SOVEREIGNTY AND INTERNATIONAL LAW:  
THE PERSPECTIVE OF THE PEOPLE'S  
REPUBLIC OF CHINA

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I. INTRODUCTION

The attitudes of Chinese Communist legal writers and political theorists 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 writers in the Western tradition. 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. The Chinese combine a fundamentally different history with a Marxist-Leninist interpretation of interstate relations to conclude that law, and international law in particular, is an expression of politics,1 and that the regulatory mechanism in interstate relations is power, not international law.

While the Chinese have suspended the publication of legal journals since the onset of the Cultural Revolution in 1965, their recent foreign policy statements and actions in the United Nations indicate that, with only slight modifications, their present attitudes toward sovereignty and international law have remained essentially

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It should be noted that the JPRS translations are of uneven quality on legal materials. As a result, I have frequently consulted the original in order to render a more accurate translation. However, for the convenience of most readers, the page in JPRS will be given for reference. Most of the documents on international law translated in JPRS have also been translated in whole or in part in J. A. Cohen and H. D. Chiu, People's China and International Law: A Documentary Study (1974). This book contains excellent translations of a collection of documents relating to the PRC's theory and practice of international law.
unchanged from those of the early 1960's. This article will examine Chinese writings on sovereignty and international law in the perspective of China's history and political background, and analyze their relationship to the Chinese perspective on the state, international organizations, and individuals as international entities.

II. Historical Perspective

At her initial confrontation with the Western powers in the nineteenth century, China viewed herself, as she had done for centuries, as the "central kingdom," superior to all other countries. China's scheme for ordering her relations with the external world reflected her vision of internal order. Ideally, proper government and a peaceful world were assumed to result from the ruler's adherence to Confucian norms of personal virtue and conduct. Virtue, not law, was considered fundamental to order in internal and international society. Law served chiefly as a coercive instrument for the enforcement of basic rules of morality.

The Confucian moral order was maintained by a system of hierarchical rule achieved by the observance of appropriate forms and ceremonies (li). "The primary purpose of this system of 'law' was not to find out who was right and who wrong, but rather to eliminate a threat to or violation of harmony and the status quo." Similarly, China's international relations were based, in theory, on the "tribute system," which had as its objective the maintenance of the harmony of mankind. These hierarchical principles, resembling those of the patriarchal Chinese family, assumed the inferiority of other states to China and ignored the view that China was but one state among equals. As a result, the concept of ius gentium, human and voluntary law established by the consent of nations in their interrelationships, could not exist in the context of China's traditional tribute system.

Most Western scholars of Chinese history have thought that, at the time of her encounter with the West in the nineteenth century,

4. Prior to her experience with the West in the 19th century, there were some exceptions to this lack of equality in China's practice of international relations, notably the treaties of Nerchinsk (1689) and Kiakhta (1727), signed with Russia on the basis of equality. For the texts of these treaties, see 1 Treaties, Conventions, etc. Between China and Foreign States (2nd ed.) 5-7, 28-49 respectively (1917).
China lacked an awareness of herself as a political state, considering herself instead as a cultural entity. Current research into the actual practice of Ch'ing international relations suggests this view will eventually require some modification, as official Ch'ing documents frequently refer to exact territorial boundaries, and as many recurring interstate problems appear to have been regulated on the basis of reciprocity. Nevertheless, in Chinese history and political philosophy, the Emperor, not the "state," was the object of concern. The Chinese people did not appear to view the Chinese "state" in a political sense; they believed the government was the Emperor's business and not their own. But in the Confucian theory of government, the people did have the right to remonstrate to the throne concerning poor conduct by government officials, and the "right to rebel" against improper government.

At the end of the Opium War in 1842, China signed the first of the "unequal treaties," the Treaty of Nanking, with Great Britain. At this time, Western and Chinese views of these treaties, which established extraterritorial rights in China, diverged greatly. The West, assuming it possessed the superior civilization, had developed as a part of international law the idea that a "civilized" nation had a right to colonize territories which were "uncivilized" and incapable of understanding their responsibilities under international law. China was among those states whose "civilization has not reached that condition which is necessary to enable their Governments and their population in every respect to understand and to carry out the command of the rules of International Law." The Western nations saw themselves as fully justified in demanding, with the use of force, certain concessions from the Chinese.

5. See, e.g., the works of John K. Fairbank on Chinese history.
6. Research by Randle Edwards at the Harvard East Asian Legal Research Center points to new perspectives on international relations during the Ch'ing Dynasty.
7. For the text of the Treaty of Nanking, see 30 British and Foreign State Papers, 389-392 (1842). Other agreements made in 1842 follow.
8. L. Oppenheim states, "partly by custom and partly by treaty obligations, Eastern non-Christian states, Japan now excepted, are restricted in their territorial jurisdiction with regard to foreign resident subjects of Christian powers." I International Law 195 (1st ed. 1905); see also 373-374, 480. Oppenheim also asserts that the civilization of non-Christian states "is essentially so different from that of the Christian States that international intercourse with them of the same kind as between Christian States has been hitherto impossible ... There should be no doubt that these States are not International Persons of the same kind and the same position within the Family of Nations as Christian States." Id. at 148.
9. Id. at 33.
10. For example, the "doctrine of fundamental rights" included "a right of intercourse of every State with all others," including: "a right of diplomatic, commercial, postal, telegraphic intercourse, of intercourse by railway, a right of
spect for sovereignty and territorial integrity was not an issue because China, lacking the rights of a civilized state under international law, was not considered a sovereign entity: "... it is discretion, and not International Law, according to which the members of the Family of Nations deal with such States as still remain outside that family."11

Whereas the West saw the first treaties as steps in extending European religion, culture and law to China, as well as economic expansion into China for Western commerce, the Chinese saw the treaties within the context of their traditional concept of world order, and not in terms of a nation-state being deprived of its rights under international law. They considered fixed tariffs and consular jurisdiction as conveniences, rather than infringements on sovereign rights.12 "Law, as in the Ottoman empire or medieval Europe, was considered personal rather than territorial."13 Thus the Chinese government usually exempted foreigners from its law.

This was done not with any sense of loss of dignity or power, but in the condescending belief that the less civilized aliens could not understand the highly complex Chinese rule and must therefore be given a chance to learn the civilized way of life through gradual observation and slow assimilation.14

The most-favored-nation clause, which extended the rights Britain had gained by treaty in 1842 to other Western states,15 was likewise considered convenient and expedient and "an expression of the

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11. Id. at 34.
13. Id. at 139.
14. Id. See F. C. Jones, Extraterritoriality in Japan, and the Diplomatic Relations Resulting in its Abolition, 1853-1899 at 2-3 (1981). Again, however, current research at the Harvard East Asian Legal Research Center would modify this view to take into consideration evidence suggesting that the Ch'ing fought to exercise Chinese criminal jurisdiction over aliens from 1730 to 1840.
15. For example, in the thirty-four articles of the Sino-American Treaty on the Opening of Five Ports for Trade, it was stipulated that all rights and privileges which Britain gained in the Treaty of Nanking, 1842, and its annexes, would accrue to the United States. See Mao-Tse-tung, Friendship or Aggression (Aug. 30, 1949) in 14 Selected Works of Mao-Tse-tung, 450, n. 2 (1961).
emperor's traditional equal benevolence toward all men from afar, regardless of culture and nationality."

