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# A Community of Shared Future for Mankind in the Global Pandemic Era: Towards a Normative Consensus or Authoritarian International Law?

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Chao Wang\*

*This article provides an analyses the implications of China's constitutionally proclaimed notion of "Community of Shared Future for Mankind" (CSFM), which reveals the stance of the PRC party in promoting so-called "Chinese wisdom" and a "Chinese solution" to address common issues in global governance and in pursuing China's global leadership in President Xi Jinping's "New Era." The author explores the possibility for China and the West of reaching a normative consensus in terms of standards set by the CSFM vision and human security in light of the current global pandemic. The author advocates pursuing a pragmatic, problem-solving approach to international engagement with China without advancing a particular political agenda based on broad ideological presumptions, namely by encouraging and facilitating China's further participation in international institutions and treaties. This approach may establish an increasing convergence and resonance of local and nonlocal norms to reach a normative consensus and, ultimately, to influence treaty performance incrementally and gradually.*

## Keywords

Community of Shared Future for Mankind, CSFM, Human Security, Global Pandemic, Normative Consensus, Authoritarianism

\* Associate Professor, Faculty of Law, University of Macau, China. MA/LL.M./Ph.D. in Law (UBC). ORCID: <http://orcid.org/0000-0001-8687-1824>. The initial research on which this paper is based was supported by Dr. Pitman Potter and the Asia Pacific Dispute Resolution Program at UBC's Institute of Asian Research under the Major Collaborative Research Initiative of the Social Sciences and Humanities Research Council of Canada, for which the author is deeply grateful. The author may be contacted at: [chaowang@um.edu.mo](mailto:chaowang@um.edu.mo)/Address: E32-2010, Faculty of Law, University of Macau, Avenida da Universidade, Taipa, Macao SAR, PRC.

All the websites cited in this article were last visited on November 12, 2022.

## 1. Introduction

The current Covid-19 pandemic is unquestionably changing the world order.<sup>1</sup> Even before the Covid-19 outbreak, the world had been changing drastically. It was replete with unilateralism, populism and inequality, which are arguably attributable to economic globalisation and neoliberalism. We may be witnessing “the end of globalism as we know it.”<sup>2</sup> Governments in many countries are shifting their stance both domestically and internationally from globalism to isolationism, from multilateralism to unilateralism and, more importantly, from liberalism to authoritarianism. Concerns have arisen that this changing world order, characterised by the decline of liberal democracy and the rise of authoritarian states, may pose a challenge to the conventional, liberal notion of an international legal order.<sup>3</sup>

In his article, “Authoritarian International Law?,” Tom Ginsburg argues that rising authoritarian states such as Russia and China are trying to export their authoritarian norms to the international arena to facilitate and justify their internal repression.<sup>4</sup> He says that such goals “are not inherently driven to extend autocratic form but act defensively to resist democracy promotion and to shore up particular allies. But in an increasingly interdependent world, such defensive action requires more active cooperation, which law can facilitate.”<sup>5</sup> As such, “legal rhetoric, practices, and rules [are] specifically designed to extend the survival and reach of authoritarian rule across space and/or time,”<sup>6</sup> which Ginsburg defines as “authoritarian international law.”<sup>7</sup>

Ginsburg’s article also explains how constitutional orders are related to authoritarian international law from a comparative constitutional law perspective. According to Ginsburg, China is a perfect example of authoritarian international law. His argument on the resilience of the Chinese Communist Party (CCP) and its

<sup>1</sup> Henry Kissinger, *The Coronavirus Pandemic Will Forever Alter the World Order*, WALL ST. J. (Apr. 3, 2020), <https://www.wsj.com/articles/the-coronavirus-pandemic-will-forever-alter-the-world-order-11585953005>.

<sup>2</sup> Henry Farrell & Abraham Newman, *Will the Coronavirus End Globalization as We Know It?*, FOREIGN AFF. (Mar. 16, 2020), <https://www.foreignaffairs.com/articles/2020-03-16/will-coronavirus-end-globalization-we-know-it>. See also *Coronavirus Will Change the World Permanently. Here’s How*, POLITICO MAG. (Mar. 19, 2020), [https://www.politico.com/news/magazine/2020/03/19/coronavirus-effect-economy-life-society-analysis-covid-135579?fbclid=IwAR0C8-qz8t2lr6fTEgrm802sWz\\_11jprOM\\_CZ0bHdUhpXJJbhaKf73Q88VA](https://www.politico.com/news/magazine/2020/03/19/coronavirus-effect-economy-life-society-analysis-covid-135579?fbclid=IwAR0C8-qz8t2lr6fTEgrm802sWz_11jprOM_CZ0bHdUhpXJJbhaKf73Q88VA).

<sup>3</sup> Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT’L L. 232 (2020).

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.* at 228.

<sup>7</sup> *Id.* at 231-2.

