

## CHINA'S DIPLOMACY AND INTERNATIONAL LAW

### 中国特色大国外交与国际法

Huikang Huang (黄惠康)

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CHINA'S DIPLOMACY AND INTERNATIONAL LAW [中国特色大国外交与国际法] (CDIL) is published jointly by the Law Press and Wuhan University Institute of International Law. The author of CDIL, Mr. Huang Huikang (Huang), based on his own practice and research, elaborated on the 70-year development of the diplomacy of Post-1949 China (PRC) and expounded on his 40 years' academic thinking on international law and perception of China's diplomacy in relation to law for the past 40 years. The CDIL was published in September 2019, containing 10 chapters and more than 520,000 words. The CDIL can be divided into three parts: Part I (Chapters One to Three), Part II (Chapters Four to Nine) and Part III are the General Principles, Detailed Discussions and Conclusions, respectively.

#### General Principles

Chapter One discusses the relationship between law and diplomacy at the macro level and highlights the importance and methodology of the interplay of international law and diplomacy. Huang clearly states, "in international relations, diplomacy gives life to law, and law gives diplomacy a soul," and "without diplomacy, the international law is the water without sources and a tree without roots; without

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international law, diplomacy will end up as hegemony.”<sup>1</sup> These theories constitute breakthroughs for the integration of law and diplomacy in China since they reflect “the way of a wise and good man [君子之道].”

Huang discusses the relationship between diplomacy and law from two dimensions. One is how a country’s foreign policies affect international law; and the other, how international law, as a relatively independent legal system, affects the formation and change of a country’s foreign policies. First, Huang believes that international law will involve the continuous development of international relations. Some important principles, rules and systems of international law were born after major historical changes in the international landscape.<sup>2</sup> For instance, changes in China’s foreign policy have great influences on the rules of international law. In the 1950s, based on independent foreign policy and diplomatic practice, China proposed and jointly promoted the five basic principles of peaceful coexistence with India and Myanmar. These principles quickly became universally recognized basic principles in international law. On the issue of establishing diplomatic relations, the Chinese government has always adhered to the practice of “contrary conditional recognition,” which is also China’s innovative contribution to the development of international law.<sup>3</sup> Entering the twenty-first century, China proposed the idea of building a “community of human destiny” and called for cooperation in a century of unprecedented changes.

Second, Huang points out that the “good or evil” of international law is a relative concept. If international law is “good law,” it will establish rules and settle disputes. The foreign policy reflecting “The Way of a Wise and Good Man” will also resonate well with international law. However, if international law is “evil law,” it can easily become a tool for hegemony. Rules such as “territory can be legally acquired by conquest with force” and extraterritorial legal powers are historical examples of ‘evil’ international law. Therefore, a county’s foreign policy shall be vigilant and resistant to “evil laws.” As mentioned earlier, the repeal of numerous unequal treaties in the PRC also contributed to improving international law.

Chapters Two and Three introduce the basic pattern and developing trend of the major-country diplomacy with Chinese characteristics and the corresponding treaties and laws. These chapters explain the inheritance and development of China’s

<sup>1</sup> HUIKANG HUANG, CHINA’S DIPLOMACY AND INTERNATIONAL LAW [中国特色大国外交与国际法] 1 (2019).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> Under the “contrary conditional recognition” principle, in order to recognize and establish diplomatic relations with the PRC, every country must respect equality and mutual benefit and respect for territorial integrity and sovereignty. Also, that country must recognize the PRC China as the sole legitimate government of China.

diplomacy in the past 70 years and discuss the characteristics and connotations of Chinese diplomacy as a major country in the new era.

One of the frontier issues discussed by Huang is the expansion of powers of treaty bodies. Huang points out that there have been disputes and the expansion and abusive use of power by the International Court of Justice, the International Tribunal for the Law of the Sea, the International Criminal Court, the United Nations High Commissioner for Human Rights, the United Nations Convention to Combat Desertification, the Secretariat and other agencies or departments. The expansion of power by those bodies leads to problems such as the “politicization of legal issues” and the “internationalization of domestic issues.”<sup>4</sup> The treaty bodies’ expansion of power is a result of the increasing international governance in various fields, which will impact the certainty of relevant international rules and systems and will influence the international rule of law in the long run.<sup>5</sup> Regarding the boundary between member and nonmember states, the basic principle shall be “treaties binding only those states that are parties to them.” Exceptions can be made to this principal when there is a matter of major importance that affects international peace and security. Regarding the boundary between national and international affairs, the extension of treaty bodies’ tentacles to a country’s domestic affairs without the permission of the state is an obvious violation of the principle of “noninterference of internal affairs.”