The Chinese view was that there was only a limited amount of China trade anyway, and it made no difference to them if it made none to the British, whether they shared this limited trade with other states. Additionally, they argued that it was difficult to distinguish one European from another because they all looked alike.

But one of the main sources of their seeming indifference to extraterritoriality was that, in the beginning, the Chinese had wanted to exclude the foreign barbarians from participation in Chinese culture, to isolate them in enclaves within China. Thus, while the treaties gave the West further access to China in some ways, from the Chinese perspective they continued to insulate China from Western influence in more important respects.

The Chinese eventually became aware, through the translations of Western books on political philosophy and such Western texts on international law as Vattel's *Le Droit des gens* and Henry Wheaton's *Elements of International Law*, that they had made significant concessions to the West in the treaties of the 19th century. Professor Schrecker argues that only when the Chinese understood the implications of the Western concept of sovereignty did they begin to suffer from "a sense of inferiority and even shame at the unusual position of China," which, combined with the activating force of nationalism, engendered a positive, active "determination to end that inequality." Not until the foreign

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16. Hsū, supra note 12, at 140.


18. Bluntschli, Das moderne Völkerecht der civilisierten Staaten als Rechtsbuch dargestellt (1868). Date translated into Chinese unknown. Referenced in Oppenheim, supra note 8, at 36. It is commonly known that the Swiss jurist Bluntschli's works were the source of the views of the modern state held by Liang Ch'i-ch'iao, one of the leading intellectuals and reformers of the early 20th century.

19. Three paragraphs concerning the rights of states in regard to contraband were translated in 1839 at the request of the Imperial Commissioner Lin Tse-hsū, as noted in Hsū, supra note 12, at 123–125.


21. J. E. Schrecker, Imperialism and Chinese Nationalism: Germany in Shantung 251 (1971). Chiu Hungdah, however, would argue that treaty revision or abrogation was "primarily a political rather than a legal question. Whether a treaty can be revised or abrogated chiefly depends upon the ratio of strength between the contracting parties." Thus he concludes that the Ch'ing government did not invoke the international law principle of *rebus sic stantibus* or prior violations by the other party in order to revise or abrogate the unequal treaties.
policy view of the reformers of the late 19th and early 20th centuries gained dominance did the Chinese take up a totally new approach to international relations, based on their new perspective of China's place within the international system as a sovereign state with equal rights before international law. And it was the reformers who, for the first time, "adopted international law as the fundamental perspective from which to formulate and judge Chinese policy."22

Nevertheless, China was forced to follow the Western "customary rules of international law"23 which she had had almost no part in formulating. As late as the 1920's, she was not treated as a fully sovereign state by the Western powers.24 For example, an instruction of the U.S. Department of State of July 26, 1927, advising American missionaries on the registration of missionary schools in China stated, "each group should be free to decide for itself whether or not it will conduct its educational work in accordance with local Chinese Regulations."25 Having given the missions the right to exercise their free will, the Department of State continued:

the missionary boards are incorporated under American law or are composed of American citizens and, therefore, are under American extraterritorial jurisdiction [a circumstance which] would appear to make it optional with the missionary board whether it will comply with Chinese laws and regulations.26

because of the political situation, not because of a lack of understanding of the Western concept of sovereignty or international law. See Hungdah Chiu, The Reception of Modern International Law in China, Seminar on the Role of Law in Asian Society, 28th International Congress of Orientalists, Canberra, Australia, at 9 (Jan. 7–9, 1971).

22. Shrecker, supra note 21, at 47.

23. 1 Oppenheim, supra note 8, at 12–14, on customary rules" of the Law of Nations.

24. See, e.g., the correspondence concerning the Boxer Rebellion and the subsequent Protocol and indemnity, in Foreign Rel. U.S. 77–382 (1900). China lacked the rights of a state to the protection of international law, the right to appeal to international justice, but bore all of a state's legal responsibilities. See K'ung Meng, A Criticism of the Theories of Capitalist International Law on International Entities and the Recognition of States, Kuo-chi wen-t'i yen-chiu, No. 2, at 45 (Feb. 3, 1960). Also translated in JPRS No. 3453 at 34 (June 27, 1960).

25. 2 Foreign Rel. U.S. 569 (1968), as quoted in J. C. Vincent, The Extraterritorial System in China: Final Phase, East Asian Research Center, Harvard, Monograph 30 at 25–26 (1970). Vincent remarks that the Nationalist government had not at this time been recognized as the government of China; hence the word "local."

26. Id.
Thus, as John Carter Vincent points out, by 1927 the treaties relating to mission schools which the U.S. had made with China\textsuperscript{27} had come to be interpreted as providing Americans and other foreigners enjoying extraterritorial rights with protection.

from interference of any sort or degree in their activities by the authorities or agents of the Chinese government. The basic original right of freedom from Chinese court jurisdiction had been extended and broadened to include freedom from Chinese administrative control except in matters explicitly provided for in the treaties.\textsuperscript{28}

The powers which participated in the Washington Conference (1921–22) also refused to renegotiate the tariff provisions of the earlier treaties on the grounds that the Chinese lacked "the essential characteristics of a modern state,"\textsuperscript{29} and were reluctant to accord China the rights of a fully sovereign state. The Chinese delegates to the Washington Conference presented a ten-point program for restoring equality and independence to China; but the other delegates replied with the "Root resolution" which pledged "to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government." To effect this, the powers adopted a number of other resolutions, including one to establish a fact-finding commission on extraterritoriality in order to recommend means

to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant

\textsuperscript{27} The Sino-American Treaty of 1858, the Supplemental Treaty of 1868, and the Sino-American Treaty of 1903.

\textsuperscript{28} Vincent, supra note 25, at 26. Note that this position was retracted in 1930: According to the U.S. State Department, "In view of the fact that the treaties do not specifically exempt from government control schools maintained by American citizens for the secular education of Chinese... and in accordance, also, with the principle that international agreements involving a surrender of sovereign authority are to be interpreted restrictively, the Department believes that American citizens and organizations in China would not be justified, under present conditions, in contesting the right of the appropriate authorities to prescribe the method in which such schools shall be conducted." 2 Foreign Rel. U.S. 538, 539 (1930) as quoted in Vincent, supra note 25, at 29.