“adaptive authoritarianism” invites further discussion on the relationship between the PRC constitution and international law,<sup>8</sup> especially in terms of how China’s constitutionally acclaimed authoritarian political ideology and legal rhetoric exert increasing influence over international law, and whether and to what extent international law also influences the PRC Constitution and the CCP’s political regime. Such central theme of dynamics between authoritarianism and liberalism also arises in another classical debate, namely regarding the normative question of universalism and cultural relativism, especially in terms of the relationship between sovereign states and their rights-bearing citizens, in light of the modern constitutionalism that is premised upon the social contract theory.

In this regard, China’s most recent constitutional amendment of 2018 merits an in-depth examination and interpretation to clarify the country’s newest stance in the international arena and its attitude towards the international legal regime. The 2018 constitutional amendment enshrines the concept of a “community of a shared future for mankind” (CSFM) as a virtue to export to the international community. An examination of the 2018 amendment may reveal transformations in China’s foreign policy and international law in terms of developing a normative consensus in this changing world.

The primary goal of this research is to explore the possibility for China and the West of reaching a normative consensus in terms of standards set by the CSFM vision and human security in light of the current global pandemic. The author suggests a pragmatic, problem-solving approach to international engagement with China without advancing a particular political agenda based on broad ideological presumptions. This article is structured as follows. Part two will present an overview of the notions of authoritarian international law, selective adaptation, and normative consensus. Part three will provide an in-depth discussion of the implications of the CSFM from various perspectives. Preceding the conclusion of the article, Part four will explore the potential of the CSFM in terms of human security as a normative consensus between China and the West in the global pandemic era.

## **2. Authoritarian International Law, Selective Adaptation, and Normative Consensus**

Ginsburg’s contention on the authoritarian international law revives a long-standing

<sup>8</sup> *Id.*

debate on the very purpose of international law, which is whether international law should follow the tradition of the treaty of Westphalia to be regime-neutral, with an emphasis on state sovereignty and non-interference of internal affairs, or, conversely, whether international law should take a more interventionist and intrusive approach to pursue individual rights and human dignity. This reflects the conflict of two competing concepts laid down in the UN Charter, namely Article 1.3 on the protection of human rights and Article 2 on the state-centred principles of territorial integrity, sovereign equality, and non-interference in internal affairs.<sup>9</sup> Ginsburg's argument on authoritarian international law invites discussion on the purpose of international law involving value judgment and prioritisation of state sovereignty or individual human rights, as well as the choice between the liberal interventionist approach and the Westphalian principles of power balance and non-interference. However, the extent to which national constitutions approach or resist a common Western liberal constitutionalism, especially in terms of the universalism-particularism dichotomy, also helps us to understand how international law and national constitutions interact, as informed by domestic social and normative determinants.<sup>10</sup>

In addition to Ginsburg's notion of "regime survival" and "adaptive authoritarianism" in China,<sup>11</sup> Pitman Potter's concept of "selective adaptation" helps to explain the PRC's legal behaviour in terms of international trade and human rights.<sup>12</sup> According to him, specifically, China's local interpretation and selective adaptation of international law can be discussed through the lens of resonance between international law and the normative discourse in the PRC Constitution as well as the Charter of the Communist Party.<sup>13</sup> The PRC's treaty-based compliance with international law is a policy tool selectively invoked to facilitate the country's constitutionally proclaimed primary goal of economic development and national stability while maintaining the political structure of the party-state and its social control over the country as its ultimate goal, as Ginsburg describes as "regime survival."<sup>14</sup> The PRC's participation in international trade and the human rights regime suggest its pragmatic approach to economic development and its promotion of individual well-being and the social welfare of the people to maintain the current

<sup>9</sup> Gerd Oberlietner, *Human Security: A Challenge to International Law*, 11 *GLOB. GOV.* 185 (2005).

<sup>10</sup> Tom Ginsburg, Svitlana Chernykh & Zachary Elkins, *Commitment and Diffusion: How and Why National Constitutions Incorporate International Law*, 1 *U. ILL. L. REV.* 201 (2008).

<sup>11</sup> *Id.*

<sup>12</sup> PITMAN POTTER, *ASSESSING TREATY PERFORMANCE IN CHINA: TRADE AND HUMAN RIGHTS* 8 (2014).

