

Chinese and Soviet Attitudes toward International Law: A Comparative Approach

Athanassios Vamvoukos

LL.B (University of Thessaloniki), M.C.L. (The George Washington University),
D.Phil. Candidate (Oxford University)

1. Introductory Remarks

The attitudes of Chinese Communist legal writers toward international law, their conception of its functions, and their interpretation of the meanings of the key terms are predictably different from and often opposed to those of their Western counterparts. While differences existed before the establishment of the People's Republic of China in 1949, these became more pronounced with the Chinese Communists' adoption of Marxism-Leninism as their official state ideology. The divergence has increasingly become centered on the concept of sovereignty, and on assumptions as to its nature and its relationship to international law.

Despite the emergence of the People's Republic of China as a nuclear power, and its ever-growing influence in world affairs, very little so far has been written on China's attitude toward international law.¹ Systematic attempts have yet to be made to probe the peculiarities of Chinese contemporary behavior concerning international law observation. We know very little so far about China's present and future motivations, or lack of them, to play the role of a law-abiding country. Lack of scholarship concerning China and international law unfortunately has allowed students to form opinions on this subject based upon values rather than knowledge, on journalistic reports rather than dispassionate enquiry. The result has been obvious: a generally negative and suspicious view of China's activities in the international arena is carried over in the field of law and, more often than not, the conclusion is drawn that China could not possibly have any respect for international law. One frequently hears oversimplified statements such as: "Since China is a socialist country which has borrowed much of its institutions and practices from the Soviet Union, it cannot possibly have an independent view of international law."

Although there may be some truth in this argument, it appears that it does not disclose the whole picture. Communist China indeed does espouse many principles of international law enunciated or applied by the Soviet Union or by Soviet internationalists. However, in view of the ever-growing differences of views between the two champions of the socialist world in manipulating international problems and in leading the world Communist movement, it may be inferred that

Communist China has formulated different approaches toward international law, at least in some aspects.

Now that the stage has been set, I shall embark upon an analysis of the Chinese attitude toward some basic problems of international law, delving, where possible, into appropriate comparisons with regard to the respective Soviet formulations.

2. A Definition of International Law

At the very outset it must be noted that, until the 1950s, the prevailing tendency among Western students of international law was to define it as a body of legally binding norms governing the relations between civilized states. Thus Oppenheim's *International Law* has unequivocally defined international law as "the body of customary and conventional rules (as distinguished from tradition, morality and rules of international courtesy) which are considered legally binding by civilized states in their intercourse with each other".² It was this very definition, with its striking limitation of the application of international law, which aroused a wave of devastating criticism among the circles of Communist Chinese jurists.

In their eyes, international law is a powerful weapon used by "civilized" countries to control and oppress the uncivilized countries,³ thereby excluding the oriental as well as the small western nations from the ambit of international law simply by branding them "uncivilized" states.⁴ The ultimate result is that "in the Western world the suppression of the weak by the strong and the annihilation of the small by the big are not only tacitly condoned by capitalist international law but also cloaked with a mantle of legality".⁵

In recent years, the much-debated definition of international law was reformulated and express reference to the term "civilized" was artfully omitted.⁶ Gradually, however, the category of international entities has come to include international organizations and, to a limited extent, individuals.⁷ This is an outgrowth of their increasingly significant role in today's complex and interdependent world society.⁸

Such formulations are generally unacceptable to Chinese writers who rigidly adhere to the view that only states can be subjects of international law, since only states can possess absolute sovereignty. On this premise, K'ung Meng points out that the capitalist concept of international entities is limited to "civilized" nations only, and that small and weak nations are branded as "uncivilized" and, consequently, either not sovereign or not fully sovereign. This, in his view, is an attempt by the West to legalize aggressive acts and colonist exploitation carried out by the "civilized" nations against the "uncivilized".⁹ Moreover, the international status of world organizations is condemned as an attempt aimed at "world