\textsuperscript{29} A. Iriye, After Imperialism: The Search for a New Order in the Far East 1921–1931 at 20 (1965). Iriye indicates that the view of the delegates of the Washington Conference was, perhaps, justified: "The authority of the central government in Peking extended only to those provinces which happened to be under control of the warlords in support of the government. At the time of the Washington Conference the Canton regime under the leadership of Sun Yat-sen desperately sought to be recognized as a distinct government and, when this failed, it chose to ignore the conference and declared beforehand that it would not recognize any decisions of the conference dealing with China."
the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.\textsuperscript{80}

Additionally, foreigners were immune from extra-treaty taxes; i.e., even though no specific treaty provisions provided for immunity from direct taxation, the nationals of the treaty powers were able to avoid paying these taxes:

Individuals and corporate entities were subject only to the jurisdiction of their own consular and national courts, and since those courts applied only the laws of their particular countries, American individuals or companies that refused to pay taxes could not be prosecuted in either the Chinese courts or in their own courts.\textsuperscript{31}

It was not until the early 1930s that the Nationalist government succeeded in gaining tariff autonomy, and another decade passed before the treaties of 1943 brought a formal end to extra-territoriality in China and promised recognition of the Chinese government's sovereignty.

Even after the Communists took power in October 1949, the Western powers still challenged some of China's sovereign rights by refusal to recognize the People's Republic of China. And the majority of the members of the United Nations held that the question of which government should represent China in the U.N. should be considered an "important question" requiring a two-thirds majority voter under Article 18 of the U.N. Charter. From the Chinese Communists' viewpoint, such actions were related to American policy of support for the Chiang Kai-shek government, and were intended to challenge the Communists' right to rule the Chinese people and to further isolate them from participation in international organizations and affairs.

III. Chinese View on International Law
and "World Law"

China's historical predisposition to suspect international rules formulated by Western nations has been strengthened by Marxism,

\begin{itemize}
\item \textsuperscript{30} Foreign Rel. U.S. 282, 290 (1922), as quoted in Iriye, supra note 29 at 21.
\item \textsuperscript{31} Vincent, supra note 25, at 38. See pp. 38–61 for details on the consumption tax, private tax agreements, consular collection of customs duties, U.S. Navy and private tax agreements, and business, municipal, and income taxes. Note that the details on the British are also covered in some areas.
\end{itemize}
which rejects a world state. Marxism calls for the elimination of all forms of coercion, including law: law is the coercive tool of the state which is ultimately supposed to "wither away." While Marxist theory concerning international law has not been explicitly developed, the obvious implication of its tenets is that a world state, particularly one using a supranational law as a coercive tool, is unacceptable.

In addition to the perspective gained from Marxism-Leninism, the Chinese Communist writers have challenged bourgeois international law for a far more fundamental reason: a distrust of the intentions of other states. The Chinese stress on intentions rather than obligations reflects the application of a Marxist-Leninist interpretation of international relations and international law. The Marxist-Leninist perspective assumes that the intentions of a state can be gauged accurately by scientific analysis of its class structure and economic system. Thus, even while states representing two different ruling classes may perform the same act, the intentions of that act differ depending on the nature of the ruling class. When the Chinese say they are sleeping in the same bed with the capitalists but dreaming different dreams, this implies that they are using the same principles of international law to obtain different goals. Given the flexibility and vagueness of international legal norms, such a view does not seem unwarranted. It is, of course, a matter of degree.

China's recent historical position as a developing, militarily weak, non-Western, and socialist nation has reinforced its distrust of the Western capitalist nations which it views as having formulated the present international rules for their own national objectives. From the Chinese perspective, these states have applied international law to maintain the status quo against newly emerging "progressive" forces. Since World War II, the international system and international law have not been totally controlled by the Western, de-

32. The Chinese explicitly affirm that international law is a tool of their own foreign policy and should be used to promote China's national interests. Chiu Hungdah points out that although every country attempts "to justify its actions in terms of international law," few Western writers would ever admit it. An exception Chiu mentions is M. S. McDougal, who consistently asserts that law is an instrument of policy: "... it is a matter of moral and political survival, as well as jurisprudential integrity, to acknowledge that a public official probably applies the law only when he promotes the policies of the moral community which he serves. There is no existing universal moral order"; quoted in Chiu Hungdah, "The Nature of International Law and the Problem of a Universal System," in Leng Shao-chuan and Chiu Hungdah (eds.), Law in Chinese Foreign Policy (1972), at 3 note 10 quoting from R. A. Falk's review of M. S. McDougal and F. P. Feliciano, Law and Minimum World Public Order (1961).
veloped, non-Communist states, but the impact of the socialist and non-aligned states has been gradual. Only since joining the U.N. and its various organs in 1971 has the PRC begun to feel she could have a role in defining the future development of the international system and international law.

One of the few major Chinese Communist works on international law, written by the late Professor Chou Keng-sheng of Peking University, reflects this distrust of the intentions behind Western theories of international law, as well as Western attempts to expand the nature and subjects of international law. Entitled *New Trends in Contemporary Anglo-American Theory of International Law* (1963), it argues that the mainstream of post World War II Anglo-American international legal thought is represented by advocates of "supranational law", "transnational law", "world law," and a "common law of mankind"; theories of law which go beyond the concept of the universality of international law to advocate the expansion of the scope, content and subjects of international law at the expense of state sovereignty. Like other Chinese writers, Professor Chou believes that these "world law" attitudes imply or serve to justify a number of objectionable principles, including:

- the denial or deprecation of state sovereignty, supremacy of international law over domestic law, giving individuals the status of subjects of international law, legalization of collective intervention, compulsory jurisdiction of the International Court of Justice, and the abolition or limitation of the immunity of foreign states . . . .

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34. Actually this title is mistranslated. It should read Trends in the Thought of Modern English and American International Law (Hsicn-tai ying-mei quo-chi fa ti szu-hsiang tung-hsiang).

35. Transnational law is seen by the Chinese as being above national law, yet not really international law. It may be used as a tool for the legal infiltration of other states, and thereby threatens national sovereignty. Jessup is considered one of the primary advocates of transnational law. See Yang Hsin and Ch’en Chien, Exposing and Criticizing the Fallacious Reasoning of Imperialists On Questions Concerning National Sovereignty Cheng-fa yen-chiu, No. 4 at 6 (1964) tr. in 1 Chinese Law and Government, No. 2 at 22 (1968–69).


37. Chou Keng-sheng, supra note 33, at 86.
C. Wilfred Jenks is one of Chou's primary targets. Chou attacks him for challenging state sovereignty with a "common law of mankind." Jenks condemns the traditional framework of international law as inadequate because adjusting relationships among states has become only one component of international law because of new developments in the first half of the twentieth century. Though organized on the basis of states, a "common law of mankind" would, in Jenks' view, provide for tasks to be performed by international and regional organizations, would protect individual rights and confer obligations on individuals, and would offer "new prescriptions to meet the needs of extensive economic, social, and technological problems."\(^{38}\) Chou concludes that Jenks would restrict the sovereignty of the state by making individuals subjects of international law, by sanctioning supra-state organizations responsible for the functioning of "the common community", and by guaranteeing community protection of individual rights.\(^{39}\)

For similar reasons, another legal writer, Chiang Yang, attacks Roscoe Pound for his advocacy of a "world wide legal order" in order to cope with the increasing economic unification of the world, and the development of transportation and communication which has brought all countries into closer contact.\(^{40}\) In refuting Pound, Chiang Yang argues that while law, as part of a particular economic base, serves a particular economic system, "there is no unified economic system in the modern world," but rather two "mutually opposed economic system," the socialist and the capitalist.\(^{41}\)

Philip Jessup is another "expansionist" jurist, whom Chou Keng-sheng criticizes for his preoccupation with "linking modern international law to international government."\(^{42}\) By implication Chou attacks Jessup's view that the possibility of nuclear war neces-


\(^{39}\) Chou Keng-sheng, supra note 33, at 37, referring to Jenks, supra note 38, and The Common Law of Mankind (1958). It should be noted that while at times Chou states that the common law of mankind is what Jenks is prescribing, in other places he suggests an awareness that Jenks is merely describing the reality of the new functions of international law, and not attempting to justify a new expansionist use of international law.