<sup>13</sup> *Id.*

<sup>14</sup> Ginsburg, Chernykh & Elkins, *supra* note 10.

domestic political regime while meeting outside expectations and international pressures for human rights compliance. Pragmatic considerations in the PRC Constitution determine China's engagement with the Western liberal norms of a free market and individual freedom in terms of economic globalisation.<sup>15</sup>

Undoubtedly, from the CCP's perspective, the Western concepts of the rule of law, constitutionalism, and international law are adopted in China merely for their instrumental values to serve the ultimate and fundamental political goal of what Ginsburg described as "regime survival." This instrumentalist and pragmatic approach involves a dynamic of selective adaptation of non-local Western liberal norms in China as "a coping strategy to balance local needs against the requirement for compliance with external rules."<sup>16</sup> It actually shows that "the sharing of international practice rules does not necessarily indicate consensus on the normative order underlying those rules."<sup>17</sup> This pragmatic approach is also used by the PRC government in endeavouring to adapt Chinese values—more specifically, the CCP ideology—to those of the international community to seek a normative consensus in global governance and international relations, which is described by Potter as "exporting virtue."<sup>18</sup>

This effort is evident in the country's most recent normative discourse of a CSFM, which was incorporated into the Preamble (Paragraph 12) of the PRC Constitution of 2018 and advocated internationally.<sup>19</sup> The CSFM notion implies the effort of the Chinese government to seek an international normative consensus on the importance of coexistence and interdependence, partly to circumvent China's human rights treaty obligations in the name of collective interests.<sup>20</sup> It seeks to find common interests with the international community by tackling global issues and challenges, at least partly hoping to shift the focus of international scrutiny from China's treaty compliance issues, especially in terms of human rights. From the author's point of

<sup>15</sup> Pitman Potter, *Selective Adaptation, Institutional Capacity, and the Reception of International Law under Conditions of Globalization*, in *GLOBALIZATION AND LOCAL ADAPTATION IN INTERNATIONAL TRADE LAW* 3 (P. Potter & L. Biuković eds., 2011).

<sup>16</sup> *Id.* at 285.

<sup>17</sup> Ljiljana Biuković, *Compliance with International Treaties: Selective Adaptation Analysis*, 44 *CAN. Y.B. INT'L L.* 453 (2007).

<sup>18</sup> See generally PITMAN POTTER, *EXPORTING VIRTUE? CHINA'S INTERNATIONAL HUMAN RIGHTS ACTIVISM IN THE AGE OF XI JINPING* (2021).

<sup>19</sup> CONGYAN CAI, *THE RISE OF CHINA AND INTERNATIONAL LAW: TAKING CHINESE EXCEPTIONALISM SERIOUSLY* 93 (2019) ("A Community of Shared Future for Mankind" was also known as "Community of Common Destiny"). See also Jacob Mardell, *The 'Community of Common Destiny' in Xi Jinping's New Era: Building a 'Community of Common Destiny' is the Motivating Force Behind China's Future Foreign Policy*, *DIPLOMAT* (Oct. 25, 2017), <https://thediplomat.com/2017/10/the-community-of-common-destiny-in-xi-jinpings-new-era>.

<sup>20</sup> Rhoda Howard-Hassmann, 34 *Human Security: Undermining Human Rights?*, *HUM. RTS. Q.* 88-112 (2012).

view, the concept of the CSFM can be interpreted as another pragmatic approach by the PRC to convince the entire international community of its focus on global issues and challenges that are of interest currently, rather than debating political ideology and human rights issues.

Even so, it may be useful to explore, by referring to the literature on human security in general and Antônio Augusto Cançado Trindade's new "concept of common concern of mankind" in particular,<sup>21</sup> whether there is a pragmatic, problem-solving approach in international law to establish a normative consensus between China and the West. Such an ideological exploration may be pursued in light of the notion of the CSFM and with a focus on identifying international and domestic issues and how they may be solved, without advancing particular political agenda based on broad presumptions of ideology.

### 3. A "Community of a Shared Future for Mankind" in the 2018 Constitutional Amendment: A Textual and Contextual Analysis

In PRC's 2018 Constitutional Amendment, the phrase "building a community of a shared future for mankind [构建人类命运共同体]," part of the "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era," one of the country's guiding principles, was added to Paragraph 7 of the Preamble to the PRC Constitution.<sup>22</sup> Although the CSFM can be described as a banner term and empty propaganda from a critical perspective,<sup>23</sup> it has significant meaning and implications for China that deeply believes this ideology can be implemented.

The CSFM was first explained in terms of global governance by President Xi Jinping in his address at the General Debate of the 70th Session of the UN General Assembly. Xi recognises: "[p]eace, development, equity, justice, democracy and freedom are common values of all mankind and the lofty goals of the United Nations," and the purposes and principles of the UN Charter should be upheld to "build a new type of international relations featuring win-win cooperation and create

<sup>21</sup> ANTÔNIO TRINDADE, *INTERNATIONAL LAW FOR HUMANKIND* 345 (2020).

<sup>22</sup> PRC CONST. ¶ 7, pmbI (2018).