### Detailed Discussions

Chapter Four focuses on China’s independent and peaceful diplomacy. It elaborates on the concept of collective security, China’s innovative concept of security and China’s position on international security and regional hotspot issues. Huang believes that, Article 51 of the United Nations Charter clearly defines the conditions for the exercise of the right to self-defense, which must meet the requirements under the Charter.<sup>6</sup> Huang emphasizes that the Charter does not unconditionally retain the right of self-defense in customary law, but incorporates it into the collective security system of the United Nations and provides substantial rules on the right to self-defense.<sup>7</sup>

Nevertheless, Huang’s view on collective security should be understood dialectically. On the one hand, the Charter establishes statutory restrictions on the right to self-defense. In a sense, the right to self-defense is incorporated into the

<sup>4</sup> HUANG, *supra* note 1, at 132-3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 157.

<sup>7</sup> *Id.* at 158.

collective security system of the United Nations, and its restrictions on the member states of the United Nations are clear.<sup>8</sup> On the other hand, however, what we cannot ignore is that, as stipulated in Article 51 of the Charter, self-defense is an “inherent right.” Hugo Grotius pointed out in the *LAW OF WAR AND PEACE* that the right to self-defense is an inherent right of a country.<sup>9</sup> The International Court of Justice clearly ruled in the *Nicaragua* case<sup>10</sup> that the right of self-defense as an inherent right exists in both customary international law and the United Nations Charter.<sup>11</sup>

Therefore, the right to self-defense exists as the natural right of a country, which cannot be denied by either the collective security system of the United Nations or customary international law. This is an important manifestation of natural law in international law and is of great significance for countries/entities that are capable of exercising state powers to a certain extent. Those entities include national liberation organizations, countries that have not joined the United Nations or countries that are not generally recognized. The discussion above does not intend to seek more possibilities for exercising the right to self-defense. Instead, the right to self-defense shall be treated as an exception to the prohibition of the use of force. As Shi Jiuyong commented, “more often than not, war and conflict is itself the greatest injustice, and it is only in the rarest of circumstances that pursuing a policy of force is likely to serve the greater good.”<sup>12</sup>

Chapters Five to Nine summarize China’s practice of international law in each major area of China’s diplomacy. “Blue Diplomacy,”<sup>13</sup> “Green Diplomacy,”<sup>14</sup> “Red Diplomacy,”<sup>15</sup> “Digital Diplomacy,”<sup>16</sup> and “One Country, Two Systems” policy are discussed here, respectively. Among them, Huang pays special attention to the “One Country, Two Systems” policy which originates from the pursuit to resolve the Taiwan issue. It was implemented upon the return of Hong Kong and Macao. Up to now, this doctrine has made great achievements, but has also experienced enormous challenges. Huang emphasizes that the “One Country, Two Systems” policy not only constitutes a fundamental ground to achieve national unification, but it also has a

<sup>8</sup> Currently, almost all countries are members of the United Nations. Thus, the scope of this provision essentially covers the majority of the territory and people around the globe. However, this scope is not absolute.

<sup>9</sup> HUGO GROTIUS, *LAW OF WAR AND PEACE* 36 (HE Qinhuo tran., 2005).

<sup>10</sup> Case concerning the Military and Paramilitary Activities in and against Nicaragua.

<sup>11</sup> M. SHAW, *INTERNATIONAL LAW* 821 (7th ed. 2014).

<sup>12</sup> Shi Jiuyong, *Prohibition of the Use of Force in International Law*, 17 *CHINESE J. INT’L L.* 13 (2018).

<sup>13</sup> “Blue Diplomacy” relates to the development of China in the ocean.

<sup>14</sup> “Green Diplomacy” concerns climate change and international environmental governance.

<sup>15</sup> “Red Diplomacy” concerns anti-corruption.