\(^{41}\) Chian Yang, supra note 40, at 43.

\(^{42}\) Chou Keng-sheng, supra note 33, at 32, referring to Philip Jessup's International Parliamentary Law, 51 AJIL at 396 (1957). Chou's comments are indirect quotes of Jessup. His remark is in response to Jessup's idea that rules of procedure in the U.N. Charter and those used in the U.N. General Assembly "have legal effects tantamount to internal constitution and parliamentary rules."
situates altering the traditional system of international law based on a society of sovereign states. Under this view, unlimited sovereignty is no longer the most desirable attribute of a state. Whether one advocates immediate total change by the establishment of world government, or gradual change by the construction of international organizations, such as the U.N., to meet these changes in international conditions, Jessup argues for a revised international law which places the collective will above the individual wills of the sovereign states.

The Chinese view is that China will not surrender any sovereignty. Although the Chinese Communist ideal, drawn from Marxism, is a stateless socialist society, a world comprised of independent “nations” (not “states”) but only one class, they recognize this as utopian and refuse to allow a restriction of their own sovereignty or that of any other “progressive” nation until all nations reach “internal perfection.” They have come to recognize that even socialist states may be “chauvinistic” and engage in “social imperialism” at the expense of smaller socialist states. Thus even the concept of a “socialist community” standing above individual socialist states has lost its appeal since the deterioration of the PRC’s relationships with the Soviet bloc began in the 1960s. The Soviet interpretation of the “socialist community” has, in the Chinese view, been used as a pretext for infringing on the sovereignty of other socialist states (notably Czechoslovakia in 1968). With the reality of national goals still preceding socialist goals, the Chinese rarely speak of a

43. It is one of the peculiar characteristics of this article that the author for the most part simply states the arguments of English and American writers without responding to any of the particular points. Rather, he simply dismisses all the “mainstream” arguments collectively on the grounds that they represent the “expansionist view.”

44. Chou Keng-sheng, supra note 33 at 30–31, summarizing Jessup’s views in A Modern Law of Nations at 1–3 (1948). For slightly different reasons, Chiang Yang believes Americans advocating a world law manipulate the world’s desire for peace to this end (Maritain), or use a form of “atomic blackmail” (Jones). See Chiang Yang, supra note 40, at 36–37; referring to Jacques Maritain, Man and the State at 196 (1951), and Jones 62 Columbia Law Review 753 (1962).

45. On the question of Marx’s reconciliation of international socialism with nationalism and his distinction between nations and states, see R. N. Berki, On Marxian Thought and the Problem of International Relations, 24 World Politics, 80 (1971) and S. F. Bloom, The World of Nations: A Study of the National Implications in the Work of Karl Marx (1941).

46. Social imperialism is the external behavior resulting from internal “revisionism.” See Shih Chun, “On Studying Some History of the National Liberation Movement,” Peking Review [hereinafter cited as PR], No. 45 at 7 (1972), on the “qualitative change” which the Soviet Union has undergone under Khrushchev-Brezhnev revisionism.

47. Shih Chun, supra note 46, at 7.
stateless society as an ultimate objective. Rather, they speak of a "mutual respect for sovereignty" replacing the "mutual dependence" theory behind such concepts as military blocs, common defense, "collective security," and "aid" which creates dependent relationships.48

In spite of their opposition to "world law" which serves as the basis of "world government," the Chinese Communists view "general" international law, a body of common norms which may be used to regulate international relations, as a positive element for achieving world peace.49 Chou Keng-sheng, for example, admits that "there are certain democratic principles in international law such as the principles of state sovereignty, equality, and non-interference in internal affairs, which have a definite progressive function to serve and compliance with which has been generally accepted."50 In fact, he condemns those Western writers who do not believe that such a body of common norms may exist in today's world.51 For example,


49. A similar view is held by Soviet writers who in general contend that international legal principles are formed only by the agreement of states. Therefore, since socialist states participate in the formulation of international legal norms, they essentially hold a "veto" over their content. "Since contemporary international law is, as a matter of jus cogens, the law of peaceful coexistence and the socialist camp has a veto in the norm formulation process, the agreement of states can have meaningful application only as the formal means of ratifying jus cogens or of effecting the further progressive (socialist) development of international law." B. Ramundo, Peaceful Coexistence 49 (1967).

50. Chou Keng-sheng, supra note 33, at 86.

51. It should be noted that Chou Keng-sheng condemns almost all Anglo-American international legal writers, who, even though they often represent different or conflicting points of view, all serve the purposes of the expansionist capitalist classes. While Chou Keng-sheng does not justify his dismissal of all these writers as if they have all said the same thing, Ying T'ao, another Chinese writer on international law, gives an explanation which would seem to explain something about the fundamentally radical nature of Chinese Communist writing. According to Ying T'ao, it is no surprise that many schools of bourgeois international law exist advocating different theories or some of the same theories: Since the bourgeoisie of each capitalist country plans according to its own interests, which often differ, contradictory theories may arise. "As the capitalist international jurists speak on behalf of the capitalist class of their country, the diversification of theories reflects precisely the contradiction between the capitalist class of different countries ... Even within the capitalist class of one country, several groups are formed because of the conflict of interest ... However, it must be stressed that their viewpoints clash only on issues of secondary importance, and generally agree on the basic interests of the capitalist class. The superficial difference in their opinion has not only confused the aggressive objectives of the imperialists on the international scene, but also given the imperialists the convenience of using different theories to attain their aggressive purposes under different circumstances"; Ying T'ao, Recognize the True Face of Capitalist International Law from a Few Basic Concepts, Kuo-chi wen-t'i yen-chiu, No. 1, at 42–51 (Jan. 3, 1960), in JPRS, No. 2801 at 36 (June 3, 1960).
Chou considers H. A. Smith, Kurt Wilk, and Josef L. Kunz as part of the "pessimistic" school of international law and criticizes them not for advocating "world law," but for suggesting that because Western civilization no longer plays a "unifying role" in the world, a general international law can no longer exist. Their view of international law is considered a denial, or questioning of the possibility of the continued existence of "any body of common norms that can be used in today's world to order international relations." Chou Keng-sheng approvingly quotes Professor G. I. Tunkin, a Soviet international legal theorist: the "theory that it is impossible to have a general international law is actually an apologia for the 'position of strength' and the 'cold war.'" Other Chinese writers on international law support Chou Keng-sheng's viewpoint, contending that although international law expresses the agreed wills of the ruling classes of the states formulating it, this does not amount to saying that under the current conditions of history (the coexistence of two types of social systems), there exist several types of international law (such as bourgeois international law, socialist international law, and so forth). In fact, the law which is now adjusting the relations between states with different social systems is a type of general (generally recognized) international law.

Chou by implication praises the conservative "optimists" Charles C. Hyde, Sir Gerald Fitzmaurice, Quincy Wright, 

52. The Crisis in the Law of Nations (1947), referring to pages 1–32.
55. Chou Keng-sheng, supra note 33, at 29.
57. Ho Wu-shuang and Ma Chiin, A Criticism of the Reactionary Viewpoint of Ch'en T'i-ch'iang on the Science of International Law, 6 Cheng-fa yen-chiu at 35–36 (1957), tr. in Cohen and Chiu, supra note 1, Chapter 2, Item 1, at 93. While there was much debate over the nature of international law in China in 1957-58, it has not been discussed much since then. Jerome Cohen notes that most writers favored the position of the existence of general international law and all agreed that there is such a thing as socialist internationalist law. But these writers could not agree whether there are two systems of international law—general and socialist—or three systems—general, socialist and bourgeois. Cohen, Cohen and Chiu, supra note 1, Chapter 1, at 74 (draft).
58. 1 International Law 2 (2nd rev. ed. (1945).
and R. Y. Jennings, for recognizing that "the international law conceived in modern Europe has, through its gradual growth, long since become a global legal system. The new conditions of the present world do not jeopardize the universality of international law." Chou Fu-lun argues that international law is formulated "under the international condition of class struggle," and defines it as the collective norms which govern interstate relations during periods of conflict and cooperation. These norms, designed to protect peaceful coexistence and express the will of the ruling classes of states, are upheld by "the individual or collective sanctions of states."

Thus, Chou Fu-lun concludes, international law is different from supranational law in that

its norms are not enacted by a political organ above states, but are the agreements reached through mutual concession and negotiation between states in the course of their struggle and cooperation. In view of this, all states have equal rights.

He suggests that if a state can negotiate as an equal, without pressures being applied by a stronger state, then international law is an acceptable regulatory mechanism among sovereign states. Like Chou Keng-sheng, he makes a clear distinction between the acceptability of the existence of international law which is "binding upon all states," and an international law which provides the basis of a world government.

IV. SUBJECTS OF INTERNATIONAL LAW

In their analysis of what entities are properly subjects of international law, the Chinese again reveal their concern that the sovereignty of the state not be limited. The Chinese insist that only states, and not individuals or international organizations, may be considered as international entities. To allow individuals or interna-
tional organizations rights as subjects of international law would, in the Chinese view, detract from the absolute sovereignty of the state.

A. States

Historical experience and Marxist philosophy have led China to conclude that power—not international legal norms—is the primary regulatory mechanism in the international legal system, and if power relationships are ever to change, the traditional concept of state sovereignty has to be modified to allow for secession and the emergence of new revolutionary states. Yet the Chinese often find this view hard to reconcile with their own jealous regard for sovereignty.

The Chinese start with the premise that an “independent state” is one which has sovereignty, “and sovereignty is the supreme power of a state in disposing of its internal affairs and the independence of a state in its external relations.”66 In determining when a state has sovereignty, the Chinese oppose the application of any criteria such as the “level or civilization” or the type of internal government. The Chinese argue that such criteria are only pretexts to conceal what are in fact relationships of power. One legal scholar, K'ung Meng, states that the pre-World War I Western view that China was too uncivilized to participate in the international legal order was merely a pretense.67 He writes that Japan was considered a full subject of international law, not because her level of civilization was higher than China's, but because she became a member of the imperialist gang by defeating first the Manchu government in China and then Czarist Russia and finally becoming an accomplice of British imperialists in the act of Far Eastern aggression. . . As for her understanding of “international law,” Japan's did not surpass that of the Manchu government. In 1865, Japan's “Law of Nations” text was still based on China's translation by the T'ung Wen-kuan in 1864. At that time Japan had not yet produced her own text on international law.68

66. What is “Independence”; What is “Neutrality”? under the section Answers to Readers’ Questions, K’ung-jen jih-pao at 3 (July 9, 1961); in JPRS, No. 10, 237 at 77 (1961).
67. K’ung Meng, supra note 24, at 34. Sec. I. Oppenheim, International Law, No. 1, at 36 (7th ed. 1948) (tr. and published by the Chinese Foreign Affairs Publications). Note that a copy of the Chinese translation is not available.
68. K’ung Meng, supra note 24, at 34. He is here referring to the translation of Wheaton into Chinese.
K'ung Meng’s view finds support in a 1905 statement by the Western scholar Oppenheim, who wrote that while there may have been doubt some years ago that Japan “was a real and full member” of the Family of Nations, “since her war with China in 1895, she must be considered one of the Great Powers that lead the Family of Nations.”

K'ung Meng concludes that capitalists' theories on the subjects of international law throughout history cannot be separated from their interests in the various stages of capitalist development. When capitalism was strongest, only the capitalist states were entitled to be subjects of international law. They refused to accord sovereignty to weak nations by formulating vague, self-serving criteria such as: “civilized,” “organized,” “peace-loving” people rather than objective “scientific” criteria.

In contrast to the Western view, the Chinese view of sovereignty according to K'ung Meng is that:

any nation, regardless of its economic, political and cultural level of development, should in no way be deprived of its right to the claim of international entity. The kind of social system it desires and the form of government it chooses are internal problems and outside the jurisdiction of the law of nations and do not affect its right to the claim of international entity. To deny the sovereignty of any state under any pretext, be it the state's "level of civilization," or social system, is illegal.

The Chinese Communists believe that, particularly since World War II, subjective criteria have been used to suppress colonial independence movements and revolutionary regimes, to maintain the status quo, and thus to deny the protection of international law to revolutionary peoples. To promote the existence of more pro-

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69. Oppenheim, supra note 8, at 33, 71, 164.
70. K'ung Meng, supra note 24, at 39.
71. Id.
72. K'ung Meng, supra note 24, at 42. It should be noted, however, that since becoming a member of the United Nations, the first veto which the PRC cast was against admission of Bangla Desh as a member Huang Hua cited Chapter II, Article 4 of the U.N. Charter on membership, which declared that applicants must not only declare their readiness to accept the obligations contained in the present Charter but also 'in the judgment of the organization, are able and willing to carry out these obligations' before they will be qualified to be admitted as a member of the United Nations... How can the 'Bangla Desh' authorities which have shown open contempt for the principles of the U.N. Charter and refused to comply with the relevant resolutions expect the Security Council to shut their eyes, asserting that they are able and willing to carry out the obligations contained in the Charter?

