers to the current international legal system, unless indicated otherwise. Generally, international law is understood as "the rules of conduct regulating the intercourse of states." Thus, there were (and even still are) different international legal systems in different circles of civilizations, such as traditional Chinese international law within the tribute system in ancient China.).
 2. See John Atkinson Hobson, *IMPERIALISM: A STUDY* 182 (1902); see Eric A. Posner & John Yoo, *International Law and the Rise of China*, 7 CHI. J. INT'L L. 1 (2006) ; see Barry Buzan, *China in International Society: Is 'Peaceful Rise' Possible?*, 3 CHIN. J. INT'L POLIT. 5 (2010).
 3. See, e.g., Phil C. W. Chan, *CHINA, STATE SOVEREIGNTY AND INTERNATIONAL LEGAL ORDER* (2015); Phil C.W. Chan, *China's Approaches to International Law Since the Opium War*, 27 LEIDEN J. INT'L L. 859 (2014); see Andrew Coleman & Jackson Nyamuya Maogoto, "Westphalian" Meets "Eastphalian" Sovereignty: China in a Globalized World, 3 ASIAN J. INT'L L. 237 (2013); Chi-hsiung Chang, *A Comparison of Eastern and Western Principles of International Order: Suzerainty vs. Colonization*, 79 BULL. OF THE INST. OF MOD. HIST. ACAD. SINICA 47 (2013); HANQINXUE, *Chinese Contemporary Perspectives on International Law: History, CULTURE AND INTERNATIONAL LAW* (2012); RUNE SVARVERUD, *INTERNATIONAL LAW AS A WORLD ORDER IN LATE IMPERIAL*

Also illuminating are other writings on China's reception and perception of international law, China's positive involvement with the international normative system in the Post-Mao Era, China's pragmatic and flexible approach to international law in the Spratly Islands dispute, international law and the rise of China, China's reform and opening-up policy and international law, the application of international law in Chinese domestic courts, and Chinese observation and practices of international law, etc. are illuminating.⁴ Moreover, Martti Koskenniemi, Lauri Mälskoo, and other scholars have provided insightful analyses and arguments regarding comparative international law.⁵

It is imperative to historically and critically reexamine the nature of international law in order to rectify the Eurocentrism in international law and international legal scholarship. Historical and critical studies of international law, as well as other studies from the perspective of international law and language, international law and culture, the sociology of international law, international law and global governance, international law and international politics, etc. are also enlightening to comprehend the nature and the evolution of international law.⁶

CHINA: TRANSLATION, RECEPTION AND DISCOURSE, 1847-1911 (2007);-TIEYA WANG, INTERNATIONAL LAW IN CHINA: HISTORICAL AND CONTEMPORARY PERSPECTIVES (1990).

4. See Richard S. Horowitz, *International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century*, 15 J. WORLD HIST. 445 (2004); Hungdah Chiu, *Chinese Attitudes Toward International Law in the Post-Mao Era, 1978-1987*, 21 INT'L LAW. 1127 (1987); Samuel S. Kim, *The Development of International Law in Post-Mao China: Change and Continuity*, 1 J. CHINESE L. 117 (1987); Michael Bennett, *The People's Republic of China and the Use of International Law in the Spratly Islands Dispute*, 28 STAN. J. INT'L L. 425 (1991);-DeLisle, *supra* note 1; Posner & Yoo, *supra* note 2; Congyan Cai, *New Great Powers and International Law in the 21st Century*, 24 EUR. J. INT'L L. 755 (2013); Wang Zonglai & Hu Bin, *China's Reform and Opening-up and International Law*, 9 CHI. J. INT'L L. 193 (2010); XueHanqin & Jin Qian, *International Treaties in the Chinese Domestic Legal System*, 8 CHINESE J. INT'L L. 299 (2009); Congyan Cai, *International Law in Chinese Courts during the Rise of China*, 110 AM. J. INT'L L. 269 (2016); Ann Kent, *Compliance v Cooperation: China and International Law*, 13 AUSTL. INT'L L. J. 19 (2006); ANN KENT, BEYOND COMPLIANCE: CHINA, INTERNATIONAL ORGANIZATIONS, AND GLOBAL SECURITY (2007); SUPACHAI PANITHPAKDI & MARK CLIFFORD, CHINA AND THE WTO: CHANGING CHINA, CHANGING WORLD TRADE (2002); CHINA AND THE WORLD TRADING SYSTEM: ENTERING THE NEW MILLENNIUM (Deborah Z. Cass et al., eds., 2003).
5. See Martti Koskenniemi, *The Case for Comparative International Law*, 20 FIN. Y.B. INT'L L. 1 (2009); LAURI MÄLSKOO, RUSSIAN APPROACHES TO INTERNATIONAL LAW (2015); see e.g., Anthea Roberts et al., *Comparative International Law: Framing the Field*, 109 AM. J. INT'L L. 467, 469 (2015).
6. See, e.g., DAVID KENNEDY, THE DARK SIDE OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004); DAVID KENNEDY, A WORLD OF STRUGGLE: HOW POWER,

However, several research gaps are still there. First, existing research on Chinese and Western international law are far from overcoming the Eurocentrism in international legal studies, or as Dipesh Chakrabarty puts it, the provincialization of Europe.⁷ Many writings are still stagnated in the Eurocentrism and unable to disentangle the relationship between the existing Western-dominated international legal system and China; studies on “what is international law and what is international law for” from the perspectives of “the Rest” and “the Other” are inadequate. Significant topics remain to be elucidated, such as the inclusiveness of international law as a language and culture of global governance, and civilizational influences on different approaches to international law.⁸ Namely, the goal of taking “China and Western international law” as a case study on the evolution of Western-dominated international law is not fulfilled yet. And second, many writings are unable to achieve the connection between the historical

LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY (2016); MARTII KOKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960 (2002); MARTII KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (2005); Anne-Charlotte Martineau, *The Rhetoric of Fragmentation: Fear and Faith in International Law*, 22 LEIDEN J. INT'L L. 1 (2009); MULTICULTURALISM AND INTERNATIONAL LAW: ESSAYS IN HONOUR OF EDWARD MCWHINNEY (Sienho Yee & Jacques-Yvan Morin eds., 2009); BART LANDHEER, ON THE SOCIOLOGY OF INTERNATIONAL LAW AND INTERNATIONAL SOCIETY (2012) (1966); RULING THE WORLD?: CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009); THE ROLE OF LAW IN INTERNATIONAL POLITICS: ESSAYS IN INTERNATIONAL RELATIONS AND INTERNATIONAL LAW (Michael Byers ed- 2000); see ANN ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* (2003); ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2004); GERRY SIMPSON, *GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER* (2004); B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT'L L. 1 (2004); CARLO FOCARELLI, *INTERNATIONAL LAW AS SOCIAL CONSTRUCT: THE STRUGGLE FOR GLOBAL JUSTICE* (2012); Gustavo Gozzi, *History of International Law and Western Civilization*, 9 INT'L COMM. L. REV. 353 (2007); Brett Bowden, *The Colonial Origins of International Law - European Expansion and the Classical Standard of Civilization*, 7 J. HIST. INT'L L. 1 (2005).

7. See DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* (2008).
8. See, e.g., UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW (Michael Byers & Georg Nolte eds., 2003). See B. S. Chimni, *Asian Civilizations and International Law: Some Reflections*, 1 ASIAN J. INT'L L. 39 (2011); Lauri Mälksoo, *The History of International Legal Theory in Russia: a Civilizational Dialogue with Europe*, 19 EUR. J. INT'L L. 211 (2008); Onuma Yasuaki, *When Was the Law of International Society Born? - An Inquiry of the History of International Law from an Intercivilizational Perspective*, 2 J. HIST. INT'L L. 1 (2000).

and critical studies of “China and Western international law” on the one hand, and the nature and evolution of international law in the world society on the other hand. Thus, the writings are ineffective and inadequate in understanding the evolution of Western-dominated international law in general and China’s approach to the Western-dominated international law; particularly in light of the past, present, and the future.

Therefore, the scope and purpose of this research is to focus on China’s perception and reception of Western-dominated international law from the Opium War (1839-1842) to the South China Sea arbitration (2013-2016), illustrating the Chinese perspective of history regarding the Western-dominated international law. It endeavors not on the specific historical or normative analyses, but on providing a framework for “China and Western-dominated international law” to analyze China’s approaches to the Western-dominated international law. The research question is: how has China understood and interacted with the Western-dominated international law since its introduction to China in the nineteenth century?

The structure of the paper is as follows. After the introduction, section two focuses on the traditional Chinese international law in ancient China to lay the context of Chinese-Western confrontation of international law. Section three elaborates on China’s approaches to the Western-dominated international law since the Opium War in the late Qing, Republic of China (“ROC”) and People’s Republic of China (“PRC”). Section four takes the South China Sea arbitration case as a special case study on the contemporary dynamics of China’s approaches to the Western-dominated international law to illustrate the underlying historical origins and civilizational forces. Section five examines the evolution of both Western-dominated international law and China’s approaches in view of the rise of China and future of international law. The last part concludes the paper.