<sup>16</sup> “Digital Diplomacy” relates to the construction of the international order of cyberspace.

positive and far-reaching impact on the innovative development of contemporary international law.<sup>17</sup> These influences include the following. (1) Expanding the application scope of the principle of peaceful coexistence. It is applicable to not only the peaceful coexistence between countries but also the peaceful coexistence of two different social systems in a single country. (2) The formation of a unique model for the Special Administrative Region (SAR) to conclude treaties, especially contributing to international treaty law in terms of the contracting subject, contracting authority, scope of application, and compliance mechanism. (3) Accepting a high degree of local autonomy in unitary countries. The SAR enjoys a high degree of autonomy including administrative rights, currency issuance rights, fiscal and taxation rights, legislative powers, independent judicial powers and final adjudication powers. (4) Promoting the mutual learning and integration of different legal systems. Within a country, the socialist legal system represented by the Mainland, the common law system of the United Kingdom and the United States represented by Hong Kong, and the continental legal system of Europe represented by Macao are continuously integrating.<sup>18</sup>

## Conclusion

Part III focuses on the connotation of “building a community with a shared future for mankind” (Proposal), and analyzes the significance of the Proposal to the development of China and the promotion of the international rule of law and global governance. In this part, China’s vision on the future development of the world is proposed. The current world is witnessing major changes that have not been seen for the past decades. Only when the Proposal is interpreted in such a context can we truly understand the major-country diplomacy with Chinese characteristics.<sup>19</sup> Huang points out that China’s Proposal is neither “starting a new course,” nor “demolishing and rebuild.” Rather, China pursues sustainable peace, universal security, shared prosperity, and an inclusive and beautiful society.<sup>20</sup> The Proposal absorbs its essence from the existing international legal system and targets achieving the common development of mankind through global governance and the international rule of law. The Proposal can be summarized as China’s attitude, philosophy and strategy towards the world today.

<sup>17</sup> HUANG, *supra* note 1, at 455.

<sup>18</sup> *Id.* at 458-9.

<sup>19</sup> Xia Liping, *Two “Constructions” Guides Development of China’s Diplomacy* [两个“构建”指明中国外交方向], *PEOPLE’S DAILY* (Overseas ed.), Nov. 7, 2017, at A1.

<sup>20</sup> HUANG, *supra* note 1, at 462-3.

- **China's attitude.** The proposition of the Proposal illustrates China's recognition and support for the concept of national multipolarization and globalization. China is determined to deeply integrate itself into the world and to share the "same boat with the world."<sup>21</sup> In 2018, China revised its constitution to include the "a community with a shared future for mankind," showing that China is legally bound to comply with this Proposal.
- **Chinese philosophy.** China has experienced unprecedented social tears and innovations during the past century. For a long time, it has been a learner and follower of the world, during which Chinese elements and Chinese voices were obscure. After the founding of the PRC, especially after 40 years of reform and opening up, the national power of China has grown rapidly, providing an opportunity for Chinese culture to regain its vitality. China is willing to play a greater role in international affairs and share its experiences. The Proposal is China's understanding of its relationship with the world, and it reflects many Chinese elements, e.g., "World Harmony" [世界大同], "Harmony is Valuable" [和为贵], "Both Love and Non-Attack" [兼爱非攻], "Heaven and Man in One" [天人合一], and "The Way of a wise and good man." These concepts are China's key to solving many major international problems, which could lead to more harmonious international relationships.
- **China's strategy.** The Proposal is a vision of international relations in the future. Although it is legally supported by many international legal principles and rules,<sup>22</sup> there are still many risks and variables during the application of the Proposal. The Proposal will contribute to closer links in the international community and greater vitality in international exchanges. As the pioneer and practitioner of the Proposal, China has created a worldwide footprint through the creation of the Asian Infrastructure Investment Bank, the joint construction of the "Belt and Road", the continuous development of the Shanghai Cooperation Organization, its active participation in peacekeeping operations of the United Nations.

China has been pursuing an independent foreign policy since 1949. After 70 years of development, China's diplomacy has entered a new era. Huang believes that diplomacy and international law have always been inseparable. It is a high-level form of diplomacy to implement foreign policy through international law and use international law to solve diplomatic problems.<sup>23</sup> Huang firmly upholds the

<sup>21</sup> Xi Jinping, *To Build a Better World Hand in Hand: Keynote Speech at The High-Level Dialogue between China's Communist Party and World Political Parties* [携手建设更加美好的世界—在中国共产党与世界政党高层对话会上的主旨讲话], PEOPLE'S DAILY, Dec. 2, 2017, at A2.

<sup>22</sup> These principles include but are not limited to prohibiting the use of force and the threat of force, the collective security system, the five basic principles of peaceful coexistence, *pacta sunt servanda*, and the peaceful settlement of international disputes.

<sup>23</sup> HUANG, *supra* note 1, at 6.

international legal order based on the purposes and principles of the United Nations Charter, and uses international law as a weapon to safeguard China's sovereignty, security and developmental interests. China should promote and build a community with a shared future for mankind, participate more deeply in international affairs, promote the innovation of the global governance system, and build a safer international environment for development. China strives to safeguard its long-term interests and play a greater role on the stage of global diplomacy.

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