See Soviet Social-Imperialism's Attempt to Further Control South Asian Subcontinent Exposed, PR, No. 35 at 6 (1972).
gressive states, some Chinese argue that national liberation move-
ments should be given the rights of states under international law,
so that they may establish their sovereign independence. The conse-
quence of such a policy would be that suppression of colonial upris-
ings (and of progressive national movements supported by the peo-
ple in independent countries) would be regarded not as internal con-
flicts or the domestic affairs of the mother country, but as "war of oppen aggression banned by the law of nations." In a similar
vein, the Chinese urge that modern international law must be "con-
ducive to the aspirations and interests of the numerous freedom-
seeking and peace-loving nations and peoples the world over." According to this view, even nations which are not independent
should nevertheless have the rights of independent states under law
as soon as the movements representing these nations indicate that
they want to be independent.

The Chinese ideological position of supporting "progressive national liberation movements" often seems in conflict with Chinese
actions. In order to explain these apparent contradictions, they
too have been forced to resort to subjective interpretation. Thus,
the suppression of the Tibetan independence movements was ex-
plained by resorting to the basic Chinese definition of sovereignty
to argue that Tibet was never able to dispose of its external affairs,
and that the Chinese exercised "sovereignty" not suzerainty" over
Tibet. In a more recent incident, the Chinese supported West
Pakistan against the Bengali national liberation movement to estab-
lish an independent Bangla Desh. The official Chinese position was
that the "national liberation movement" was not, in fact, supported
by the people but was really inspired and promoted by an illegal in-
vasion of Indian troops. Even after the establishment of Bangla
Desh, the Chinese refused to recognize its sovereignty by vetoing its
application for admission to the United Nations. Similarly, the
Chinese Communist view of the Taiwan independence movement

73. K'ung Meng, supra note 24, at 39. Also see F.I. Kozhevnikov, (ed.),
International Law, (Moscow: Foreign Language Publishing House, n.d.) at 90,
for a similar view.

74. Chou Keng-sheng, supra note 33, at 88. See also Chou En-lai, speech at
plenary meeting of the Afro-Asian Conference, as mentioned by Yang Hsin and
Ch'en Chien, supra note 35 at 12-13.

75. For the Communist Chinese position on Tibet, with particular attention
to the matter of "suzerainty" and "sovereignty," see Li Tich-tseng, The Legal
Position of Tibet, 50 AJIL 394 (1956). The Indian viewpoint is argued by C. H.

76. See Two Interdependent Resolutions on "Bangla Desh" Adopted, PR,
No. 49 at 9 (1972); and Soviet Social-Imperialism's Attempt to Further Control
South Asian Subcontinent Exposed, PR, No. 35 at 6 (1972).
(at least as of 1973) has been that it is nothing but a movement supported by American and Japanese imperialists without genuine popular support. Thus, while the Chinese maintain that colonies and oppressed dependent nations are indeed allowed to seek independence and are entitled to protection of international law, there is a qualitative judgment involved as to which nations are entitled to such rights, usually contingent on the "support of the people."

B. International Organizations

International organizations, if they represent simply a form of cooperation among equal states, and are based on and limited by agreements, are acceptable to the Chinese. Thus, such special organs of the United Nations as the International Postal Union, the International Labor Organization, and the International Telecommunication Union are deemed acceptable because their goal is "simply to promote their respective fields of activity, defined and limited by provisions of common agreement."77

The PRC's major perspective on the United Nations is that, just as international law is the law among sovereign states,

the United Nations is an international organization among sovereign states, not a 'world government' above them; its resolutions are generally in the nature of recommendations (with the exception of the decisions of the Security Council for the maintenance of peace), which naturally cannot bind the member states. The United Nations does not have legislative power. . . . 78

Moreover, to make the U.N. into a "world government" would contravene the Charter because the Charter is itself "a treaty among sovereign states."79

But even while in theory the U.N. was conceived to be an international organization among sovereign states, the Chinese believe the imperialists have in practice distorted the provisions of the U.N. Charter to promote reactionary policies.80 Before its admission to the U.N., the PRC had been inclined to see the U.N. as an international organization misused by the great powers, and as a "supranational world government" which attempted to formulate "world

77. K'ung Meng, supra note 24, at 41.
78. Chou Keng-sheng, supra note 33, at 84-85.
79. Id. at 84.
80. Id. at 85; see examples.
In particular, the PRC felt that the U.S. had attempted to use the U.N. as an aggressive tool to promote U.S. interests.\textsuperscript{82}

The PRC's attitude toward the United Nations since its admission has changed from that of an outsider criticizing the methods and goals of those inside, to one of an insider performing a distinct role as the defender of the interests of small and medium-sized countries against the forces of imperialism, colonialism, and neocolonialism.\textsuperscript{83} Thus, for the purpose of safeguarding state sovereignty and developing national economies, the Chinese advocate working "for the establishment of new-type international economic and trade relations based on equality and mutual benefit."\textsuperscript{84}

The Chinese Communists still object most strongly to those international organizations which may provide the foundation for the establishment of a "world state" because they are not limited by and responsible to the states of which they are composed. The Chinese writers refute the claim that because an international body has the power to sign treaties, or its representatives enjoy diplomatic immunity, that it is analogous to a state, and is therefore entitled to the rights of a state under international law. Rather, the Chinese argue, these international organizations are in fact only representatives of member states in the international organization, and are only allowed to sign treaties which "merely state the respective rights and responsibility of the members." The only reason for


\textsuperscript{82} Ying T'ao, Criticism of Capitalist International Law in Regard to Theories of State Sovereignty, Kuo-chi wen-t'i yen chiu, No. 3 at 47–52 (March 3, 1960); in JPRS, No. 2916 at 32–33 (June 25, 1960). The author includes as evidence the U.S. invasion of Korea in the name of the U.N. in 1950; passing of resolutions which interfered in the domestic affairs of Hungary by the General Assembly "under the domination of the United States"; in 1950 the U.S. "compelled" the General Assembly to agree on a "collective measures committee" for the purpose of putting a U.N. force at the disposal of the U.S.; the U.S. proposed that both NATO and SEATO be put into the U.N. "collective measures committee." And finally, Eisenhower's idea to form a U.N. army and the then U.S. Secretary of State John Foster Dulles' statement that "there should be a U.N. force which can be sent to any place in the world where there is a threat of aggression," struck the Chinese as revealing the true intentions of the U.S. to use the U.N. for aggression and to destroy other states' sovereignty. See Cohen's translation in Cohen and Chiu, supra note 1, Chapter 7, item 1, at 106–110.

\textsuperscript{83} See, e.g., Challenge to Superpowers' Power Politics, PR, No. 52 at 10 (1972), China's Stand on Disarmament, PR, No. 44 at 22 (1972); Third World Countries Play Increasingly Important Role in International Affairs, PR, No. 43 at 15 (1972); and The First [Political and Security] Committee Adopts 52-Nation Draft Resolution, PR, No. 48 at 8 (1972).

