Chapter 3

China’s Approaches to International Law since the Opium War

International law is an amalgam of the past, present and future. The vicissitudes of international relations and our desires for progressive development of international law compel us to focus on the present upon which future may be built, while the past is rationalised, distorted or simply forgotten. The past is important not only because the vast majority of rules, principles and norms of international law, including those codified in treaties, have come into being through decades, if not centuries, of deviation, crystallisation and consolidation, but also because the past, and one’s perspectives of the past, underlie, inform and explain a State’s perspectives of a particular order or particular norms or values and its approaches to the perspectives and actions of other States. As Avery Goldstein maintains, ‘[h]istory, especially the interpretation of history, affects every country’s contemporary interaction with the outside world. History not only bequeaths some of the substantive issues on the foreign policy agenda ... [i]t also affects foreign policy decision-making when leaders draw lessons from past experience or invoke analogical reasoning that compares the country’s current circumstances to those it faced before’.

Progressive development of international law does not always mean that change to longstanding principles of international law must ensue; in appropriate cases, maintenance of the stability and integrity of such principles represents the progressiveness one should desire.

In ignoring or distorting the historiography of international law, past mistakes are revived only to masquerade in different clothing. For instance, the ‘standard of civilisation’, a defining factor in international law that justified colonialism, remains in important international legal sources and has

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2 The most notable example is embodied in Article 38(1)(c) of the Statute of the International Court of Justice, which states that ‘[t]he Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply the general principles of law recognised by civilised nations'.
metamorphosed into contemporary discourses of human rights, democracy and self-determination, which, as discussed in the previous chapter, many argue should be enforced through humanitarian intervention akin to the *mission civilisatrice* two centuries ago. Susan Marks has noted that ‘when we treat international law as a redemptive force that could save the world if only it were properly respected and enforced, we obscure the possibility that international legal norms may themselves have contributed to creating or sustaining the ills from which we are now to be saved. We also mischaracterize the processes of emancipatory change as redemption or deliverance. And we weaken our capacity to criticize international law, and make it more useful to those by whom liberatory processes are actually carried forward’. In consequence, not only are discourses of human rights, democracy and self-determination rejected by many non-Western States and their peoples, but also are the conceptual validity, normative applicability and empirical implementation of human rights, democracy and self-determination questioned and manipulated, and international peace and security submerged in murky waters.

Mikhaïl Xifaras stresses that ‘the justification of international law must take responsibility for the historical meaning of international law for non-Western peoples, and not simply content itself with affirming its own legitimacy in terms of its conformity with principles that have their origins in Western thought’. China’s historical experience with international law illuminates the role of international law in legitimating Western powers’ oppression of non-Western States, peoples and cultures, including a State and civilisation as old as China, during the nineteenth and early twentieth centuries; how China’s adaptation to Western international law faced resistance from within and externally; how China has used international law to protect and advance its State sovereignty and national interests since the 1860s; and how China’s simultaneous resistance to and use of international law have contributed to the development of international law.

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