<sup>23</sup> Jinghan Zeng, *Slogan of 'Community of Shared Future for Mankind,'* in *SLOGAN POLITICS, CRITICAL STUDIES OF THE ASIA-PACIFIC* 111 (2020).

a community of shared future for mankind.”<sup>24</sup> Xi further elaborates on the concept of the CSFM in his address to the United Nations Office at Geneva, stating: “It is thus incumbent on all countries to uphold the authority of the international rule of law, exercise their rights in accordance with law and fulfil their obligations in good faith.”<sup>25</sup>

Soon after Xi’s official pronouncement in speeches delivered at Davos and Geneva in January 2017, the concept of the CSFM was incorporated into the Resolution of the 55th Session of the Commission for Social Development, which reads:

Calls upon the international community to enhance support and fulfil its commitments to take further action in areas critical to Africa’s economic and social development, in the spirit of win-win cooperation and to create a shared future, based upon our common humanity, and welcomes the efforts by development partners to strengthen cooperation with the New Partnership.<sup>26</sup>

Later, the same wording appeared in other approved draft of the UN resolutions.<sup>27</sup> The inclusion of this phrase reveals the stance of the Chinese government in promoting so-called “Chinese wisdom” and a “Chinese solution” to address common issues in global governance in pursuit of China’s global leadership in President Xi’s “New Era.” As for China, the CSFM is a goal to achieve economic interdependence through “win-win cooperation” and mutual trust in the political arena to tackle common challenges, such as climate change and poverty reduction, while, for the West, this may serve as another instance of what Ginsburg views as a kind of international cooperation between authoritarian states like Russia and China, which may ultimately “shape the very content of international law.”<sup>28</sup>

<sup>24</sup> Xi Jinping, *Working Together to Forge a New Partnership of Win–Win Cooperation and Create a Community of Shared Future for Mankind: Address at the General Debate of the 70th Session of the UN General Assembly*, GENERAL DEBATE (Sept. 28, 2015), [gadebate.un.org/sites/default/files/gastatements/70/70\\_ZH\\_en.pdf](http://gadebate.un.org/sites/default/files/gastatements/70/70_ZH_en.pdf).

<sup>25</sup> Xi further states: “All countries and international judicial institutions should ensure equal and uniform application of international law and reject double standards and the practice of applying international law in a selective way, thus ensuring genuine equality and justice in the world.” See Xi Jinping, *Work Together to Build a Community of Shared Future for Mankind*, XINHUANET (Jan. 18, 2017), [http://www.xinhuanet.com/english/2017-01/19/c\\_135994707.htm](http://www.xinhuanet.com/english/2017-01/19/c_135994707.htm) (keynote speech at the United Nations Office in Geneva).

<sup>26</sup> UN ECOSOC, *Social Dimensions of the New Partnership for Africa’s Development*, (Aug. 8, 2017), [https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/232/95/PDF/N1723295.pdf](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/232/95/PDF/N1723295.pdf?China+Keywords:+Community+with+Shared+Future+for+Mankind); *China Keywords: Community with Shared Future for Mankind*, XINHUANET (Jan. 24, 2018), [http://www.xinhuanet.com/english/2018-01/24/c\\_136921370.htm](http://www.xinhuanet.com/english/2018-01/24/c_136921370.htm).

<sup>27</sup> Charlotte Gao, *A Community of Shared Future: One Short Phrase for UN, One Big Victory for China? United Nations Security Resolutions Adopted Chinese President Xi Jinping’s Signature Foreign Policy Slogan*, DIPLOMAT (Nov. 5, 2017), [thediplomat.com/2017/11/a-community-of-shared-future-one-short-phrase-for-un-one-big-victory-for-china](http://thediplomat.com/2017/11/a-community-of-shared-future-one-short-phrase-for-un-one-big-victory-for-china).

<sup>28</sup> Ginsburg, *supra* note 3, at 228.

China refers to the CSFM as both idealist rhetoric and a statement on coming international law and relations. Citing Confucius, Xi states that the foundation of the concept of CSFM is “to create a world truly shared by all.”<sup>29</sup> A French historian, Ernst Renan, proposes a similar notion in his 1882 lecture, “Qu’est-ce qu’une nation?” (What is a Nation?).<sup>30</sup> Renan states that “nations are not held together by ethnicity or culture, but by a deeply felt sense of community and shared destiny.”<sup>31</sup> His theory is perhaps better framed as an ideal than as a practical solution to the challenges posed by conflicts between cultures and civilisations.<sup>32</sup>

Practically, the concept of the CSFM has become “a catchall category for the country’s regional and broader global engagement.” It is suggestive of China’s desire to adapt its official normative discourse to the international community to seek a normative consensus in global governance. In his address to senior Chinese diplomats in 2018 for a new type of international relations, President Xi said: China will “play its part as a major and responsible country and take an active part in reforming and developing the global governance system.”<sup>33</sup>

China’s contention to build CSFM is more than an idealist, official normative discourse; it is also a pragmatic approach to realising its economic and political interests. Critics may argue that China is hoodwinking the international community, whose real interest is not to promote international harmony and prosperity but rather to become economically strong and politically influential. As Barmé, Jaivin, and Goldkorn argue, the PRC is “a radically pragmatic state that cloaks its needs in high-flown rhetoric and bombast. ... In the new and evolving ordering of the world as conceived by Beijing, the communities of shared destiny too jostle for attention.”<sup>34</sup>

The above discussion invites a realistic perspective on the foreign policy implications of China’s notion of the CSFM in terms of self-interest and community interest. As a development of Deng’s strategy of economic primacy with its low-profile strategy in international relations, China’s foreign policy in the Xi era will further its expanded participation to project its political and economic power.<sup>35</sup> Since

<sup>29</sup> CONFUCIUS [孔子], BOOK OF RITES [《礼记》: ‘大道之行也, 天下为公’].

<sup>30</sup> ERNEST RENAN, QU’EST-CE QU’UNE NATION?, [http://www.iheal.univ-paris3.fr/sites/www.iheal.univ-paris3.fr/files/Renan\\_-\\_Qu'est-ce\\_qu'une\\_Nation.pdf](http://www.iheal.univ-paris3.fr/sites/www.iheal.univ-paris3.fr/files/Renan_-_Qu'est-ce_qu'une_Nation.pdf). For English translation, see WHAT IS A NATION?, [http://ucparis.fr/files/9313/6549/9943/What\\_is\\_a\\_Nation.pdf](http://ucparis.fr/files/9313/6549/9943/What_is_a_Nation.pdf).

<sup>31</sup> Mardell, *supra* note 19.

<sup>32</sup> See generally SAMUEL HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (2011).

<sup>33</sup> See Xi Urges Breaking New Ground in Major Country Diplomacy with Chinese Characteristics, XINHUANET (June 24, 2018), [http://www.xinhuanet.com/english/2018-06/24/c\\_137276269.htm](http://www.xinhuanet.com/english/2018-06/24/c_137276269.htm).

<sup>34</sup> Geremie Barmé, *Conclusion: Bringing Order to All-Under-Heaven*, in SHARED DESTINY 326-7 (G. Barmé, L. Jaivin, & J. Goldkorn eds., 2015).

<sup>35</sup> POTTER, *supra* note 18, at 51.



“Xi’s New [Current] Era”, beginning in 2012, China’s assertive new foreign policy initiatives,<sup>36</sup> such as the founding of the Asian Infrastructure Investment Bank (AIIB) and the Belt and Road Initiative (BRI), have been more than moving towards the ultimate goal of the CSFM. Foreign policy initiatives of the AIIB and the BRI suggest a strategy of buying power in pursuit of China’s economic and security interests.

There are two political agenda behind China’s the BRI and the AIIB. First, China’s growing economic ties with BRI and AIIB countries act as a means of expanding its global network for economic co-operation and trade in response to the “First Island Containment Chain” fortified by the US,<sup>37</sup> which China rejects as embodying the “Cold War mentality and power politics.”<sup>38</sup> Avoiding direct confrontation with the US in the Pacific Ocean, China uses the BRI to embed itself into a US-free global network with a focus on Southeast Asia, Middle Asia, Africa, and Europe and to attain further economic growth through a mutually beneficial arrangement.<sup>39</sup>

Second, China’s extensive economic support of developing countries, especially to those included in the AIIB and the BRI, buys power in the international arena. This is similar to the way in which the Japanese government achieved political, economic, and cultural power through its Official Development Aid (ODA) programme.<sup>40</sup>

China’s initiatives, including the AIIB and the BRI, demonstrate that the country is transforming from a passive recipient to an international lawmaker. Both the “Beijing Consensus” of a state-centred authoritarian development model<sup>41</sup> and the CSFM reveal China’s efforts at “increasing power to influence events and policies internationally” from economic development to political relations.<sup>42</sup> According to Potter, this can be described as “exporting virtues” to defend its human rights performance.<sup>43</sup>

Aside from closer engagement with international trade and investment systems,

<sup>36</sup> Xiaochun Zhao, *In Pursuit of a Community of Shared Future: China’s Global Activism in Perspective*, 4(1) CHINA Q. INT’L STRATEGIC STUD. 23 (2018).

<sup>37</sup> The “Island Containment Chain” refers to the military alliance between the US and island countries and regions in the Pacific Ocean that surround China, such as Japan, Taiwan, and some Southeast Asian countries. See James Holmes, *The Ultimate Way to Deter China: Why Island-Chain Defense Can Work*, NAT’L INTEREST (June 10, 2019), <https://nationalinterest.org/blog/buzz/ultimate-way-deter-china-why-island-chain-defense-can-work-61942>.

<sup>38</sup> Xinhuanet, *supra* note 33.

<sup>39</sup> See generally Hideo Ohashi, *The Belt and Road Initiative (BRI) in the context of China’s opening-up policy*, 7 J. CONTEMP. E. ASIA STUD. 85 (2018).