\textsuperscript{84} China's Principled Stand on Monetary Problem, PR, No. 42 at 11 (1972).
granting their members diplomatic immunity is for the purpose of "smooth execution of their duties."\textsuperscript{85}

Thus, to say that the PRC disapproves of the idea of a "world state" is not to deny its interest in international organizations founded on international law which are organized among sovereign states, and which therefore do not threaten their sovereignty. The Chinese recognize the need for "factual" or "non-political" international relationships which are capable of regulation, such as postal exchanges.\textsuperscript{86} Yet, it is still clear that in the Chinese Communist view the rights of international organizations only begin where national sovereign rights end, and that international law should be a law among states, not above them.

Since entering the United Nations the Chinese have been concerned less with resisting the establishment of a "world state" and more with exploiting the possibility of strengthening international organizations at the expense of the large and wealthy states. For instance, the Chinese have argued that the International Monetary Fund, which is governed by countries in proportion to their monetary contributions, should be reorganized to give each country an equal vote.\textsuperscript{87} This would strengthen the organization as a whole and thus would end "manipulation of international monetary affairs by a few countries."\textsuperscript{88} Another example of this theory was evident at the United Nations Sea-Bed Committee meeting\textsuperscript{89} where the Chinese delegate argued that the international regime should be strengthened so as to lessen the influence of the superpowers:

\begin{quote}
We are of the view that the function of the international regime should not be confined only to governing the activities of the exploration and exploitation of the sea-bed. It should be pointed out that some representatives are doing their utmost to minimize the governing role of the international regime. But the more minimized the governing role of the international regime, the easier will it be for the superpowers to make use of the so-called "traditional international law" to maintain all their vested rights and interests."\textsuperscript{90}
\end{quote}

\textsuperscript{85} K'ung Meng, supra note 24, at 41.
\textsuperscript{86} See Chou Keng-sheng, supra note 33, at 25.
\textsuperscript{87} China's Principled Stand, supra note 84.
\textsuperscript{88} Id.
\textsuperscript{89} "Latin America: Struggle to Safeguard Marine Resources," PR, No. 3 at 6 (1973); and "U.N. Sea-Bed Committee Ends Session," PR, No. 34 at 10 (1972).
\textsuperscript{90} On Governing International Sea-Bed Area, PR, No. 34 at 11 (1972). Also
Thus, the Chinese with a view towards lessening the influence of the superpowers now seem to be prime advocates of granting increased power to international organizations which allocate voting power equally among all countries.

C. Individuals

Since the Chinese believe that any acknowledgment that international organizations possess some of the rights of states diminishes the sovereignty of states, it is consistent that they also view the conferral of international legal rights and responsibilities on individuals as an undesirable limitation of national sovereignty. The Chinese attitude on individuals as subjects of international law reflects in many ways the classical view of Western international law. Under this view, the state was deemed to have "absolute sovereignty," and the individual was considered an "object" rather than a subject of international law.91 States in the international system were justified in pursuing a policy aimed solely at self-preservation or self-aggrandizement, and the rights of individuals were defined and limited solely by the needs of the state.92 Of course, Western international law has diverged in recent years from the classical pattern, and it is now recognized to some degree that certain natural human rights exist which transcend the limits of national sovereignty. Although these rights are still regarded as limited, despite a post World War II tendency to expand them, it is clear that what recog-

91. Percy E. Corbett, who discusses the position of the individual in classical international law, notes that "the idea of the populus as a corporate person, of which the ruling individual or group is merely the highest agent," was first expressed in the works of Althusius, in the early 17th century, but never really developed until the writings of Wolff and Vattel in the latter part of the 18th century. The theory of the individual as an "object" encountered serious obstacles in a number of areas, including piracy, military occupation, contraband, and blockade-breaking. Now, in the 20th century, the creation of a large number of "stateless" individuals from wars and revolutions presents a further obstacle to the idea of individuals as mere objects of international law; see his Law and Society in the Relations of States 54-57 (1951).

nition there is "not only limit[s] the scope of legally permissible interna-
tional action, but more important, limit[s] the traditional au-
tonomy of the leaders of the state over internal matters."93 Coplin,
for one, believes that this recognition challenges the assumptions of
the state system and international law far more than the recognition
of international or regional organizations as subjects of internation-
al law.94 Needless to say, the Chinese Communists, being highly
protective of their sovereignty, are very suspicious of this Western
trend.

History and philosophy weigh heavily in the Chinese distrust
of expanding the subjects of international law. The Chinese argue
that when there were few socialist states, the capitalist states were
unconcerned with individuals in international law. Only as the num-
ber of socialist states increased were the capitalist states anxious to
increase the number of international entities so as to dilute the in-
creased socialist power. Philosophical distrust of the implications of
expanding the subjects of international law runs even deeper. From
the Chinese perspective, the concept of individual rights, whether in
the national or international sphere, is an alien concept. Traditional
Chinese culture rejected the idea of individual rights, and the pres-
ent Communist view is that individuals only have rights within the
collective. The Chinese Communists also oppose the view of indi-
viduals as subjects of international law because it conflicts with the
Marxist concept of class struggle in international relations. Chao
Chen-chiang, for example, attacks Duguit of the school of social
solidarity for his view that individuals, and especially the rulers of
states, should be the subjects of international law, and that "inter-
national public service" rather than state sovereignty should be the

93. Id. Coplin notes that most modern writers believe the individual's rela-
tionship to international law is no longer simply that of object, but that as
Wolfgang Friedmann notes, the rights of the individual in international law are
as yet fragmentary and uncertain"; The Changing Dimensions of International
that, based on international practice, one cannot say simply "that individuals are,
or that they are not, 'persons in international law.' It is only possible to say that
in some contexts they are treated as persons, in others not"; see Corbett, supra
note 91, at 58.

94. "Since the principle of collective responsibility (of the state) rather than
individual responsibility has traditionally served as the infrastructure for the
rights and duties of states, the development of a place for the individual in
the international legal system that would make him personally responsible
would completely revolutionize international law."

Coplin, supra note 92, at 149. He references Hans Kelsen, Principles of
International Law at 9-13, 114-48 (1959) for discussion of the role of collective
responsibility in international law.
major value and goal. To make national rulers subjects of international law, Duguit feels, would lay the basis for the creation of a more unified international community. Chao, in contrast, sees this as a reactionary view, espoused for the purpose of opposing the class struggle in the international arena by bringing about "class cooperation" between the peoples of oppressed states and the ruling class of the oppressor [imperialist] states."

One of the philosophical factors present in the Chinese rejection of the concept of individuals as international entities is their denial of the "monist" conception of law. Monists such as Jessup and Lauterpacht maintain that international law must be applied directly to individuals and their breaches of law considered wrongs against all nations. Lauterpacht also emphasizes the "international rights of man," which, he believes, are becoming increasingly important under the leadership of the U.N. and the Council of Europe. It is precisely this conception of the "new" international law which the Chinese reject as undermining state sovereignty. By attempting to cast individuals in the role of international entities, the monists hope to bypass the internal sovereign rule of the state, suggesting that international law is superior to national law. Thus, while the PRC officially opposes assassination, hijacking and terrorism by individuals, they also oppose the formation of any international law to deal with these crimes.

