A Keen Observer of the International Rule of Law?

Since the Opium War, from an insular imperial regime determined to have its traditions preserved, China has metamorphosed into a major international actor whose contribution to the legitimacy and development of international law ought to be scrutinised and understood. Given the centrality of law in the creation, decision-making processes and procedures, and impact of the United Nations Security Council and its decisions, the deliberative discourses that Security Council Member States engage in that in turn shape their behaviours, and the necessity for China to articulate its reasons publicly for its actions within the Security Council (which may consist in abstentions and vetoes as well as support), the roles China plays within the Security Council illuminate and clarify its approaches to international legal order. China’s actions within the Security Council also show how international law may or may not have evolved to encompass certain contentious interpretations of the United Nations Charter, notably the power of the United Nations to form or delegate peacekeeping operations, and the purported right or duty of the international community or a State to use force against another State in the face of human rights violations or a humanitarian catastrophe.

As discussed in Chapter 3, while China, as represented by the People’s Republic of China government in the United Nations since 25 October 1971, was initially hostile to the international organisation as epitome of superpower hegemony, through subsequent socialisation with the United Nations and other international organisations, especially as a Permanent Member of the Security Council, it has navigated its place within international legal order and the roles it may play in shaping the conduct of international relations, the development of international law, and the direction in which international legal order in its current form ought to proceed.

This chapter first explains how international law serves as a constitutional–normative framework within which the Security Council must operate, followed by a discussion of how the Security Council in turn may serve as a locus of deliberative discourses that delineate, influence and constrain its Member States’ behaviours. Then, it challenges the view commonly held by international relations scholars that international law plays a limited role on matters of international peace and security.

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by exploring China’s voting behaviour in the Security Council and the arguments it has proffered in justification. This chapter also discusses how China has made use of its Security Council permanent membership to explore possibilities for strengthening the United Nations in the maintenance of international peace and security. Finally, it addresses some scenarios in which China might resort to international legal norms and principles to respond to a draft Security Council resolution aimed at its conduct rather than simply veto it. An appreciation of how China deploys legal argumentation to buttress its positions helps advance ‘our understanding of the law, and thus … the identity, objective, and principles of the community’. This chapter shows the importance China, through its voting behaviour and argumentation in the Security Council, ascribes international law as the perimeter within which international order ought to function.

1 Security Council and International Law

The United Nations was established to forestall international conflicts and the Security Council was envisaged as a forum where major States, together with specially affected States and a rotating sample of other States, may meet to deliberate and determine the course of action to follow in a situation or dispute by reference to established international norms, principles, rules and procedures, in order that international peace and security may be maintained or restored. The United Nations Charter vests the primary responsibility for the maintenance of international peace and security in the Security Council, and specifically prescribes that the General Assembly shall not make any

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3 Under Article 23(1) of the United Nations Charter, it falls upon the United Nations General Assembly to elect ten Members of the United Nations to be non-Permanent Members of the Security Council, ‘due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organisation, and also to equitable geographical distribution’. Article 23(2) states that a non-Permanent Member shall be elected for a term of two years, and may not be eligible for immediate re-election. Currently, three non-Permanent Members are elected from among African States and two from among Asian States (with the proviso that one of these five non-Permanent Members must be an Arab State alternately in Africa or Asia), two from among Latin American and Caribbean States, two from among Eastern European States, and two from Western European and other States (such as Australia and Canada).
4 Ibid., Art.24(1). Although the responsibility conferred on the Security Council for the maintenance of international peace and security is primary (and thus not necessarily exclusive: