

A CONCISE HISTORY OF INTERNATIONAL LAW IN CHINA-CONFLICTS, FUSION, AND DEVELOPMENT

Written by Zewei Yang & Ran Guo
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“A Concise History of International Law in China-Conflicts, Fusion, and Development” presents a panoramic view of international law in China. The book historically reviews the origin and development of international law in China, discusses China’s contribution to the theory and institutional innovation of contemporary international law, and looks forward to the future of international law in China and the world. More concretely, this book pays attention to the development history of China’s international law scholarship; closely follows the latest trends in China’s international law research; and guides further research. A careful review of the book will provide the readers with a panoramic view of the history of China’s international law. It is not only an important treatise on the history of international law in China but also an indispensable reference for theoretical and practical circles with bibliography.

Keywords

History of International Law in China, Contemporary International Law,
Theory and Institutional Innovation in International Law

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1. Introduction

The book “A CONCISE HISTORY OF INTERNATIONAL LAW IN CHINA--CONFLICTS, FUSION, AND DEVELOPMENT” was published in 2021 by William S. Hein & Co., Inc. in New York. The book was authored by Dr. Yang Zewei, distinguished professor of the Chang Jiang Scholars Program of the Ministry of Education of China, doctoral supervisor of Wuhan University Institute of International Law, and co-authored by Professor Guo Ran of Shanghai Maritime University. It consists of 100,000 words with six chapters based on history and social reality, rich in content and rigorous in argument. This book pays attention to the development history of China’s international law scholarship; closely follows the latest trends in China’s international law research; and guides further research. A careful review of the book will provide the readers with a panoramic view of the history of China’s international law.

2. Significance

A. Boosting the research on the history of international law in China

In the international law scholarship, the history of international law cannot be ignored. Only by understanding the past can we better grasp the present and predict the future.¹ However, current research on the history of international law that particularly scrutinizes the history of international law in China has been insufficient. There are no monographs fully dedicated to the history of international law in China, but just some papers or book chapters on this topic.² The publication of this book is thus very significant in the sense that it has firstly conducted a detailed research of the history of China’s international law comprehensively in the development context.

¹ ZEWEI YANG, *STUDY ON THE HISTORY OF INTERNATIONAL LAW* [国际法史论] 1 (Beijing: Higher Education Press, 2011).

² See, e.g., JUNNAN LAI, *INTERNATIONAL LAW AND CHINA IN THE LATE QING DYNASTY* [国际法与晚清中国] (Shanghai People's Publishing House, 2015); TAO TIAN, *IMPORTATION OF INTERNATIONAL LAW AND CHINA IN THE LATE QING DYNASTY* [国际法输入与晚清中国] (Jinan Press, 2001); Weiming Zhang, *Review and Prospect of International Law Research in the Late Qing Dynasty* [晚清国际法研究回顾与前瞻], 6 J. XIHUA U. (Philosophy & Social Sciences Edition) [西华大学学报(哲学社会科学版)] 92-6 (2006); Zhipeng He, *Research on the Importance of International Law in China under the New Era* [国际法在新时代中国的重要性探究], 1 TSINGHUA U.L.J. [清华法学] 6-30 (2018).

B. Promoting theoretical innovation of China's international law

Today's China is closer than ever to be at the center of the world. China is actively participating in the reform and construction of the global governance system and significantly improving its international influence on the world politics and economy.³ Against this background, China has been paying more attention to the role of international law and strengthening its research and practice. In this regard, this book reviews the development history of international law in China; summarizes China's contribution to the development of international law; interprets international law from China's standpoint; and promotes the theoretical innovation of China's international law to some extent.

C. Enhancing China's foreign exchanges and international law practice

Since the founding of the People's Republic of China in 1949, the Chinese government has accumulated its State practices on various issues in international law, including the basic principles of international law and the peaceful settlement of international disputes. However, China's international law and practices are not well known to the world because there lacks of in-depth coverage on this subject. The book is systematically reviewing the development process of international law in China, interpreting China's current international law research, as well as exploring China's contribution to the development of international law. Therefore, it will enhance China's foreign exchanges and international law practice, it will give academic ground for international lawyers in the world to have a more comprehensive understanding of the history and current trend of China's international law.

3. Main Contents

A. Reviewing China's international law history

The book first explores the traces of international law in ancient China. As early as the Spring and Autumn Period and the Warring States Period (B.C.770-221), China

³ Resolution of the Central Committee of the Communist Party of China on the major achievements and historical experience of the party's century-long struggle (adopted at the sixth plenary meeting of the 19th Central Committee of the Communist Party of China on November 11, 2021), PEOPLE'S DAILY, NOV. 17, 2021.

pursued classical traces of international law. For example, during that period, *li* (礼) were customary rules that governed intercourses between princes; *xin* [信] was good faith which is similar to today's international law principle of *pacta sunt servada*; *jing* [敬] was reverence or respectfulness; *yi* [义], or justice, is similar to natural law in modern times.⁴ Furthermore, there were a sort of methods for the peaceful settlement of international dispute including mediation, good offices, public hearings, consultation and adjudication, which are similar to those provided by modern international law.⁵

Also, the book introduces Chinese international law in the Qing Dynasty and the Republic of China. In the mid-17th century, China encountered international law first. The authors have reviewed the initial encounter of China with international law in the Qing Dynasty and the process of signing the Sino-Russian Treaty of Nibuchu. After reviewing this process, the authors explain the Qing's policy to adopting modern international law. As the Qing government maintained a very strict closed-door policy at that time, it was difficult to introduce international law. From the conclusion of the Nibuchu Treaty to the eve of the Opium War in 1840, China did not pay much attention to international law.⁶ However, in this period, modern international law works began to be imported into China.⁷ China established its first agency for foreign affairs, "Tsungli Yamen [总理衙门]." Although the Qing's relations with western powers were governed by the unequal treaties, some officials and scholars already acknowledged that international law could be a useful tool for safeguarding China's interests.⁸ Nonetheless, Qing's foreign relations were dominated by unequal treaties, which had not been abolished until the founding of the People's Republic of China in 1949.⁹

During the period of the Republic of China (1912-49), China's international law scholarship promoted an in-depth discussion on the abolition of unequal treaties. At that time, the Republic of China made corresponding contributions to the creation of the League of Nations and later the United Nations. It also participated in the trial of Japanese war criminals by the International Military Tribunal for the Far East.¹⁰

⁴ ZEWI YANG & RAN GUO, A CONCISE HISTORY OF INTERNATIONAL LAW IN CHINA-CONFLICTS, FUSION AND DEVELOPMENT 5-7 (William S. Hein & Co., Inc. 2021).

⁵ *Id.* at 12-5.

⁶ *Id.* at 17-9.

⁷ *See, e.g.,* LE DROIT DES GENS[万国法]; ELEMENTS OF INTERNATIONAL LAW [国际法原理].

⁸ YANG & GUO, *supra* note 4, at 20-4.

⁹ *Id.* at 25-7.

¹⁰ *Id.* at 35-50.

B. China's contribution to contemporary international legal theory and practice

In Chapter IV (the People's Republic of China and Contemporary International Law), the authors address the international law in New China after 1949. In this chapter, the authors examine the Five Principles of Peaceful Coexistence, which has gradually developed into a basic dogma of contemporary international law.¹¹ The Five Principles are one of China's most important contributions to postwar international law as practical grounds for a fair and reasonable international order.¹²

This book also deeply analyzes the status of international law in China's domestic legal system and China's contributions to the theoretical development of contemporary international law, such as state recognition, state succession, dual nationality, international treaties, and peaceful settlement of disputes. In particular, since 2012, China has been developing new initiatives under international law such as the "Chinese Dream," the "Belt and Road" and "A Community of Shared Future for Mankind," which have showcased China's participation in global governance in the twenty-first century. Actually, these initiatives contain a very rich connotation of international law, enriching and developing the theory and practice of international law.

For example, the "Chinese Dream" is a rule-based initiative, where China shall abide by international law and fulfill its international obligations; follow the peaceful settlement of international disputes; and adhere to the Five Principles of Peaceful Coexistence in its foreign relations. It is "the dream of international cooperation" which includes the principle of international cooperation in international relations.¹³ The Belt and Road Initiative is a new type of international cooperation, new platform for global governance, and new dimension for cross-regional international cooperation.¹⁴

In Chapter V, the authors summarize China's international jurisprudence from the period of the Qing Dynasty, the Republic of China, to the People's Republic of China. The study of international law in the Qing Dynasty(1644-1911) started

¹¹ Hanqin Xue, *Chinese Contemporary Perspective on International Law: History, Culture and International Law*, 355 RECUEIL DES COURS (Collected Courses of The Hague Academy of International Law) 68 (2011).

¹² YANG & GUO, *supra* note 4, at 58.

¹³ Zewei Yang, *Implication of the "China Dream" in International Law* ["中国梦"的国际法解读], 1 WUHAN U. INT'L L. REV. [武大国际法评论] 3-5 (2014).

¹⁴ Zewei Yang, *Understanding the Belt and Road Initiative under Contemporary International Law*, 2 CHINA & WTO REV. 301 (2019).

from the translation of modern international law classics,¹⁵ because there were few works on international law written by Chinese scholars in the Qing Dynasty.¹⁶ The Republic of China (1912-49) also focused on the translation of classic works of Western international law.¹⁷ Then, Chinese scholars paid special attention to the history of international law¹⁸ and diplomatic history.¹⁹ From 1949 to 1978, a number of international law classics were translated and published.²⁰ Among a few books on international law published,²¹ Professor Zhou Gengsheng(周鲠生)'s "International Law" (two volumes) was noticeable. Published in 1976, it was the first and the only international law textbook in China before the 1980s.²²

Since the reform and opening up in 1978, China's attitude toward international law has dramatically changed.²³ In this course, China's international law has gone through stages of recovery, development and forward-looking vision.²⁴ In spite of the authors' enthusiasm, the theory and practice of China's international law have not been fully summarized because of on-going theoretical and practical innovation of international law in China.

C. China's future innovation of international legal theory and institution

By reviewing the development process and current situation of China's international law, the authors further look forward to China's international law research in the

¹⁵ Xingyao Zhizhang [星轺指掌]; Gongfa Bianlan [公法便览]; Gongfa Huitong [公法会通]; Ludi Zhanli Xinxuan [陆地战例新选]; Gongfa Xinbian [公法新编].

¹⁶ There were only two international law works: Chunqiu Gongfa Biyi Fawei [春秋公法比义发微] written by Lan Guangce (蓝光策); Fengshi Jinjian [奉使金鉴] written by Lu Haihuan(吕海寰).

¹⁷ Public International Law in the Twentieth Century (trans. by Zhu Wenfu); On Chinese International Law (trans. by Li Dazhao); Public Law and Private Law (trans. by Huang Fengming).

¹⁸ Guo ji fa fa da shi [国际法发达史] written by Liu Daren and Yuan Guoqin; The History of Modern International Law [现代国际法史论] written by Tao Shu.

¹⁹ The History of World Diplomacy in the Past Hundred Years written by Liu Keshu; The History of Modern Diplomacy written by Zhang Minsheng; History of Modern European Diplomacy, History of Contemporary World Diplomacy written by Zhou Gengsheng.

²⁰ See, e.g., UNITED NATIONS HISTORICAL MATERIAL (VOLUME I); TERRITORIAL WATERS IN INTERNATIONAL LAW; A TEXTBOOK FOR INTERNATIONAL LAW; OPPENHEIM'S INTERNATIONAL LAW; A GUIDE TO DIPLOMATIC PRACTICE; and THE INTERNATIONAL LAW OF THE SEA.

²¹ Xiandai yingmei guojifa de sixiang Dongxiang [现代英美国际法思想动向]; guojifa zhong de sifa guanxia wenti [国际法中的司法管辖问题]; linghaifa gailun [领海法概论]; lianheguo guoji fayuan [联合国国际法院]; guojifa lilun wenti [国际法理论问题].

²² TIQIANG CHEN, INTERNATIONAL LAW ESSAYS [国际法论文集] 266 (Law Press China, 1985).

²³ Xue, *supra* note 11, at 87.

²⁴ YANG & GUO, *supra* note 4, at 132-68.

future. In Chapters VI, they discuss the need to further strengthen the theoretical and institutional innovation of China's international law. Today, due to the fast changing global politics and the improvement of China's international status, there is a strong need to innovate China's ideas of international legal theory. As China is becoming a leading country in world politics and economy, it is necessary to lead and even shape international rule of law; provide solutions; and contribute Chinese wisdom to constructing a fair and balanced system for peace and common prosperity of the global society. To achieve this goal, on the one hand, China should propose ideas or values that can be accepted by most countries across the world. On the other hand, it should recognize different interests of each party of the international community.²⁵ This will not only help China participate in global governance more actively, but also demonstrate its image as a major country designing and implementing cutting-edge rules of the international community with Chinese ideas.

4. Core Areas for Discussion

A. Traces of international law in ancient China

The book introduces the traces of international law in ancient China and analyzes these principles such as peaceful settlement of international disputes, and the law of war. In addition, the political, economic, social, and cultural conditions around traces of international law in ancient China as well as the contemporary values of these principles such as *li*, *xin*, *jing*, and *yi* have been explored.

B. The characteristics of international law in each historical stage of China

The book reviews the developing process of China's international law from ancient times to the twenty-first century. In this regard, historical evolution of international law at each stage should be summarized theoretically for greater understanding.²⁶

²⁵ *Id.* at 172-3.

²⁶ Kang Dan, Historical Interpretation of International Law-Commentary on The History of International Law' [国际法的历史解读—评《国际法史论》], 7 JINAN J. (Philosophy and Social Sciences), 159 (2012).

C. Contemporary international law of China

In the last part of the book, the authors address the need for promoting China's international law theory and institutional innovation. Both also try to show the way to realize the international legal and institutional innovation, but need to promote more concrete agenda with detailed solutions to follow up the fast changes in international relations and the improvement of China's international status. For example, the concept "a shared future for mankind" has gradually been recognized by the international community of the twenty-first century, which has been referred to by the UN General Assembly's resolutions many times. It is important to consider the concept of a shared future for mankind and how the concept can be institutionalized to form binding rules of international law. By this way, while China's role in international law-making is improving,²⁷ it can participate in international legislation process more actively.

5. Prospects for China's International Law Scholarship

A. New research fields of China's international law

As the world is undergoing profound changes, China is becoming a G2 country of the current international community. China is generally expected to take a greater responsibility in the global politics and economy in the future. In this regard, it is important to promoting and expand China's international law scholarship in the future. Noticeable fields of the twenty-first century's international law include cyberspace, outer space, polar regions, oceans, public health, and so on. Simultaneously, Chinese international lawyers should keep eyes on the historical approach to international law, such as the characteristics of international law in each period of ancient China, their political, economic, and social conditions, and contemporary values of these principles.

B. Theoretical support for China's opening-up

In the future, China's international law scholarship should respond to the practical needs of the domestic and international society. For example, traditional Chinese

²⁷ Zewei Yang, *The People's Republic of China and the Development of Contemporary International Law Review and Prospects*, 13 J. EAST ASIA & INT'L L. 358 (2020).

cultural elements and ideas can be introduced for the development of international law. This will not only provide a platform for deepening legal and cultural exchanges with other countries, but also allow international lawyers to better serve the country's needs.

C. China's formulation of international rules

In the course of formulating international laws, "soft law" used to be a starting point. Soft law contains initiatives, declarations, and action plans, etc. Those non-binding rules would navigate the international community to get consensus for some binding international rule in the near future. For example, as the concept of "a community with shared future for mankind" has been referred to at the UN General Assembly resolutions, it has gradually been recognized by the international community as an influential customary rule. China can stipulate this concept in the preamble and general provisions when concluding treaties. By this way, China can make use of international law proactively to propose Chinese schemes and propositions and fundamentally transform its status from the receiver and participant to constructor, contributor and leader in international orders, rules and concepts.²⁸

6. Conclusion

As two Chinese international lawyers who have devoted themselves to international law research and teaching for decades, Professor Zewei Yang and Professor Ran Guo have unfolded a panoramic picture of international law in China from a historical perspective. In brief, "A CONCISE HISTORY OF INTERNATIONAL LAW IN CHINA--CONFLICTS, FUSION, AND DEVELOPMENT" will be a good reference for foreign international lawyer to understand China's approach to international law and a lighthouse for future research of international law in China. It is not only an important treatise to the history of international law in China, but also an indispensable bibliography for theoretical and practical circles.

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²⁸ See SELECTED CASES OF CHINESE INTERNATIONAL LAW PRACTICE [中国国际法实践案例选编] 21 (PRC Ministry of Foreign Affairs Department of Treaty and Law ed., 2018).