Traditional Chinese International Law in Ancient China

Traditional Chinese mechanisms and rules of international relation in ancient “Chinese world order,” several widely acknowledged and essential conclusions. First, Ancient China had “certain fairly consistent rules and usages” in the interstate conducts (i.e. diplomacy, conferences and treaties) with systematic “usages, words and ideas corresponding to the terms of Western modern international law” from the

Spring and Autumn period and the Warring States period (722-221 B.C.) to late Qing.⁹

Second, compared to the Westphalian system of sovereign states in Western international law, rules and usages had unique cultural backgrounds, ethical contexts, political meanings and state inter-relation within the Chinese world order (namely the Sino-centric regional order).¹⁰ Traditional Chinese international law did not contain rhetoric of “sovereignty equality” or “independent state” but incorporated concepts of “vassal states,” “barbarous state” and “foreign state.”¹¹ The Relations among participants of this Chinese world order were unique compared to Western international law.¹²

Finally, the Chinese tribute and “Eastphalian” state systems, as a system of rules and governance, were politically legitimate, economically effective and culturally dominant in China and East Asia’s long history until the intrusion of European states toward the end of the nineteenth century.¹³ Traditional ancient Chinese international law is an extension of Chinese culture and governance with layered hierarchical relations for order and harmony.¹⁴ Scholars summarized traditional Chinese world order mainly through sinocentrism and cultural supremacy, the concept of a universal State, civilization vs. barbarity, hierarchy and anti-egalitarianism.¹⁵ In the words of Benjamin I. Schwartz, it is “a peculiarly Confucian mystique of rule by virtue and an absolutization of the Confucian moral order.”¹⁶

9. See L. Oppenheim, *International Law* 376 (H. Lauterpacht eds., vol. 1, 1958), e.g., Wang, *supra* note 3, at 205-207. See Georges M. Abi-Saab, *The Newly Independent States and the Rules of International Law: An Outline*, 8 *How. L. J.* 95 (1962); *The Cambridge History of China* 189 (Denis Twitchett & John K. Fairbank eds., 1980). See Roswell S. Britton, *Chinese Interstate Intercourse before 700 BC*, 29 *Am. J. Int’l L.* 616 (1935).
10. See IMMANUEL C. Y. HSU, *CHINA’S ENTRANCE INTO THE FAMILY OF NATIONS* 6 (1960).
11. See ARTHUR NUSSBAUM, *A CONCISE HISTORY OF THE LAW OF NATIONS* 10 (1954); Shih-Tsai Chen, *The Equality of States in Ancient China*, 35 *AM. J. INT’L L.* 641 (1941); Chang, *supra* note 3; Wang, *supra* note 3, at 218.
12. See Chang, *supra* note 3.
13. See Coleman & Maogoto, *supra* note 3 (explaining “Eastphalian” is used in contrast with Westphalian to define the unique Chinese world order “under the heaven” (“*tianxia*”)). See ADDA B. BOZEMAN, *POLITICS AND CULTURE IN INTERNATIONAL HISTORY: FROM THE ANCIENT NEAR EAST TO THE OPENING OF THE MODERN AGE* 143 (2d ed. 1960).
14. See *China’s Response to the West: Documentary Survey, 1839-1923* 19 (S. Y. Teng & J. K. Fairbank eds., 1963).
15. See Zhaojie Li, *Traditional Chinese World Order*, 1 *CHINESE J. INT’L L.* 20 (2002).
16. See Wang, *supra* note 3, at 215-16.

Compared with Western-dominated international law, how does traditional Chinese international law differ with respect to global dominance? The governing foundations of traditional Chinese international law was in the universalization of its culture in the East Asia cultural circle. Chinese international law was also founded on the recognition of China's authority by other countries and people of non-Chinese culture.¹⁷ Thus, the use of force was exceptional while cultural ascendancy was the normal Chinese cultural emphasis on morality, order and harmony, such as “*de*” (the virtuous conduct), “*li*” (proper ceremony) and “*fa*” (law and regulation), were the main governance foundations.¹⁸

Second, the traditional Chinese international law operated on the basis of the center and dominance of Chinese culture with layered governance framework for order and harmony. The “world order under the heaven” (“*tianxia*”) consisted of the “Middle Kingdom” of China (“*zhongguo*”) and other subordinated states in the suzerainty system.¹⁹ The hierarchical governance structure of traditional Chinese world order had been more cultural and ethical dimensions rather than economic or political dimensions in the kinship family of nations “under the heaven”.

Third, regarding its governance paradigms, the main components are diversity, self-determination and non-ruling governance through the suzerainty system.²⁰ Territorial sovereignty or annexation into the Middle Kingdom was not vastly sought while self-determination and the special relationship with the Middle Kingdom were carried out with cultural subordination and ethical obedience. Order and harmony in diversity had been one of the fundamental characteristics of traditional Chinese international law and worldview.

Fourthly, regarding the specific governance institutions, the tribute system is the main pillar of the Chinese “world order under the heaven” (“*tianxia*”) through cultural subordination, symbolic tributes

17. *Id.*

18. See Jan Zielonka, *Empires and the Modern International System*, 17 *Geopolitics* 502, 506 (2012); see also James N. Rosenau, *Illusions of Power and Empire*, 44 *WESLEYAN U. J. OF HISTORY AND THEORY* 73 (2005) (discussing the exceptional uses of force were violent and even aggressive, which can be considered as the “operation and maintenance costs” or the dark sides of the traditional Chinese international law in ancient China).

19. Zhao Tingyang, *A Political World Philosophy in Terms of All-under-heaven (Tian-xia)*, 56 *Sage J.* 5, (2009).

20. See, e.g., Tingyang Zhao, *Rethinking Empire from a Chinese Concept 'All-under-Heaven' (Tian-xia)*, 12 *SOC. IDENTITIES* 29 (2006).

and economic exchanges.²¹ No substantial exploitation or conquest had been performed regularly, as the final goal was the security and cultural authority of the “Middle Kingdom.” That demonstrates the defensive (other than the offensive) strategy of the Middle Kingdom Empire rooted in Chinese culture: the final goal is not the extension of China’s actual ruling or territory but the defensive security of the nation and system.²² This goal is elastic, flexible and open to different dynasties and at different stages of national strength.²³

Fifth, some cultural dimensions of traditional Chinese international law have survived the West-East confrontation and have been able to embody themselves in the contemporary Chinese culture. These dimensions have survived despite Western intrusion and subsequent modernization processes destroying its concrete foundations, structures, paradigms, and institutions. The evolution of Chinese culture, particularly its worldview and cultural fundamentals, is comparatively slow in comparison with Chinese revolutions, industrialization and modernization in the last two centuries.²⁴ Thus, there are many “lines of continuities” in terms of political system, legal system, social governance, foreign contacts, worldview and international law that form the domestic and international manifestations of China’s cultural genes and national identity.²⁵ All those are the domestic and international manifestations of Chinese culture’s genes and China’s national identity.

Therefore, traditional Chinese international law existed in ancient China in a legitimate, effective, and dominant relationship from its inception to late Qing (as mechanisms and rules for international

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21. See IMMANUEL C. Y. HSU, *THE RISE OF MODERN CHINA* 182 (Oxford Univ. Press, Inc., 6th ed. 1975).
 22. See T. F. Tsiang, *China and European Expansion*, 2 *POLITICA* 1 (1936); See John K. Fairbank, *Tributary Trade and China’s Relations with the West*, 1 *J. ASIAN STUD.* 129 (1942).
 23. See Yongjin Zhang & Barry Buzan, *The Tributary System as International Society in Theory and Practice*, 5 *CHINA J. INT. POL.* 3, 16-17 (2012); Yongjin Zhang, *System, Empire and State in Chinese International Relations*, 27 *REV. INT’L STUD.* 43, 53 (2001).
 24. See, e.g., ZHITIAN LUO, *INHERITANCE WITHIN RUPTURE: CULTURE AND SCHOLARSHIP IN EARLY TWENTIETH CENTURY CHINA* (Brill ed., 2015). See AIGUO LU, *CHINA AND THE GLOBAL ECONOMY SINCE 1840* (Brill ed., 2000).
 25. See, e.g., KATHRYN BERNHARDT, *CIVIL LAW IN QING AND REPUBLICAN CHINA* (Stan. Univ. Press 1994). See PHILIP C. HUANG, *CODE, CUSTOM, AND LEGAL PRACTICE IN CHINA: THE QING AND THE REPUBLIC COMPARED* (Stan. Univ. Press 2001).

relations and exchanges).²⁶ There is no point in mechanical or rigid analogy (of rhetoric and concepts) between the traditional Chinese international law and Western-dominated international law on the descriptive level. Thus, the Eurocentrism in perceiving traditional Chinese international law should be overcome by ontological and comparative perspectives towards the traditional Chinese world order and Western worldview.²⁷

From the perspective of international law as a language and culture of global governance, traditional Chinese international law is an extension of Chinese domestic governance culture, ideology and worldview.²⁸ It is a political, cultural and ethical component of traditional Chinese national identity, culture dominance and worldview that have passed down from ancient Chinese world order all the way to the twenty-first century's rise of China.²⁹ Traditional Chinese international law has been subordinated by the thrust of Western forces with economic exploitation and political oppression. However, but the cultural genes of traditional Chinese international law have been evolving and functioning covertly in the modernization processes of China, particularly influencing China's approaches to the Western-dominated international law.³⁰

26. See ERIC HAYOT, *THE HYPOTHETICAL MANDARIN: SYMPATHY, MODERNITY, AND CHINESE PAIN* 10 (Kevin J. H. Dettmar & Mark Wollaeger eds., 2009); PHILIP HUANG, *CIVIL JUSTICE IN CHINA: REPRESENTATION AND PRACTICE IN THE QING* (Stan. Univ. Press 1996).

27. See, e.g., Fassbender & Peters eds., *infra note* 83.

28. See Chan, *supra* note 3, at 864; CHIH-YU SHIH, *THE SPIRIT OF CHINESE FOREIGN POLICY: A PSYCHOCULTURAL VIEW* (Palgrave Macmillan UK, 1990).

29. See, e.g., Suisheng Zhao, *Rethinking the Chinese World Order: the Imperial Cycle and the Rise of China*, 24 *J. CONTEMP. CHINA* 961 (2015).

30. For instance, the Treaty of Nanking granted an indemnity and extraterritoriality to Britain, the opening of five treaty ports and the cession of Hong Kong Island in 1842. Other subsequent unequal treaties had forcefully opened China's market to Western power's trade system. China's sovereignty (including territorial integrity, national independence, tariff autonomy, etc.) had been profoundly undermined, leaving China to be a semi-colonial state. See Schwartz, *supra* note 16, at 282, 284. With the West as the powerful "Other", the substantive adaption of the identity of China (as the "Self") and the governance paradigms of traditional Chinese international law (such as changes in the non-direct governance of Tibet, Vietnam, etc.) has continued from the Opium War in the nineteenth century to the rise of China in the new millennium.