<sup>40</sup> See generally DAVID ARASE, *BUYING POWER: THE POLITICAL ECONOMY OF JAPAN’S FOREIGN AID* (1995).

<sup>41</sup> See generally JOSHUA RAMO, *THE BEIJING CONSENSUS* (2004); Maurits Elen, *Joshua Cooper Ramo on the Beijing Consensus in the Age of Networks*, DIPLOMAT (Aug. 10, 2016), <https://thediplomat.com/2016/08/interview-joshua-cooper-ramo>.

<sup>42</sup> PITMAN POTTER, *CHINA’S LEGAL SYSTEM* 185 (2013).

<sup>43</sup> See generally, POTTER, *supra* note 18.

China pursued expanded human rights diplomacy, attempting to influence international substantive discourses on human rights and to deflect attention away from its own human rights abuses. China also expanded its international political and diplomatic activities, participating more fully in the UN agencies on health, labour, and arms control and in crisis management in the Middle East and Central Europe.<sup>44</sup> This also coincides with Tom Ginsburg's argument regarding authoritarian international law that China is trying to export its authoritarian norms to the international arena to facilitate and justify its internal repression. Ginsburg contends that China's purposes "are not inherently driven to extend autocratic form, but act defensively to resist democracy promotion and to shore up particular allies. But in an increasingly interdependent world, such defensive action requires more active cooperation, which law can facilitate."<sup>45</sup>

#### 4. Implication of the CSFM: Human Security as a Normative Consensus

The concept of the CSFM as a foreign policy principle that evolved from the Five Principles of Peaceful Coexistence in 1954 suggests China's view of interdependence and coexistence in today's world. No doubt this concept may also introduce the political agenda of circumventing its human rights obligations or distracting attention from its human rights treaty compliance by emphasising the collective interests of humankind. This concept seems to search for common interests among the international community in tackling global problems together.<sup>46</sup>

The CSFM may be examined by reference to the concept of human security and its relationship with human rights. The concept of "human security" was first introduced in the 1990s by the United Nations Development Programme (UNDP) to address new threats and risks to human beings. It is defined as both "safety from such chronic threats as hunger, disease and repression" and "protection from sudden and hurtful disruptions in the patterns of daily life."<sup>47</sup> A major controversy over the term "human security" is that individual human rights may be infringed upon in the

<sup>44</sup> Potter, *supra* note 12, 185-7.

<sup>45</sup> Ginsburg, *supra* note 3.

<sup>46</sup> TRINDADE, *supra* note 21.

<sup>47</sup> UNDP, HUMAN DEVELOPMENT REPORT 23 (1994), [https://hdr.undp.org/system/files/documents//hdr1994\\_encompletenstatspdf.pdf](https://hdr.undp.org/system/files/documents//hdr1994_encompletenstatspdf.pdf). See also Howard-Hassmann, *supra* note 20.

name of protecting the collective interest of human security. In other words, nation states may circumvent their human rights treaty obligations in the guise of protecting human security.<sup>48</sup> According to the 1994 UNDP Report, however, “one of the most important aspects of human security is that people should be able to live in a society that honours their basic human rights.”<sup>49</sup>

Under the discourse of human security, “human rights appear to be merely a subset of human security concerns.”<sup>50</sup> Alternatively, it may be argued that human rights and human security are different aspects of human dignity, so that they are not contradictory to each other but rather converge. A defining feature of human security is the centrality of people as opposed to states. The principal goal of human security is to extend the concept of security beyond national security as a way to force states to pay more attention to the needs of their citizens.<sup>51</sup>

In today’s world, fast changing especially in light of the global coronavirus pandemic, the notion of the CSFM is an example of the importance of human security. As James Tully states in *Strange Multiplicity: Constitutionalism in an Age of Diversity*,<sup>52</sup> Canadian First Nation artist Bill Reid’s sculpture, *The Spirit of Haida Gwaii* is considered to be a symbol of humanity’s interdependence and coexistence:

The sculpture encompasses ... not just one culture but the entire family of living beings. The canoe is filled to overflowing with creatures who bite and claw one another as they doggedly paddle along. The variety and interdependence of the canoe’s occupants represents the natural environment on which the ancient Haida relied for their very survival: the passengers are diverse, and not always in harmony, yet they must depend on one another to live. ... There is certainly no lack of activity in our little boat, but is there any purpose?<sup>53</sup>

This is a timely reminder of the centrality of human security as a normative consensus in international law-making process in light of coexistence and co-operation, which Wolfgang Friedman wrote in 1964:

In international law it is today of both theoretical and practical importance to distinguish between the international law of ‘coexistence,’ governing essentially

<sup>48</sup> Oberlietner, *supra* note 9, at 185.

<sup>49</sup> UNDP, *supra* note 47.

<sup>50</sup> Howard-Hassmann, *supra* note 20, at 103.