China's Approaches to the Western-dominated International Law since the Opium War

China is a representative case on the “historical meaning of international law to non-Western peoples.”³¹ Since the Opium War between 1839-1842, China has been forced into interacting with Western “civilized” powers (including Japan) in accordance with the Western-dominated international law, while traditional Chinese world order and corresponding system of international rules were disintegrating.³² Specifically, the economic interests in Sino-British trade and the conflicts of diplomatic protocols (stemming from different worldviews and different systems of international law) are the two main underlying reasons for the Opium War.³³ The forced signing of the Treaty of Nanjing in 1842 is the starting point of China’s substantive interaction with Western-dominated international law in its modern historical processes of endeavoring to save the nation and the people.³⁴

The Opium War marked the start of the so-called “century of humiliation” (“*bainianguochi*”) for China during 1839-1949, as well as the start of modern Chinese history.³⁵ More than five hundred “unequal treaties” were concluded in modern Chinese history, which had intensively encroached on the sovereignty rights of China and public welfare of Chinese people, this includes the ceding or leasing of territories, forced opening of the ports for trade, imposition of extraterritoriality on foreigners living in China, large amounts of reparations and loss of tariff autonomy.³⁶ China’s past isolation and its reluctance to contact with the West, traditional rules of foreign relations and regional

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31. See Emmanuelle Jouannet, *Universalism and Imperialism: The True-False Paradox of International Law?* 18 EUR. J. INT’L L. 379, 406 (2007).
 32. Unless expressly stated otherwise in this paper, the “Opium War” refers to the First Opium War (1839–42), also known as the Anglo-Chinese War. John K. Fairbank, *Introduction: the Old Order*, in THE CAMBRIDGE HISTORY OF CHINA, VOLUME 10, LATE CH’ING, 1800-1911, PART 1 1-3 (John K. Fairbank eds., 1978).
 33. See STEVE TSANG, A MODERN HISTORY OF HONG KONG 3-13, 29 (2007). ELIZABETH COBBS HOFFMAN, AMERICAN UMPIRE 111 (2013).
 34. See Wang, *supra* note 3, at 238.
 35. See, e.g., Alison Adcock Kaufman, *The “Century of Humiliation,” Then and Now: Chinese Perceptions of the International Order*, 25 PAC. FOCUS 1 (2010).
 36. See DONG WANG, CHINA’S UNEQUAL TREATIES: NARRATING NATIONAL HISTORY 1–2(2005). See, e.g., BOLESŁAW ADAM BOCZEK, INTERNATIONAL LAW: A DICTIONARY 229 (2005); IMMANUEL C.Y. HSU, THE RISE OF MODERN CHINA 239 (1970); STUART. S. MALAWER, IMPOSED TREATIES AND INTERNATIONAL LAW 37 89-90 (1977); Wang, *supra* note 3, at 252-53.

governance system were constantly defeated and torn apart, while Western international law were used to justify colonialism, imperialism and hegemonism since the Opium War in the late Qing, Republic of China [ROC] and People's Republic of China [PRC].³⁷

Chinese open-minded intellectuals and government officials in the late Qing who “opened their eyes to see the world” (*kaiyankanshijie*) realized that traditional Chinese world order could not cope with the invasion of the West by modern military force and economic colonization. This is because it had technologically lagged behind due to the First Industrial Revolution (1760s-1840s) in Europe and China's great wall of self-isolation resultant of Sinocentrism, worldview of “Celestial Empire” (*tianchaoshangguo*) and “Seclusion Policy” (*biguansuoguo*) in the Qing dynasty.³⁸ Only by learning from the powerful West (including Japan) and taking advantage of all the existing resources could the goal of “saving the nation and people” (*jiuguobaozhong*) be possibly achieved.³⁹ Thus, reform and modernization by learning from the West and Japan to preserve the Chinese culture and civilization had gradually attained widely acknowledged legitimacy through many debates with respect to China's modern state-building processes, including both domestic affairs and international relations.

Therefore, along with the deepening of China's engagement and interaction with Western Powers and the Western-dominated international law since the Opium War, China's fundamental perspectives and approaches to the international law have been accumulatively and substantively formed since the late Qing. That is, might is right, and the Western-dominated international law is the accomplice of political oppression and economic exploitation as a language of power and interests.⁴⁰ China has to learn from the West in order to take advantage of the Western-dominated international law to enter into “the family of

37. See Fairbank, *supra* note 32, at 3, 6. See, e.g., Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L. J. 1 (1999). See Anghie, *supra* note 6.

38. See Fairbank, *supra* note 32, at 3.

39. For example, the renowned intellectual, Qichao Liang, argued about the necessity and urgency of reform in his famous series of articles titled “General Ideas on Reform” (*bianfatongyi*) in 1896-1899. Also, Hongzhang Li, a famous Chinese politician, general and diplomat in the late Qing, argued for political reform and modernization so as to preserve the Chinese civilization against invasions of Western powers and Japan.

40. See Wang, *supra* note 3, at 248.

nations” and achieve national rejuvenation to save the nation and the people.⁴¹

Specifically, with respect to its general attitudes, China has been interacting with the Western-dominated international law in a reluctant, instrumental and pragmatic way since the Opium War. Regarding its historical engagement, China has taken advantage of the Western-dominated international law in a historically critical and culturally conservative way as a result of its past experiences of political oppression and economic exploitation. Regarding the continuities and changes of its participation, China has been a passive resistor, progressive taker and proactive maker to the Western-dominated international law. The final goal of China’s participation in international society and interaction with the Western-dominated international law has always been national rejuvenation.⁴²

Specifically, in the late Qing period in 1840-1911, many contacts, corresponding governmental organs and unequal treaties were established with the West, while the late Qing government was actually still functioning on the basis of traditional Chinese world order and considered the Western-dominated international law merely as some diplomatic tools to save itself in Sino-West conflicts.⁴³ Therefore, the fundamental conflicts of worldview and governance paradigms (including specific diplomatic protocols, general principles, etc.) between international law in ancient China (within the tribute system) and the Western-dominated international law (within the Westphalia system) remained unchanged. Such “normative rejection of international law” was partaken not only by China but also by Western powers so as to deny China a civilized sovereign state in the “family of nations” and

41. See, e.g., Yongjin Zhang, *China's Entry into International Society: Beyond the Standard of 'Civilization'*, 17 REV. OF INT. STUD. 3 (1991); Chan, *supra* note 3, at 77.

42. See, e.g., Kim, *supra* note 4, at 128. See Samuel S. Kim, *China and the United Nations*, in *CHINA JOINS THE WORLD: PROGRESS AND PROSPECTS* 42, 80 (Elizabeth Economy & Michel Oksenberg eds., 1999); Chan, *supra* note 3, at 77.

43. For example, the Zongli Yamen was established in 1861 in charge of foreign policy in imperial China during the late Qing dynasty. See, e.g., IMMANUEL C. Y. HSU, *CHINA'S ENTRANCE INTO THE FAMILY OF NATIONS, THE DIPLOMATIC PHASE, 1858-1880* 121-123 (1960); ARNULF BECKER LORCA, *MESTIZO INTERNATIONAL LAW: A GLOBAL INTELLECTUAL HISTORY 1842-1933* 114-117 (2014); DOUGLAS REYNOLDS, *CHINA, 1898-1912: THE XINZHENG REVOLUTION AND JAPAN* (1993); STEPHEN R. MACKINNON, *POWER AND POLITICS IN LATE IMPERIAL CHINA: YUAN SHI-KAI IN BEIJING AND TIANJIN, 1901-1908* (1980).

thus realize their goal of political oppression and economic exploitation.⁴⁴

With the urgent mission of reforming the country and those from the background of constant military defeats and concessions to foreign powers since the Opium War, a new form of learning was introduced. “[L]earning Western science and technology on the basis of Chinese culture and learning” (*zhongtixiyong*) was launched during the Self-Strengthening Movement in the 1860s-1890s, despite that it failed by the defeat in the First Sino-Japanese War (*jiawuzhancheng*) in 1894-1895.⁴⁵ Subsequently, Chinese people were increasingly skeptical towards the traditional Chinese culture and political system.⁴⁶ With more Western ideas pouring into societies, this new Western-dominated international law and world order had partially replaced the previous traditional Chinese world order and international law system in both China and East Asia.⁴⁷ After the final collapse of Qing dynasty and the establishment of the ROC in 1912, the Chinese governments and diplomats were determined to enter into the family of “civilized” nations. This movement was focused on taking advantage of the Western-dominated international law to protect Chinese national interests, despite that most of the time they failed.⁴⁸

In the period of the ROC in 1912-1949 and the PRC since 1949, there may be some changes in the specific approaches to the Western-dominated international law and world order as a result of different ideologies, governments, etc. However, the main theme of all these administrations is the same: modern state building, entering into the family of nations and achieving national rejuvenation for Chinese people.⁴⁹ Under the context of the First World War, the Beiyang

44. See Chan, *supra* note 3, at 868; GERRIT W. GONG, THE STANDARD OF “CIVILIZATION” IN INTERNATIONAL SOCIETY 146, 164 (1984).

45. See Wang, *supra* note 3, at 251; Allen Fung, *Testing the Self-Strengthening: The Chinese Army in the Sino-Japanese War of 1894–1895*, 30 MOD. ASIAN STUD. 1007 (1996).

46. See, e.g., Charlotte Furth, *Intellectual Change: From the Reform Movement to the May Fourth Movement, 1895-1920*, in THE CAMBRIDGE HISTORY OF CHINA, VOLUME 12, REPUBLICAN CHINA 1912-1949, PART 1 322-405 (John K. Fairbank eds., 1983).

47. See, e.g., Zhaojie Li, *International Law in China: Legal Aspect of the Chinese Perspective of World Order*, Thesis (S.J.D.), University of Toronto (Canada) 87 (1996).

48. For example, at the Paris Peace Conference in 1919, the Western powers refused China’s claims and transferred the Germany’s concessions on Shandong to Japan instead.

49. For example, both the governments support and inherit the Three Principles of the People (nationalism, democracy, and the livelihood of the people) developed by Sun Yat-

government (1913-1928) of the ROC attempted to use the Western-dominated international legal rules to protect its territorial integrity and other sovereign rights. However, the Beiyinag government failed in the face of power politics, particularly the “Twenty-One Demands” by Japan in 1915.⁵⁰

Western powers ignored China’s opposition against Japan’s aggression, and Japan’s acquisition of Shandong and other goals were granted.⁵¹ Consequently, China refused to sign the Treaty of Versailles and the May Fourth Movement was set off in 1919, which contributed to the Chinese communist movement.⁵² Chinese people began to reconsider the nature of Western civilization and Western-dominated international law.⁵³ Thus, Chinese government and people were reminded that the Western-dominated international law is nothing but the tool and accomplice of colonialism, imperialism, international oppression and exploitation, power politics, etc.

Afterwards, the Kuomintang government (1925-1948) of the ROC led the Chinese people to win the War of Resistance against Japan (1937-1945). The Kuomintang government succeeded in maintaining that its borders to essentially those of the Qing (minus only Outer Mongolia) by pragmatic diplomacy and usages of the Western-dominated international law, especially Tibet, Xinjiang and Manchuria.⁵⁴ However, the hope of abolishing unequal treaties imposed by Western powers in accordance with the doctrine of *rebus sic standibus*,

sen as part of a philosophy to make China a free, prosperous, and powerful nation. See LYON SHARMAN, SUN YAT-SEN: HIS LIFE AND ITS MEANING, A CRITICAL BIOGRAPHY 94, 271 (1968).