<sup>51</sup> *Id.* at 90.

<sup>52</sup> JAMES TULLY, *STRANGE MULTIPLICITY: CONSTITUTIONALISM IN AN AGE OF DIVERSITY* 23 (1995).

<sup>53</sup> Bill Reid, *The Spirit of Haida Gwaii* Canadian Museum of History, <http://www.historymuseum.ca/cmc/exhibitions/aborig/grand/gh04eng.html>. See also TULLY, *supra* note 52.

diplomatic inter-state relations, and the international law of co-operation, expressed in the growing structure of international organization and the pursuit of common human interests.<sup>54</sup>

This emphasis on the distinction coincides with Sienho Yee's view. Yee argues that whereas international peace and harmony were the distinguishing features of coexistence, co-operation between states—a natural progression from coexistence—refers to a stage of development where states enter into agreements for their mutual benefit.<sup>55</sup>

Because treaty compliance may be more effective “in the presence of a social system marked by shared norms and beliefs,”<sup>56</sup> China's compliance with international treaties depends on building normative consensus between non-local Western liberal standards and the local underlying norms. Thus, human security, as identical to the CSFM, has the potential to serve as a normative consensus among the international community and become a key element linking its national constitution with international law. Therefore, as a way of echoing China's notion of the CSFM, it may be desirable for the international community to encourage China to converge its normative discourse like CSFM to the concept of human security, thereby forming a global consensus, along with the protection of individual human rights as its key feature.

China has not been unreceptive to western constitutional ideology. At the height of the bilateral relationship between China and the US of the 1980s, when the US Constitution celebrated its 200th anniversary in 1987, this landmark did not go unnoticed in China. In fact, there was much academic interest in the US Constitution. Two nationwide conferences were organised by Fudan University of Shanghai and Beijing International Studies University.<sup>57</sup> This academic interests in the US Constitution<sup>58</sup> brought many translation on its leading works.<sup>59</sup> Research shows

<sup>54</sup> See generally WOLFGANG FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW*, vii (1964). See also JOEL TRACHTMAN, *THE FUTURE OF INTERNATIONAL LAW: GLOBAL GOVERNMENT* 12 (2013).

<sup>55</sup> Sienho Yee, *The International Law of Co-progressiveness: The Descriptive Observation, the Normative Position and Some Core Principles*, 13(3) CHINESE J. INT'L L. 487 (2014).

<sup>56</sup> Beth Simmons, *Compliance with International Agreements*, 1 ANN. REV. POLIT. SCI. 75, 86 (1998). See also HEGLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (1980).

<sup>57</sup> Hu X., *The US Constitution and Its Dissemination in China, Circa 1987*, 12 J. HIST. SCI. 89 (2018). <available only in Chinese>

<sup>58</sup> Han Liu, *Regime-Centered and Court-Centered Understandings: The Reception of American Constitutional Law in Contemporary China*, 68(1) AM. J. COMP. L. (2020).

<sup>59</sup> See, e.g., LOUIS HENKIN, *CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS* (1990); *CONSTITUTIONALISM AND RIGHTS: THE INFLUENCE OF THE UNITED STATES CONSTITUTION ABROAD* (L. Henkin & A. Rosenthal eds., 1990); 3 *THE POLITICAL THEORY OF THE CONSTITUTION* (K. Thompson ed., 1990); and ALLEN ROSENBAUM, *CONSTITUTIONALISM: THE PHILOSOPHICAL*

that the term “foreign constitutionalism” was mentioned in China’s most influential official medium, *The People’s Daily*, 25 times during the period from 1949 to 1978, 36 times between 1979 and 1988, 44 times between 1989 and 1999, and 67 times during the period from 1999 to 2009.<sup>60</sup> In 2013, however, an article published by the CCP media argued that the key elements and ideas of constitutionalism belong exclusively to capitalism and have no place in the socialist people’s democratic system.<sup>61</sup> Since then, no further discussion on constitutionalism has been allowed in China.<sup>62</sup>

As mentioned above, this is at least partly because of the perception of the CCP leaders, who are concerned about the pro-democracy protests in China in 2011, that Western ideas of constitutionalism and democracy were political propaganda of the West and particularly the US aimed at inciting the overthrow of the Chinese government and subverting state power. This reveals how international engagement may inform China’s reception of Western liberal norms.

From the American perspective, China is a global political and economic power posing the gravest threat and challenging the US hegemony. Even before the Trump administration, the US initiatives in the Asia-Pacific, such as the Comprehensive and Progressive Trans-Pacific Partnership, were widely seen as part of America’s containment policy against China.<sup>63</sup> As such, one could not expect China to promote the Western liberal normative discourses in China.