50. For example, China invoked Article 11 of the Covenant of the League of Nations to defend its sovereign rights over the Manchuria against Japan in 1931. Also, China terminated the “unequal treaties” concluded with Belgium in accordance with Article 19 of the Covenant of the League of Nations and the doctrine of *rebus sic standibus* in 1926.
51. See SETH P. TILLMAN, ANGLO-AMERICAN RELATIONS AT THE PARIS PEACE CONFERENCE OF 1919 333-34 (2015).
52. See, e.g., ROCKY M. MIRZA, THE RISE AND FALL OF THE AMERICAN EMPIRE: A RE-INTERPRETATION OF HISTORY, ECONOMICS AND PHILOSOPHY: 1492-2006 332 (2007); XU GUOQI, CHINA AND EMPIRE, IN EMPIRES AT WAR: 1911-1923 233 (Robert Gerwarth & Erez Manela eds., 2014).
53. See Furth, *supra* note 46, at 402.
54. It is also known as “the Second Sino-Japanese War,” as opposed to the First Sino-Japanese War of 1894-1895. See William C. Kirby, *The Internationalization of China: Foreign Relations at home and abroad in the Republican Era*, 150 THE CHINA QUARTERLY 433, 437 (1997); Chan, *supra* note 3, at 871-72.

had been frustrated for a long time until the height of the Second World War (under the context of US's joining the Allies in 1941) and the establishment of the PRC, particularly the problem of extraterritoriality and china as a "civilized" sovereign state.⁵⁵

During the period of the People's Republic of China from 1949-1978, China was regarded as a communist threat and enemy to the Western-dominated world society.⁵⁶ China's approaches to international law in the PRC period could be understood through its attitudes towards the existing world order at that time and foreign policies towards Western countries (especially the US). China's attitudes and approaches to the Western-dominated international law can be found in several aspects: the reexamination of previous treaties concluded by the Kuomintang government and the Qing, "leaning to one side" policy, the doctrines of anti-imperialism, anti-hegemonism, anti-colonialism, "Three Worlds Theory," "Five Principles of Peaceful Co-existence," and support for national independence movement.⁵⁷

Particularly, the "Five Principles of Peaceful Co-existence" represents China's most fundamental and significant approach to Western-dominated international law after China's long way of struggling in semi-colonial times since the Opium War. The principles include no humiliation, political oppression or economic exploitation by Western

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55. See, e.g., Harold Scott Quigley, *Extraterritoriality in China*, 20 AM. J. INT'L L. 46 (1926). See William Callahan, *Nationalising International Theory: Race, Class and the English School*, 18 GLOBAL SOCIETY 305, 321 (2004). See Wang, *supra* note 3, at 248, 261-62. See, e.g., *China-United States: Treaty for the Relinquishment of Extraterritorial Rights in China and the Regulation of Related Matters*. 37 AM. J. INT'L L. 65 (1943).
56. See GORDON H. CHANGE, *FRIENDS AND ENEMIES: THE UNITED STATES, CHINA, AND THE SOVIET UNION, 1948-1972* (1990).
57. Common Program of the Chinese People's Political Consultative Conference (Adopted by the First Plenary Session of the Chinese People's PCC on September 29th, 1949), Article 55. Namely, it is anti-United States and for the Soviet Union. Between the spring and summer of 1949, Chairman Mao Zedong advanced three major principles of foreign policy, including "starting anew," "putting the house in order before inviting guests" and "leaning to one side." For more details, see Ministry of Foreign Affairs of the People's Republic of China, *Formulation of Foreign Policy of New China on the Eve of its Birth*, http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18057.shtml. ZHIYU SHI, *CHINA'S JUST WORLD: THE MORALITY OF CHINESE FOREIGN POLICY 4* (1993). See Sandra Gillespie, *Diplomacy on a South-South Dimension: The Legacy of Mao's Three Worlds Theory and the Evolution of Sino-African Relations*, in *INTERCULTURAL COMM. & DIPL.* 123 (Hannah Slavik eds., 2004); Hanqin Xue, *Chinese Observations on International Law*, 6 CHINESE J. INT'L L. 83, 85-86 (2007).

powers towards an independent new China.⁵⁸ An interesting perspective is that these five principles, specifically the principle of sovereignty, non-aggression and non-interference, have already been alleged as pre-existing fundamental legal principles in the Western-dominated international law, despite that they are merely considered as formal legal rules (or even rhetoric) in the books rather than in the actions towards non-Western nations.⁵⁹ Comparatively, China's emphasis on the "Five Principles of Peaceful Co-existence" appears to be more substantive and anti-hegemonism, particularly among different countries and civilizations during different developmental stages.⁶⁰

Article 54 of the Common Program of the Chinese People's Political Consultative Conference ("CPCPPCC"), which was the provisional constitution from 1949 to 1954, provided as follows:⁶¹

The principle of the foreign policy of the People's Republic of China is protection of the independence, freedom, integrity of territory and sovereignty of the country, upholding of lasting international peace and friendly co-operation between the peoples of all countries, and opposition to the imperialist policy of aggression and war.

Also, the preamble of the 1954 Constitution of the PRC, which was the first constitution of the PRC during 1954-1975 based on the CPCPPCC adopted in 1949, in line with article 56 and 57 of the CPCPPCC, provided the following: "Our country's policy of establishing and extending diplomatic relations with all countries on the principles of equality, mutual benefit and respect for each other's sovereignty and territorial integrity has already yielded success and will continue to be carried out."⁶²

On the basis of the "World Revolution" approach to the existing world order in 1965 and the "Three Worlds Theory" firstly raised by

58. See Chen Tiqiang, *The People's Republic of China and Public International Law*, 8 DALHOUSIE L. J. 3, 24-27 (1984); Hungdah Chiu, *Communist China's Attitude Toward International Law*, 60 AM. J. INT'L L. 245 (1966).

59. For example, the United Nations Charter had substantively mentioned all those principles. See, e.g., Anghie, note 6 (The improvised sovereignty doctrine).

60. See, e.g., THOMAS CIESLIK, THE ROLE OF GREATER CHINA IN LATIN AMERICA, IN GREATER CHINA IN AN ERA OF GLOBALIZATION 161-184 (Sujian Guo & Baogang Guo eds., 2010); YOUNG-CHAN KIM, CHINA AND AFRICA: A NEW PARADIGM OF GLOBAL BUSINESS 130-31 (2017).

61. The Common Program of The Chinese People's Political Consultative Conference, art. 54, Sept. 29, 1949.

62. *Id.* at art. 56-57.

Mao Zedongin 1974, Mao's attitudes towards the West (and even the whole "Other") were both radical and conservative, idealistic and realistic, as well as succeeding and negating the previous methods and experiences.⁶³ That is, ideological concerns, as well as nationalism and internationalism, were operating simultaneously in the making of China's worldview and foreign policies (which was dominated by Mao in 1949-1976). For example, the "leaning to one side" policy in the 1950s was based on both ideological reasons and realistic concerns of national interests, while the Sino-Soviet split in the 1960s was more about the leadership of international communist movement.⁶⁴ On one hand, the underlying motivations of the evolutionary approach to the existing world order were ideological concerns, and on the other hand, institutional and realistic reasons, as the PRC had not participated in the formulation and design of the existing post-World War II world order. Moreover, its previous historical experiences during the "century of humiliation" led to substantial political distrust of the West.⁶⁵

Apparently, China was not only ideologically conservative and critical towards the existing international legal order (particularly the imperialism and United States) at that time. It also directly

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63. See People's Daily, *Chairman Mao's Theory of the Differentiation of the Three Worlds is a Major Contribution to Marxism-Leninism*, Nov. 1, 1977; Chen Jian, *China and the Bandung Conference: Changing Perceptions and Representations*, in *BANDUNG REVISITED: THE LEGACY OF THE 1955 ASIAN-AFRICAN CONFERENCE FOR INTERNATIONAL ORDER* 144-46 (Seng Tan & Amitav Acharya eds., 2008). See, e.g., Li Jie, *Changes in China's Domestic Situation in the 1960s and Sino-U.S. Relations*, in *RE-EXAMING THE COLD WAR: U.S. - CHINA DIPLOMACY, 1954-1973* (Robert S. Ross & Changbin Jiang eds., 2001); Dhruva Kumar, *Mao and China's Foreign Policy Perspectives* (1989); Huiyun Feng, *CHINESE STRATEGIC CULTURE AND FOREIGN POLICY DECISION-MAKING: CONFUCIANISM, LEADERSHIP AND WAR* 47, 59 (2007); Houman A. Sadri, *REVOLUTIONARY STATES, LEADERS AND FOREIGN RELATIONS: A COMPARATIVE STUDY OF CHINA, CUBA, AND IRAN* 55-57 (1997); Carol Lee Hamrin, *Elite Politics and the Development of China's Foreign Relations*, in *CHINESE FOREIGN POLICY: THEORY AND PRACTICE* 70-109 (Thomas W. Robinson & David L. Shambaugh eds., 1995).
64. See, e.g., Frederick C. Teiwes, *Establishment and Consolidation of the New Regime*, in *THE CAMBRIDGE HISTORY OF*, vol. 14, *The People's Republic, THE PEOPLE'S REPUBLIC, PART 1: THE EMERGENCE OF REVOLUTIONARY CHINA 1949-1965* (Roderick Macfarquhar & John K. Fairbank eds., 1987); Allen S. Whiting, *The Sino-Soviet Split*, in *THE PEOPLE'S REPUBLIC, PART 1: THE EMERGENCE OF REVOLUTIONARY* 478-538.
65. See, e.g., Frederick C. Teiwes, *Establishment and Consolidation of the New Regime*, in *THE CAMBRIDGE HISTORY OF*, vol. 14, *The People's Republic, THE PEOPLE'S REPUBLIC, PART 1: THE EMERGENCE OF REVOLUTIONARY CHINA 1949-1965* (Roderick Macfarquhar & John K. Fairbank eds., 1987); Allen S. Whiting, *The Sino-Soviet Split*, in *THE PEOPLE'S REPUBLIC, PART 1: THE EMERGENCE OF REVOLUTIONARY* 478-538.

confrontational and rejective, as the Western-dominated international law has always been considered as the mouthpiece of hegemonism, imperialism, international oppression and exploitation towards non-Western countries due to its low inclusiveness.⁶⁶ Also, China believed that it could achieve the goal of national rejuvenation by confrontation against the existing Western-dominated world order. However, due to Mao's revolutionary movements and other policies of ideological confrontation, China had stayed in poverty; and the dream of national rejuvenation had stranded for decades with both traditional Chinese culture and Western-dominated international law stigmatized.⁶⁷

In October 1971, the PRC government replaced the Taiwan government as the representative government of China in the United Nations ("UN").⁶⁸ Despite its continuous hostility towards the UN and Western-dominated international legal system, such as its non-recognition of the compulsory jurisdiction of the International Court of Justice ("ICJ") in 1972, China started to gradually engage with and integrate into the Western-dominated international legal order.⁶⁹

During the period of the PRC since 1978 with the new national policy of "reform and opening-up," the focus of Chinese domestic policies changed from "class struggle" to economic development, as it was believed by the new leaders (especially Deng Xiaoping) that peace and development (rather than war and revolution) are the major themes of this era and also the primary needs of China.⁷⁰ China's foreign policies have come back to the pragmatic approach of "independent foreign policy of peace," which includes: (1) safeguarding its independence, sovereignty and territorial integrity, (2) anti-hegemonism for world peace, (3) promoting the establishment of a more democratic

66. See *China Calls Arbitral Court "Mouthpiece" for Certain Groups*, XINHUA NEWS (July 4, 2016), http://news.xinhuanet.com/english/2016-07/04/c_135488172.htm.

67. See Hungdah Chiu, *Communist China's Attitude toward International Law*, 60 AM. J. INT'L L. 245 (1966).

68. See G.A. Res. 2758 (XXVI), Restoration of the Lawful Rights of the People's Republic of China in the United Nations (Oct. 25, 1971).

69. See Natalie G. Lichtenstein, *The People's Republic of China and Revision of the United Nations Charter*, 18 HARV. INT'L. L. J. 629 (1977); Chan, *supra* note 3, at 886.

70. See, e.g., CHINA'S ECONOMIC REFORM: A STUDY WITH DOCUMENTS 80 (Christopher Howe et al. 2003); Yang Yi, *Modernization of China's National Defense, in TRANSFORMATION OF FOREIGN AFFAIRS AND INTERNATIONAL RELATIONS IN CHINA* 241-42, 1978-2008 (Wang Yizhou eds., 2011).

and equitable new international political and economic order, and (4) upholding the Five Principles of Peaceful Co-Existence, etc.⁷¹

Deng Xiaoping believed that China's national rejuvenation, particularly economic reform and development for the purpose of "four modernizations," could only be achieved within the existing Western-dominated world order and international legal system.⁷² Therefore, under the guideline of "keep a low profile and achieve something" (*taoguangyanghui, yousuozuowei*), China's goal is to achieve economic and political reform within the framework of Western-dominated world order and international law through general learning from the West and effective sinicization to the needs of China (with Chinese characteristics).⁷³ Thus, China's approach has become pragmatically taken advantage of existing international law to achieve economic and political reform for the purpose of national rejuvenation.⁷⁴

Therefore, China has deeply embraced the Western-dominated international economic order while refusing to comprehensively participate in international human right law, international dispute settlement by judicial means, international criminal law, and other sensitive areas of international law. It is evident that China has been still under the past shadow of "economic exploitation and political oppression" by foreign powers by virtue of international law as a language of power and interests.⁷⁵ To some extent, the independent and peaceful path of economic development and political reform "with Chinese characteristics" since 1978 is the modified version of the "learning Western science and technology on the basis of Chinese culture and learning"

71. It is also called China's "Independent and Peaceful Development Strategy." See *China's Independent Foreign Policy of Peace*, Ministry of Foreign Affairs of the People's Republic of China (Sept. 19, 2003), http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjzg_663340/zcyjs_663346/xgxw_663348/t24_942.shtml (It is also called China's "Independent and Peaceful Development Strategy.")

72. The Four Modernizations include the modernization of agriculture, industry, science and technology, and the military. See Mingjiang Li, *Rising from Within: China's Search for a Multilateral World and Its Implications for Sino-US Relations*, 17 GLOBAL GOVERNANCE 331 (2011).

73. See, e.g., Yan Xuetong, *From Keeping a Low Profile to Striving for Achievement*, 153 CHINESE J. INT. POLIT. 184 (2014); Zhu Liqun, CHINA AND THE INTERNATIONAL SOCIETY: ADAPTATION AND SELF-CONSCIOUSNESS 41-42 (Jinjun Zhao & Zhirui Chen eds., 2014).

74. See RICHARD BAUM, BURYING MAO: CHINESE POLITICS IN THE AGE OF DENG XIAOPING 56-57 (1996) (The underlying philosophy is still to learn from the West to save the nation and the people).

75. See Kim, *supra* note 4, at 157.

(*zhongtixiyong*) movement in 1860s-1890s, in spite of different contexts and narratives.

Afterwards, different leaders of the PRC would constantly update and interpret these principles by adopting specific policies and new concepts in different contexts and for different needs. Some of these needs include, “China as the largest developing country,” “China’s peaceful development” and “build a harmonious world,” “China’s core interests,” “new type of great power relations,” “never seek hegemony,” “great rejuvenation of the Chinese nation” and “Chinese dream,” “two centennial goals,” “community of shared future for mankind,” etc.⁷⁶ The final goal has always been to become a great power to effectively achieve national rejuvenation without direct confrontation with the West and existing international legal system in accordance with Deng’s guideline.

In June 2016, Russia and China adopted a declaration on the promotion of international law to “enhance their cooperation in upholding and promoting international law and in establishing a just and equitable international order based on international law,” emphasizing the “principles of international law” and criticizing double standards in the Western-dominated international law.⁷⁷ This declaration is in line with

76. See Marcia Don Harpaz, *China and the WTO: New Kid in the Developing Bloc?* HEBREW UNIV. INT’L L. 2-07; Xue, *supra* note 3, at 94, 169, 200; Ministry of Foreign Affairs of the People’s Republic of China, *China Issues White Paper on Peaceful Development* (Sept. 7, 2011), http://www.fmprc.gov.cn/mfa_eng/topics_665678/whitepaper_665742/t856325.shtml; WILLY WO-LAP LAM, CHINESE POLITICS IN THE ERA OF XI JINPING: RENAISSANCE, REFORM, OR RETROGRESSION? 193-94 (2015). Toshi Yoshihara & James R. Holmes, *Can China Defend a “Core Interest” in the South China Sea?*, 34 THE WASHINGTON QUARTERLY 45 (2011); Qi Hao, *China Debates the ‘New Type of Great Power Relations’*, 8 CHINESE J. INT. POLIT. 349 (2015); Dingding Chen & Jianwei Wang, *Lying Low No More?: China’s New Thinking on the Tao Guang Yang Hui Strategy*, 9 CHINA: AN INT’L J. 195, 198 (2011); Zheng Wang, *Not Rising, But Rejuvenating: The “Chinese Dream”*, THE DIPLOMAT (Feb. 05, 2013), <http://thediplomat.com/2013/02/chinese-dream-draft/>. See, e.g., TIMOTHY R. HEATH, CHINA’S NEW GOVERNING PARTY PARADIGM: POLITICAL RENEWAL AND THE PURSUIT OF NATIONAL REJUVENATION 218 (2016); H.E. Xi Jinping, President of the People’s Republic of China, Speech at the United Nations Office at Geneva, Switzerland: Work Together to Build a Community of Shared Future for Mankind (Jan. 18, 2017), http://news.xinhuanet.com/english/2017-01/19/c_135994707.htm.

77. Ministry of Foreign Affairs of the People’s Republic of China, *Declaration of the Russian Federation and the People’s Republic of China on the Promotion of International Law* (June 26, 2016), http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1386141.shtml.

previous China-Russia Joint statements in 1997, 2005, 2008, etc.⁷⁸ As China and Russia have always considered the existing Western-dominated international legal system as the hegemonic tool with structural biases for the dominance of the West, it vividly illustrates divergences and struggles among different approaches to international law by Western and non-Western powers.⁷⁹ China has been sticking to the “Five Principles of Peaceful Coexistence” and adhering to the establishment of a “New International Economic Order” because of its historical sufferings and traditional worldviews.⁸⁰

There are lines of continuities and changes in China’s approach to international law from ancient China, late modern China, to the present. Chinese perceptions of the Western-dominated international law are based on many aspects that are inherited and reinforced as parts of China’s culture, worldview, history, and national identity.⁸¹ China, as the world’s oldest continuous civilization pushing through thick and thin, has been evolutionary in its foreign policy, worldview, and culture of governance.⁸² Understanding the origins and forces in Chinese culture and history provides a framework for the lines of continuities

78. See *Joint Statement of the People’s Republic of China and the Russian Federation On Major International Issues*, 23 May 2008; *Joint Statement of the People’s Republic of China and the Russian Federation on the International Order of the 21st Century*, 1 July 2005; *Joint Statement of the People’s Republic of China and the Russian Federation on A Multi-polar World and the Establishment of A New International Order*, 23 Apr. 1997.

79. See Lauri Mälksoo, *Russia and China Challenge the Western Hegemony in the Interpretation of International Law*, EJIL: TALK! (July 15, 2016), <https://www.ejiltalk.org/russia-and-china-challenge-the-western-hegemony-in-the-interpretation-of-international-law/>; see also Ingrid Wuerth, *China, Russia, and International Law*, L. FARE BLOG (July 11, 2016), <https://www.lawfareblog.com/china-russia-and-international-law/>; Fu Ying & Wu Shicun, *South China Sea: How We Got to This Stage*, THE NATIONAL INTEREST (May 9, 2016), <http://nationalinterest.org/feature/south-china-sea-how-we-got-stage-16118>.

80. See G.A. Res. 3201 (S-VI), ¶ 4 (May 1, 1974).

81. See Schwartz, *supra* note 16, at 287.

82. See Hobson, *supra* note 2, at 182; see also Zhao, *supra* 29, at 962. For example, the Five Principles of Peaceful Co-existence, Chinese understandings on the “democratic deficits” of the Western-dominated international legal system, global governance paradigms, etc., have been important components of Chinese perceptions towards the Western-dominated international law and global governance. Their underlying origins are from traditional Chinese worldview of “world order under the heaven” (“*tianxia*”), the utopian goal of “great peace” (“*da tong*”), etc. The concept of “Community of Common Destiny” (“*mingyungongtongti*”) initiated by President Xi Jinping also demonstrates Chinese worldview, final goal and global governance paradigms in contrast with Western analogues.

and changes in China's approaches to international law since the Opium War.