The main reason behind the US’s hostility towards China has been the increasing dominance of the CCP. During the period of cordial Sino-US relations in the 1980s, engaging with China might be a useful approach to influencing China to adapt the general norms of international law and work more effectively towards a cosmopolitan constitutionalism based on shared norms. The notion of human security, as equated to China’s constitutionally acclaimed CSFM, may present an opening to encourage human rights protection in China. China’s assertive stance in the international arena is defensive in nature, which is an efficient means to protect national interest and the survival of the party-state. As long as this approach can be effective, China may

DIMENSION (1988).

<sup>60</sup> Lianfan Deng, *Study on the Types of the Concepts of Constitutionalism on the ‘People’s Daily’ from 1949 to 2009*, 5 CONST. & ADMIN. L. R. 235 (2011). <available only in Chinese>

<sup>61</sup> Xiaoqing Yang, *Constitutionalism and the People’s Democratic System*, PEOPLE’S DAILY (May 22, 2013), <http://theory.people.com.cn/n/2013/0522/c40531-21566974.html>. <available only in Chinese>

<sup>62</sup> Wangyou Rey, *Netizens discuss “Comparative Study of Constitutional Government and People’s Democratic System”* [网友热议《宪政与人民民主制度之比较研究》], BBC NEWS (May 22, 2013), [https://www.bbc.com/zhongwen/simp/china/2013/05/130522\\_capitalism\\_comments](https://www.bbc.com/zhongwen/simp/china/2013/05/130522_capitalism_comments). <available only in Chinese>

<sup>63</sup> David Pilling, *It Won’t Be Easy to Build an ‘Anyone but China’ Club*, FIN. TIMES (May 23, 2013), <https://www.ft.com/content/08cf74f6-c216-11e2-8992-00144feab7de>.

be willing to pursue “a less definitive version that seeks to explore the changes in constitutionalism without anticipating a political transformation towards such a universalism.”<sup>64</sup>

## 5. Conclusion: How to Engage China in CSFM?

China’s constitutionally proclaimed notion of the CSFM demonstrates the country’s efforts to project its normative discourse in global governance onto the international community. In practice, the author would like to suggest common interest among the international community as a whole in tackling global problems. To frame a normative discourse in terms of human security may offer a possibility for both China and the international community to converge on a normative consensus in the making of international law, which is built not only on interdependence but also on the commonality of humanity. It might be useful to explore whether there is a pragmatic problem-solving approach in international law with special references on identifying international and domestic issues and how it can be solved without advancing a particular political agenda based on broad ideological presumptions. This does not mean the end of ideology; rather, a liberal world order is believed desirable for all mankind to pursue pragmatically.

Thus, a normative consensus, such as human rights and climate change issues, may be established with authoritarian states on a case-by-case basis in an effort to incrementally transform those states into more internationally oriented.

China has been engaged with the globalised world since the 17th century, when Jesuit accommodation helped the West to understand China. Subsequently, routine existence and thought changed, from Delft to Beijing, in response to the rapid growth and substantial influence (at times for the worse) of global trade.<sup>65</sup> The American unilateralism in the international system invites discussion of the pros and cons of economic globalisation. As China has recently sought to develop a more self-reliant domestic economy, this policy shift of inward economic pivot is properly understood as a temporary measure taken in response to the US policy to ‘decouple’ from China. Despite the growing authoritarianism of China’s domestic policy and its aggressive

<sup>64</sup> Haig Patapan, *Towards a Cosmopolitan Constitutionalism: On Universalism and Particularism in Chinese Constitutionalism*, 3(1) CHINESE J. COMP. L. 80 (2015).

<sup>65</sup> See generally TIMOTHY BROOK, VERMEER’S HAT: THE SEVENTEENTH CENTURY AND THE DAWN OF THE GLOBAL WORLD (2008).

posture in the international arena, China will be remaining as a key member of the international community. Whether China's current authoritarian turn will be long-term may depend on the future of its leadership.

The Covid-19 pandemic does not signal the end of globalism. As stated by former US Secretary of State Henry Kissinger, the pandemic will "forever alter the world order."<sup>66</sup> However, ever-accelerating change is a fact of modern life, as evidenced by Donald Trump's regime, characterised by unilateralism, human rights issues, refugee crises, and climate change. In *WORLD ORDER*, Kissinger writes: "Our age is insistently, at times almost desperately, in pursuit of a concept of world order. Chaos threatens side by side with unprecedented interdependence."<sup>67</sup> Therefore, a worldwide normative consensus based on human security may guide our future, be it towards a community of a shared future for mankind or not.

Received: August 1, 2022

Modified: September 30, 2022

Accepted: November 1, 2022

<sup>66</sup> Kissinger, *supra* note 1.

<sup>67</sup> Michiko Kakutani, *Long View of History Includes Today*, N.Y. TIMES (Sept. 8, 2014), <https://www.nytimes.com/2014/09/09/books/in-world-order-henry-kissinger-sums-up-his-philosophy.html>.