South China Sea Arbitration Case: “Yesterday Once More” in Chinese History of the Western-dominated International Law

It is always necessary to understand the current situations of international law in the context of the historical evolution (and interaction) of China and the West in order to formulate general frameworks and accurate insights of the past, present and future.⁸³ Comparatively, progress in scientific technologies amidst the industrialization and modernization processes could be made in a prompter way than changes in the culture of nations. It is true that China has made great progress in industrialization and modernization in the last century (particularly since 1978), but there is much continuity warranted between the traditional and contemporary China on the cultural aspects of its basic worldviews and national identity.⁸⁴ The legal system, particularly international law as the extension of domestic governance culture in a certain civilization, could illustrate that point.⁸⁵ This connection and contextualization are necessary for historical and critical understandings of the contemporary international law and future world order, particularly in light of China's experiences in its late modern history and the rise of China in the twenty-first century.⁸⁶

China's critical and conservative attitudes towards the Western-dominated international law has always hangs there as the shadow of the modern history of “century of humiliation.”⁸⁷ China's emphasis on the Five Principles of Peaceful Co-existence, its hostility to international (quasi-) judicial dispute settlement mechanisms, its desire to learn from the West and also reform the existing Western-dominated

83. See Bardo Fassbender & Anne Peters, *Introduction: Towards A Global History Of International Law*, THE OXFORD HANDBOOK OF THE HIST. OF INT'L LAW 1, 24 (Bardo Fassbender & Anne Peters eds., 2012); Shin Kawashima, *China*, THE OXFORD HANDBOOK OF THE HIST. OF INT'L LAW 451, 473 (Bardo Fassbender & Anne Peters eds., 2012).

84. See, e.g., Zhao, *supra* note 82, at 367.

85. See Schwartz, *supra* note 16, at 276.

86. See G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?*, 87 FOREIGN AFFAIRS 23 (2008); Philip R. Trimble, *International Law, World Order, and Critical Legal Studies*, 42 STAN L. REV. 811 (1989).

87. See Kim, *supra* note 5, at 157.

international law system for a more democratic and equitable world order, etc. have demonstrated China's fundamental approaches to international law.⁸⁸ As such, a representative and latest example is the South China Sea arbitration case in 2013-2016, which vividly illustrates China's contemporary approach to the Western-dominated international law in the twenty-first century.⁸⁹

Generally, there are several significant political and legal aspects of the South China Sea arbitration case. Firstly, China does not recognize the jurisdiction of the Arbitral Tribunal in accordance with Annex VII of the United Nations Convention on the Law of the Sea ("UNCLOS") as "the essence of the subject-matter of the arbitration is territorial sovereignty over several maritime features in the South China Sea." Despite that, China's position of non-acceptance and non-participation did not bar this Tribunal from proceeding with the arbitration.⁹⁰ Secondly, the arbitration award comprehensively supported most of the Philippines's claims and ruled against China with a controversial approach of "progressive and ambitious" interpretation to relevant clauses, declaring the nine-dash line invalid and even the biggest naturally formed island in Nansha Islands, Taiping Island (Itu Aba), as no "fully entitled island."⁹¹ Thirdly, the arbitration case is initiated with profound political elements under the context of America's "Asia-Pacific Rebalance" Strategy since 2012 and the rhetoric of "the rise/threat of China" in international politics, and the arbitration award

88. See, e.g., SOPHIE RICHARDSON, CHINA, CAMBODIA, AND THE FIVE PRINCIPLES OF PEACEFUL COEXISTENCE (2010). See Julian Ku, *China and the Future of International Adjudication*, 27 MD. J. INT'L L. 154 (2012); James A. R. Nafziger & Ruan Jiafang, *Chinese Methods of Resolving International Trade, Investment, and Maritime Disputes*, 23 WILLIAMETTE L. REV. 619 (1987); CHINA AND THE NEW INTERNATIONAL ORDER (Wang Gungwu & Zheng Yongnian eds., 2008); William A. Callahan, *Chinese Visions of World Order: Post-hegemonic or a New Hegemony?*, 10 INT'L STUD. REV. 749 (2008).

89. See *Debate Map: Disputes in the South and East China Seas*, OXFORD PUB. INT'L LAW, <http://opil.ouplaw.com/page/222/debate-map-disputes-in-the-south-and-east-china-seas> (last updated Mar. 23, 2017).

90. Ministry of Foreign Affairs of the People's Republic of China, Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines ("China's Position Paper"), 7 December 2014, ¶ 4.

Annex VII of the UNCLOS provides that the "[a]bsence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings."

91. See PCA Case No. 2013-19 of 2016, *The South China Sea Arb.* ¶¶ 632, 643-48; China's Position Paper, *supra* note 90, ¶¶ 19-22.

seems to do no good but only bring about chaos to the South China Sea and Asia.⁹² Fourthly, many Western countries, such as the US and Australia, pressed China to enforce the arbitration award, while many other countries are for bilateral negotiations to resolve the disputes.⁹³

There is no doubt that China will not recognize or enforce the award, and the South China Sea has entered into a new round of big-power political gambling and geopolitical rivalries, particularly between the US and China.⁹⁴ The arbitration award is neither a game changer nor going to have real-world legal impacts due to China's non-recognition, but rather another rhetoric in international politics and a bargaining chip in the grand chessboard.⁹⁵ International law has exposed its close relationship (or even subordination) to international politics, as well as the mystery of global governance, the myth of international rule of law, the structural biases of Eurocentrism and low inclusiveness of the Western-dominated international law, and also other paradoxes thereof.⁹⁶ Once again, international law holds a

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92. See Robert S. Ross, *The Problem With the Pivot: Obama's New Asia Policy Is Unnecessary and Counterproductive*, 91 FOREIGN AFFAIRS 70 (2012); Bonnie Glaser & Brittany Billingsley, *US-China Relations: US Pivot to Asia Leaves China off Balance*, 13 COMPARATIVE CONNECTIONS 29 (2011); Eric A. Posner & John Yoo, *International Law and the Rise of China*, 7 CHINESE J. INT'L L. 1 (2006); Barry Buzan, *China in International Society: Is 'Peaceful Rise' Possible?* 3 CHINESE J. INT'L POLIT. 5 (2010); Feng Zhang, *South China Sea Arbitration Award: Breathtaking (But Counterproductive)*, THE NATIONAL INTEREST (July 16, 2016) <http://nationalinterest.org/blog/the-buzz/south-china-sea-arbitration-award-breathtaking-17004>.
93. See U.S. Dep't of State, *Decision in the Philippines-China Arbitration*, (July 12, 2016), <http://www.state.gov/r/pa/prs/ps/2016/07/259587.htm>.; Australian Minister for Foreign Affairs, *Australia Supports Peaceful Dispute Resolution In The South China Sea* (July 12, 2016), http://foreignminister.gov.au/releases/Pages/2016/jb_mr_160712a.aspx.; M. Taylor Fravel et. al., *What Is the Future of the South China Sea?*, FOREIGN POLICY (July 12, 2016), <http://foreignpolicy.com/2016/07/12/what-is-the-future-of-the-south-china-sea/>.
94. See Leszek Buszynski, *The South China Sea: Oil, Maritime Claims, and US-China Strategic Rivalry*, 35 THE WASHINGTON QUARTERLY 139 (2012); Jane Perlez & Chris Buckley, *U.S. and Beijing Offer Competing Views on South China Sea*, THE NEW YORK TIMES (June 7, 2016), http://www.nytimes.com/2016/06/08/world/asia/us-south-china-sea-talks.html?_r=0.
95. See Diane Desierto, *The Philippines v. China Arbitral Award on the Merits as a Subsidiary Source of International Law*, EJIL TALK (July 12, 2016), <http://www.ejiltalk.org/the-philippines-v-china-arbitral-award-on-the-merits-as-a-subsi-dia-ry-source-of-international-law/>; ZBIGNIEW BRZEZINSKI, THE GRAND CHESSBOARD: AMERICAN PRIMACY AND ITS GEOSTRATEGIC IMPERATIVES (1997).
96. See JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005); FRANCIS ANTHONY BOYLE, WORLD POLITICS AND INTERNATIONAL LAW (1985); EDWIN

position of powerlessness, perplexity, non-enforcement, crisis of legitimacy and inclusiveness.⁹⁷ Moreover, the South China Sea arbitration case is a new layer of these unhappy memories of the Western-dominated international law for China, as the Western-dominated international law has come with humiliation, exploitation and oppression in terms of “international law’s meaning to non-Western nations and peoples.”⁹⁸ The Western-dominated international law has not always been part of the solution, but rather part of the problem.⁹⁹

Moreover, this arbitration case demonstrates different perceptions and conceptions of international law by China and Western countries, which originates from different historical experiences, civilizational geneses, worldviews, and cultures. On the one hand, China believes that it has enjoyed the sovereign rights over these islands in the South China Sea since the Second World War and these rights have been widely recognized.¹⁰⁰ More importantly, these sovereign and historic rights are exercised by both effective control and Chinese traditional way of non-ruling governance, and they should be fully respected in a manner of justice and fairness.¹⁰¹ China considers them as basic historical facts and the Western-dominated international law should not be intentionally or strategically interpreted to undermine them without sufficient consideration of the history of the disputes regions and

EGEDE & PETER SUTCH, *THE POLITICS OF INTERNATIONAL LAW AND INTERNATIONAL JUSTICE* (2013).

97. See Joseph Klein, *South China Sea: UN Law of the Sea Arbitration Tribunal Sinks the Rule of Law*, (Aug. 20, 2016), <http://www.foreignpolicyjournal.com/2016/08/20/south-china-sea-un-law-of-the-sea-arbitration-tribunal-sinks-the-rule-of-law/>; Jacques de Lisle, *The South China Sea Arbitration Decision: China Fought the Law, and the Law Won. ...Or Did It?*, (July 12, 2016), <http://www.fpri.org/article/2016/07/south-china-sea-arbitration-decision-china-fought-law-law-won/>.
98. See K. J. Noh, *Making a Mockery of International Law: the Arbitral Tribunal on the South China Sea Prepares the Way for War*, (July 19 2016), <http://www.counter-punch.org/2016/07/19/making-a-mockery-of-international-law-the-arbitral-tribunal-on-the-south-china-sea-prepares-the-way-for-war/>.
99. See KENNEDY, *THE DARK SIDES OF VIRTUE*, *supra* note 15, at 266-72; FRIEDRICH KRATOCHWIL, *THE STATUS OF LAW IN WORLD SOCIETY: MEDITATIONS ON THE ROLE AND RULE OF LAW* 2(2014); Andrew Hurrell, *Global Inequality and International Institutions*, 32 *METAPHILOSOPHY* 34, 43-44 (2001).
100. See generally *THE SOUTH CHINA SEA ARBITRATION: A CHINESE PERSPECTIVE* (Stefan Talmon & Bing Bing Jia eds., 2014).
101. See Fu Ying, *Why China Says No to the Arbitration on the South China Sea*, *FOREIGN POLICY*, July 10, 2016; China’s Position Paper, *supra* note 90; Zhiguo Gao & Bing Bing Jia, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, 107 *AM. J. INT’L L.* 98 (2013).

entitlements.¹⁰² Also, as China had issued the jurisdiction exclusion declaration, nobody should force China into some Western-dominated proceedings in view of all these humiliations China had endured in the last two centuries of political oppression and economic exploitation.¹⁰³ However, on the other hand, a few countries in the ASEAN and some Western countries behind the scene claim that all these rights are ambiguous and undergoing changes by effective control of islands, the ratification of the UNCLOS and the evolution of other international rules.

International legal rules could always be interpreted and argued in many ways to support totally different (or even contradictory) claims, to justify or outlaw various conducts; and the existing Western-dominated international law has always been closely related to Western powers and their interests in its historical evolution from the periods of colonization, imperialism, and hegemonism, to the contemporary mystery of global governance and myth of global rule of law.¹⁰⁴ To a great extent, the existing Western-dominated international law is the extension of Western values and worldviews while alternatives from other civilizations are suppressed and ignored, and thus the legitimacy and effectiveness of international law are undermined as a result of its inclusiveness and representativeness deficits.¹⁰⁵ It has been happening in Africa, Middle East, South China Sea and many other places that the Western-dominated international law has not been the tool for global justice or the solution to global governance dilemmas, but the reinforcer of the existing structural biases or part of the systematic violence.¹⁰⁶

It goes to the heart of the fundamental question: what is the Western-dominated international law and what is the Western-dominated international law for? From the perspective of historical and critical

102. See Alan E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*, 46 INT'L & COMP. L. Q.37 (1997).

103. See U.N. Convention on the Law of the Sea, art. 288, Dec. 10, 1982, 1833 U.N.T.S. 397.

104. See Simpson, *supra* note 6; Focarelli, *supra* note 6, at 4.; Tom J. Farer, *Political and Economic Coercion in Contemporary International Law*. 79 AM. J. INT'L L. 405 (1985); Anghie, *supra* note 6, at 32.

105. See Brzezinski, *supra* note 95, at 24-29.

106. See David Kennedy, *Law and the Political Economy of the World*, 26 LEIDEN J. INT'L L.7 (2013) (The inequality and injustice in the international political and economic life are the creature of international law).

studies of international law, these are glimpses of the dark sides of the Western-dominated international law since its inception.¹⁰⁷ That's why it should not be defined as the "clash of civilizations" but the "clash of ignorance."¹⁰⁸ That is, the structural biases of Eurocentrism and ignorance in international law give rise to the systematic violence of global governance and struggles of non-Western people.

China's approaches to international law have been a representative part of that grand story. For instance, China's hostility to international judicial mechanisms comes from: (1) its historical experiences of the dark sides of international law, (2) its belief in justice and fairness in the naturalism rather than the legal positivism of international law; and (3) its traditional desire of order and harmony in Asia through non-Western non-judicial manners.¹⁰⁹ The existing Western-dominated international law is considered by many non-Western nations, particularly China, as the legal tool for the pursuit of interests in international politics, the language of Western values and worldviews, and an integral part of the culture of Western-dominated governance

107. See Martti Koskenniemi, *The Politics of International Law—20 Years Later*, 20 EUR. J. INT'L L. 7 (2009). Kennedy, *THE DARK SIDE OF VIRTUE*, *supra* note 6; Orford, *READING HUMANITARIAN INTERVENTION*, *supra* note 6.

108. See Samuel P. Huntington, *The Clash of Civilizations?*, 73 COUNCIL ON FOREIGN RELATIONS 22 (1993); Edward W. Said, *The Clash of Ignorance*, THE NATION, October 22, 2001, at 1; Karim H. Karim & Mahmoud Eid, *Clash of Ignorance*, 5 GLOB. MEDIA J. – CAN. ED. 7 (2012). ("The clash of ignorance provides a critique of the clash of civilizations theory by addressing the particular problem of ignorance in intercultural and international interactions. It challenges the assumption of the Self and the Other, and it argues that the causes of global governance dilemmas "are not to be found in an unavoidable clash of civilizations but in ignorance". Namely, the "clash of civilizations" theory and other similar scholarship are abstract and constructed distortion of the reality, which are detached from the reality and ineffective to describe, analyze and critique the reality. The power-knowledge co-production entrenches structural biases and systematic violence into the scholarship to main the structural biases (power, interests and injustice) in global governance. This "clash of ignorance" critique could also apply to international law and international legal scholarship to reveal the structural biases thereof. And those dark sides of international law, structural biases in international legal scholarship, etc., have been pointed out by many other critical studies of international law.).

109. See Michael D. Swaine, *Chinese Views on the South China Sea Arbitration Case between the People's Republic of China and the Philippines*, <http://carnegiendowment.org/files/CLM51MS.pdf>; Institute for Security & Development Policy, *Understanding China's Position on the South China Sea Disputes*, BACKGROUNDERS, (June 2016), <http://isdip.eu/publication/understanding-chinas-position-south-china-sea-disputes/>; China's Position Paper, *supra* note 90.

paradigms.¹¹⁰ The myth of “international rule of law” seems to be the rule of Western-dominated international law for Western-dominated global governance paradigms.¹¹¹

The South China Sea arbitration case reveals different historical narratives of Western-dominated international law, different imagination of global governance and different ideas of world order. The arbitration case also exposes the ignorance and struggles that “the Rest” have endured from the West in terms of the structural biases and systematic violence of Eurocentrism in international law and international legal expertise. It subtly unfolds the ignorance and structural biases in existing international legal scholarship, particularly the blind spots on the dark sides of Western-dominated international law and overstatements of its nobility. This arbitration case provides a good critique on expansionist arguments and progressive narratives of the Western-dominated international law in view of the historical expansion of European international law.¹¹² Different narratives of history, diverse imagination of orders and worldviews, and disparate language and culture of global governance are more fundamentally significant than technical and legal debates within the legal positivism of international law in the South China Sea arbitration case.

The South China Sea arbitration case illustrates the conflicts between Chinese perceptions of international law and the Western-dominated international law since the Opium War.¹¹³ China’s approaches to international law are based firstly on its traditional worldview and culture (particularly the beliefs in naturalistic justice and fairness, and desire of order and harmony through non-Western non-judicial manners), and secondly on its historical experiences with the Western-dominated international law. China has been conservative towards

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110. See Monica Garcia-Salmones Rovira, *The Project of Positivism in International Law*, 25 EUR. J. INT’L L. 599, 602 (2014) (book review); Steven R. Ratner, *The Thin Justice of International Law: A Moral Reckoning on the Law of Nations*, 27 EUR. J. INT’L L. 1169, 1170 (2015) (book review).
 111. See DAVID KENNEDY, *The Mystery of Global Governance*, in *RULING THE WORLD?: CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE*, 51 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009); FRANK J. GARCIA, *TRADE, INEQUALITY, AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE* (Martinus Mijhoff, 1st ed. 2003).
 112. See Jochen von Bernstorff, *International Legal Scholarship as a Cooling Medium in International Law and Politics*, 25 EUR. J. INT’L L. 977, 989 (2014).
 113. See Li Chen, *Universalism and Equal Sovereignty as Contested Myths of International Law in the Sino-Western Encounter*, 13 J. HIST. INT’L L. 75 (2011).

Western-dominated international law as a result of international law's dark sides and lack of inclusiveness. The divergences among different perceptions of current Western-dominated international law are very likely to increase.¹¹⁴ Thus, current Western-dominated international law and global governance paradigms are undergoing potential crises of legitimacy and effectiveness due to the Eurocentrism and "clash of ignorance." The South China Sea arbitration case is a scene of "yesterday once more" in Chinese history.

The Rise of China and the Future of International Law

The existing international legal system has inherited much from colonialism, imperialism, hegemonism, etc. in a close and continuing historical relevance of the past.¹¹⁵ The history and contemporary evolution of international law are woven into the same narratives, discourse, knowledge, language and culture of international law, global governance and international legal scholarship.¹¹⁶ International law is utilized to name and rename, mythicize and re-mythicize, to make law and to outlaw. Doing so realizes various economic and political interests in a globalized but still decentralized world society.¹¹⁷ The evolution of China's approaches to international law since the Opium War has gone hand in hand with the evolution of the Western-dominated international law in terms of both its noble goals and dark sides.¹¹⁸

Western-dominated international law takes "interest" in the central concept of international cooperation and competition (while justice and morality) are disregarded. Legal positivism assumes that international law, as a normative vision of the world society and as a

114. See Routledge, *INTERNATIONAL LAW IN A MULTIPOLAR WORLD* (Matthew Happold ed., 2012.); Bobo Lo, *RUSSIA AND THE NEW WORLD ORDER* (Brookings Inst. ed., 2015.); *THE EMERGING POWERS AND THE EMERGING WORLD ORDER: BACK TO THE FUTURE?* (Steen Fryba et. al. eds. 1st ed. 2016.); Barry Buzan, *China in International Society: Is 'Peaceful Rise' Possible?*, 3 *CHINESE J. OF INT'L POL.* 5, 12 (2010).

115. See Anghic, *supra* note 6.

116. See KENNEDY, *A WORLD OF STRUGGLE*, *supra* note 6, at 199; Samuel Moyn, *Knowledge and Politics in International Law*, 129 *HARV. L. REV.* 2164 (2016); SHEILA JASANOFF, *THE IDIOM OF CO-PRODUCTION*, IN *STATES OF KNOWLEDGE: THE CO-PRODUCTION OF SCIENCE AND SOCIAL ORDER I* (Sheila Jasanoff eds., 2004).

117. See Focarelli, *supra* note 6, at 4.; Simpson, *supra* note 6.; KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 6, at 516-17; See Koskenniemi, *FROM APOLOGY TO UTOPIA*, *supra* note 15, at 562-617.

118. See Fassbender & Peters eds., *supra* note 83; Kennedy, *A WORLD OF STRUGGLE*, *supra* note 6.

normative language for international discourse, could apolitically report the reality of world society. However, due to ideological and structural biases in international law and international legal expertise, it cannot.¹¹⁹ Positivism in international law leads to the following consequences: the detachment of law from reality, elimination of politics from law, and definitive transformation of law into a tool at the service of interests.¹²⁰

The positivism of international law ignores the reality of the world society and the evolution of international law in this world society. Thus, these ideological and structural biases inherited from imperialism and other dimensions of the Eurocentric history of international law are covered up.¹²¹ The positivism of international law facilitates the embellishment of the Eurocentric history of international law. Further positivism hides these biases to maintain the effectiveness, legitimacy and dominance of the contemporary Western-dominated international legal system and global governance paradigms. These ideological and structural biases are woven into the positivism of international law and reinforced by the Eurocentric narratives of the history of international law. International law has never apolitically reported on and responded to the reality of the world society.¹²²

If the science of international law, the normativity and positivism of international law, are not able to accurately respond to reality said law and legal scholarship become artificial rhetoric in close connection with power, interests and politics. The seemingly productive, systematization of international law and enhanced legitimacy of the Western-dominated international law reinforces international law to be a tool for international exploitation and dominance by some countries.¹²³ The result is injustice and conflicts in world society more injustices, imbalances and potential conflicts in this world society as structural biases

119. See Thomas Pogge, *Divided against Itself: Aspiration and Reality of International Law*, in THE CAMBRIDGE COMPANION TO INT. L. 373 (James Crawford & Martti Koskenniemi eds., 2012).

120. See Rovira, *supra* note 110, at 603.

121. See Kratochwil, *supra* note 99.

122. See Rovira, *supra* note 110, at 604.

123. See HA-JOON CHANG, KICKING AWAY THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE (2002).; Ha-Joon Chang, *Kicking Away the Ladder: The "Real" History of Free Trade*, Foreign Policy In Focus (2003).

and systematic violence are not removed but reinforced.¹²⁴ Therefore, it is imperative to put the Western-dominated international law back into the broad historical context for a holistic and meaningful geology of international law, as historical and critical studies of international law are beneficial to achieve “a politically and historically informed account of the role of international law.”¹²⁵

Many analytical concepts and tools are used to illustrate the nature and evolution of the current Western-dominated international law and global governance.¹²⁶ Deconstructing these assumptions and the knowledge-power production system in international law and international legal scholarship gets ride of structural biases and systematic violence.¹²⁷

For instance, the perspective of the legitimacy of the current Western-dominated international law and global governance touches upon a fundamental question about the evolution of international law: international institutions and rules should constantly evolve to response to the changing needs in this world society where sovereign states are still the principle actors; otherwise, they will decay by causing disorder, costs and risks as a result of the decline of their legitimacy.¹²⁸ However, how does international law realistically evolve, and why? Whose order and disorder, benefits and burdens, justice and injustice, development and exploitation in the evolutionary processes? Who decides and how to decide the center and the peripheries of the projected structure of international law and global governance?¹²⁹ These issues lead us to more insights on the sociology of international law.

124. See Rovira, *supra* note 110, at 602-03; Thomas Pogge, *Priorities of Global Justice*, 32 METAPHILOSOPHY 6 19-21(2001).

125. See James Crawford & Martti Koskenniemi, *Introduction*, in THE CAMBRIDGE COMPANION TO INTERNATIONAL LAW 1 (James Crawford & Martti Koskenniemi eds., 2012).

126. See FRANK J. GARCIA, GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: THREE TAKES 12 (2013). See also LEGITMACY, JUSTICE AND PUBLIC INTERNATIONAL LAW (Lu-kas H. Meyer ed., 2009).

127. See DAVID MILLER, NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE 20 (2007). For “connected criticism,” See Michael Walzer, *The Political Theory License*, 16 ANN. REV. OF POL. SCI. 1, 5 (2013). See Kratochwil, *supra* note 99 (H. Meyer ed., 2009).

128. See FRANCIS FUKUYAMA, POLITICAL ORDER AND POLITICAL DECAY: FROM THE INDUSTRIAL REVOLUTION TO THE GLOBALIZATION OF DEMOCRACY (2014).

129. See THE SHIFTING ALLOCATION OF AUTHORITY IN INTERNATIONAL LAW: CONSIDERING SOVEREIGNTY, SUPREMACY AND SUBSIDIARITY (Tomer Broude & Yuval Shany eds., 2008).

Also, the global justice approach to international law effectively facilitates to take account of these injustices, imbalances and biases in the current realities of international rule of law.¹³⁰ There is no fundamental incompatibility between global justice and international law, except that these structural biases in the current international legal system embody a Western-dominated paradigm of morality and justice in international law and global governance, particularly the legal positivism of international law.¹³¹ However, all these biases and violence seem to be inevitable and fated, as the Western-dominated international law has always been predominant actors' tool for interests and power in the last several centuries.¹³²

From the perspective of international law as a language and culture of international cooperation and global governance, the nature and operation mode of the current Western-dominated international law would not change until the power structure transforms, and then a new mode of language and culture of international law comes into being with potentially different focuses and achievements. Only when a new theoretical framework is initiated and integrated into current international legal practices and theories could it be possible to mitigate these structural biases and systematic violence. To that point, the multi-polarization trend, particularly the rise of China, may provide opportunities to break away from the age-old Eurocentrism and finally have a truly global base for international law and global governance.¹³³

As pointed out by Hoebel, "law is but a response to social needs."¹³⁴ That is more than true for international law in a world society.¹³⁵ International law is one form of social norms with the merit of stability and predictability to regulate the interfaces and exchanges among nations, and it is a legalized form of regulatory and distributive mechanisms with sovereignty elements and transnational factors.¹³⁶

130. See Garcia, *supra* note 111.

131. See Ratner, *supra* note 110.

132. See Garcia, *supra* note 126, at 20.

133. *Id.* at 14.

134. See E. ADAMSON HOEBEL, *THE LAW OF PRIMITIVE MAN: A STUDY IN COMPARATIVE LEGAL DYNAMICS* 293 (2009).

135. See HERSCH LAUTERPACHT, *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* 437 (1933).

136. See Byers eds., *supra* note 8, at 252-54; WOLFGANG FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 57 (1964); Onuma Yasuaki, *International Law in*

Now, the fabric of the international community and the solidarity of the world society are aggressively established, while “the consciousness of the entity of the whole” in a world society is driven by diverse interests with different cost-benefit analyses in reality.¹³⁷

The current Western-dominated international law is a language of power and interests in the name of normative rules, which manifests the Western culture of global governance. From the perspective of the colonization of life world by systems in Habermas’s “Theory of Communicative Action,” these structural biases and systematic violence manifest the colonization of the interests (money) and power in international political and social system onto international law as a communicative language, as well as their colonization onto international legal scholarship as a medium for social reflection.¹³⁸ Also, from the perspective of “the West and the Rest” dichotomy, these structural biases in international law and international legal expertise are entrenched in the civilizing mission and colonial confrontation with the dominance of the West over the rest.¹³⁹

Furthermore, the power-knowledge co-production paradigm for the structural biases in international legal scholarship could produce vicious circles in global governance. Firstly, the structural biases in international legal expertise would facilitate and reinforce the structural biases in international law and the dominance of the West for some time, by constantly excluding and oppressing non-Western powers and knowledge. Secondly, the first step leads to new powers and knowledge being excluded in the existing communities, and establishing separate portals by regime proliferation and rule complexity becomes a cost-effective option for emerging powers. Thus, the effectiveness and legitimacy of the existing Western-dominated international law and knowledge will be diluted. Thirdly, not until the cost-benefit analysis of this sort of interaction goes against the predominant West does the reformulation of these communities start. Hence, the governance and transaction costs for these proliferation, complex and disorders could be substantial. However, that is the nature

and with International Politics: The Functions of International Law in International Society, 14 EUR. J. INT’L L. 105, 108 (2003).

137. See Friedmann, *supra* note 136, at 57. (“[A] community of interests”).

138. See JURGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* (1981).

139. See NIALL FERGUSON, *CIVILIZATION: THE WEST AND THE REST* (1981); EDWARD W. SAID, *ORIENTALISM* (1979).

of power politics and diplomacy in a Western-dominated world society.

Then, what kinds of impacts will China's approaches to the Western-dominated international law and the rise of China have on the evolution and future of international law in this globalized, multipolar and decentralized world society? Generally, changes to international legal rules and regimes are gradually achieved through regime proliferation, rule complexity and thereafter their interaction.¹⁴⁰ Changes are based on existing rules and regimes, and new stakeholders need to cooperate with previous dominant authorities.¹⁴¹ Thus, any overall overthrow of existing structure of interests in international law is not feasible. A more interdependent world system does not mean the decline of the past powers and the rise of new hegemonies, but means more pillars and stakeholders for better balance of interests in global governance and enhanced legitimacy of international law.¹⁴²

Therefore, on the one hand, China will continue its constructive engagement within the current international legal system in the short term, trying to make a difference in the system.¹⁴³ On the other hand, China will make efforts to establish China-led regional mechanism in the Asia-Pacific region and then reform the current global order on the long run by introducing new contents, paradigms and connotations from its civilization to the language of international law and culture of global governance.¹⁴⁴ Namely, it is the implementation of the strategy of "keep a low profile and achieve something" (*taoguangyanghui, yousuozuowei*) and "learning Western science and technology on the basis of Chinese culture and learning" (*zhongtixiyong*).¹⁴⁵ More importantly, China's approaches to international law and the rise of China could be an opportunity to rectify these structural biases and systematic

140. See Kal Raustiala, *Density and Conflict in International Intellectual Property Law*, 40 U.C. DAVIS L. REV. 1021, 1026 (2007).

141. *Id.*

142. See Nico Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16 EUR. J. INT'L L. 369 (2005).

143. See Michael D. Swaine, *Chinese Views and Commentary on the 'One Belt, One Road' Initiative*, 47 CHINA LEADERSHIP MONITOR 1 (2015); Stephen M. Young, *US -China Relations: Balancing Cooperation and Competition in the Most Important Bilateral Relationship in Both the Region and the World*, 37 AM. FOREIGN POL'Y INTERESTS 166 (2015); Shintaro Hamanaka, *TPP versus RCEP: Control of Membership and Agenda Setting*, 18 J. OF E. ASIAN ECON. INTEGRATION 163 (2014).

144. *Supra* note 143.

145. *Id.*

violence in the current Western-dominated international law with a more democratic and balanced approach, if “a more democratic and balanced approach” partly means more invoices and interests of main stakeholders are taken into consideration.

In conclusion, the structural biases and systemic violence of Eurocentrism in the current Western-dominated international law and international legal scholarship are integral components of “the clash of ignorance” amidst the evolution of international law in this globalized but decentralized world society. The rise of China could be an opportunity to rectify these structural biases and systematic violence in the current Western-dominated international law with a more democratic and balanced approach.

Conclusion

The era of the unchallenged centrality of Europe and the West, as well as the Chinese traditional world order, is now in the past. However, far from the end of the story, a new stage has been set for the participation and competition of different civilizations in global governance and international law. One of the greatest challenges to international law and international politics is still the lag in the evolution of international institutions behind social needs and changes in this world society.¹⁴⁶

From the Opium War to the South China Sea arbitration case, traditional Chinese international law and world order have always been evolving and functioning covertly, along with growing divergences between Chinese (perceptions of) international law and the Western-dominated international law as a result of the clash of ignorance. The future of international law lies in historical and critical reflections of the current injustice, imbalances, structural biases and systematic violence from the perspective of both the Self (the West) and the Other (the Rest); and, the rise of China is likely to restructure the inclusion and exclusion on the economic and political levels in international law.

146. See SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 5 (2006).