In our opinion, the handling of such problems falls basically within the sovereign right of the country in which the incident occurs. We cannot agree to the forcible imposition of measures detrimental to state sovereignty in the form of an international convention.

The Chinese perspective is that acts of terror by individuals "divorced from the masses" have little chance of success, and are actually harmful to the national liberation cause. They consider

96. Id.
97. Id.
99. Imperialism, Colonialism, Zionism is Terrorism, PR, No. 49 at 12 (1972).
100. Id.
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attempts by the “superpowers” to create in the United Nations legislation on international terrorism as an “attempt to suppress the national-liberation movements on the pretext of the adventurist acts of terrorism by a small number of people.”¹⁰² They cite as an example that some members of the United Nations have “slandered the Palestinian liberation movement and the liberation movements in southern Africa as ‘terrorist organizations,’” when in actuality they represent people struggling to achieve and defend national independence.¹⁰³ The Chinese add that these movements are:

“just struggles with the active participation of the broad masses of the people, and are not terrorism at all. On the contrary, those people are the real victims of terrorism.”¹⁰⁴

Chinese international legal scholars state that they support the ideas in the Universal Declaration of Human Rights but reject the view that the U.N., by means of the Security Council or the Commission on Human Rights, “may override the authority of the state to protect individual rights in the state.”¹⁰⁵ It is not international organizations or international law, but only the national law of each state which may undertake the obligations of ensuring the rights of its individual members. The purpose of the U.N. Charter is simply to bind each member state to pledge that personal rights will be guaranteed under its national law.¹⁰⁶ Were international organizations to go beyond this and bypass states to guarantee the human rights of their nationals, it would be intervention in their internal affairs.¹⁰⁷ Thus, while the Chinese do not oppose the international protection of human rights,¹⁰⁸ they are suspicious of the intent behind it and are afraid that intervention for “humanitarian

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¹⁰². Challenge to Superpowers’ Power Politics: A Hsinhua Correspondent Commentary on the 27th Session of U.N. General Assembly, PR, No. 52 at 10 (1972); also see What Stands in the Way of Real Detente? PR, No. 42 at 10 (1972).

¹⁰³. Imperialism, Colonialism, Zionism is Terrorism, PR, No. 49 at 12 (1972).

¹⁰⁴. Id. When referring to violence, the Chinese demand that a distinction be drawn between “the military aggression and violent repression by the aggressors and oppressors from the struggle of resistance by the victims of aggression and oppression”; On the So-Called Prevention of “Terrorism”, PR, No. 40 at 30 (1972).

¹⁰⁵. K’ung Meng, supra note 24, at 40.

¹⁰⁶. Id.

¹⁰⁷. Id. at 41.

¹⁰⁸. For example, they have endorsed the Universal Declaration of Human Rights.
reasons" may be an excuse to intervene in the internal affairs of socialist countries or to interfere in national independence movements in order to maintain the status quo.

Marxist class analysis plays an important role in the Chinese attitude towards human rights. The Chinese contend that "humanitarianism" has a class character: "in the class society human rights assume a class nature too." "Human rights" are said to be definable only in terms of the class espousing them, and thus capitalist international law is capable of defending only "the human rights of the capitalist class." These rights, the Chinese maintain, only accord "lip service to the human rights of the broad working masses, the minority races, and the people of colonies and dependent states." In contrast, Western theorists maintain that there are ascertainable limits to the discretion of a state in the treatment of its nationals, and thus when a state maltreats, and persecutes its nationals so as "to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible." Chinese scholars such as...

109. Intervention for "humanitarian reasons" is usually referred to in the context of a country's treatment of minorities, but may also relate to civil war. For example, the purpose of the American, British, and Belgian "task force" operation in the Congo in 1964 was to evacuate missionaries endangered in the rebel-held territory of Stanleyville during the civil war, with the help of the Congo government. It was meant to be limited intervention and withdrawal which was not supposed to interfere in the "internal strife"; but most states did not approve of it. See R. Higgins, Internal War and International Law, in R. Falk and C. Black (eds.), 3 The Future of the International Legal Order at 102 (1971).

110. Ying T'ao, Criticism of Capitalist International Law in Regard to Theories of State Sovereignty, Kuo-chi wen-t'i yen-chiu, No. 3 at 47 (March 9, 1960), in JPRS, No. 2916 at 31 (June 25, 1960).

111. Ch'ien Ssu, Criticizing the Stand of Capitalist International Law in Regard to the Problem of Residents, Kuo-chi wen-t'i yen-chiu, No. 5 at 40 (May 3, 1960), in JPRS 6024 at 72 (Oct. 5, 1960).

112. Id. at 73.

113. Id.

114. Id. at 83. Ch'ien Ssu notes that, like "human rights," genocide has a "class basis." In 1948 the General Assembly of the U.N. signed a covenant against genocide, but it concealed its class basis and failed to define criminal responsibility. Thus the American "extermination" of the Indians was not termed "genocide," but the Soviet "racial extermination (murdering as well as exiling large groups of Hungarians to Siberia)" was called genocide by the United States and U.K. at the 11th Session of the General Assembly. Similarly, the International Law Commission in 1959 alleged that the PRC had attempted "to exterminate the Tibetan race and religion by means of murder and physical and spiritual torture," and demanded U.N. intervention. See Id. at 76-77.

115. Id. at 73. See also, Chou Keng-sheng, supra note 33, at 58.

116. Lauterpacht's quoting of Oppenheim, International Law, at 279-280 (7th ed. 1948), in I-Hsin, What does Bourgeois International Law Explain about the Question of Intervention, in Kuo-chi wen-t'i yen-chiu, No. 4 at 47 (1960), as tr. in Cohen and Chiu, supra note 1, Chapter 9, item 4, at 106.
Hsin and Ch'ien Ssu challenge this view, contending that the term "humanity" in Western legal writing is "bourgeois humanity." The state that Western theorists would define as "inhumane" the establishment of a proletarian dictatorship over reactionary forces and the adoption of "certain progressive measures in internal affairs which reflect the demands of the people but which are unfavorable to the minority, the originally privileged class . . . " I Hsin cites as an example the case of Tibet (1959) where the "people" suppressed the rebellion of the reactionary upper class and introduced "democratic reform" liberating a million or more Tibetans from the feudal serf system, while the "imperialists" called it a "violation of human rights" and tried to legally intervene. The Chinese explain that in a socialist society there is simply no reason to intervene on behalf of human rights, since there is no exploiting class left to violate rights, "... only in the society of the exploiting class is there any real encroachment on human rights." Only counterrevolutionaries and subversive elements who, with the support of the imperialists, attempt to overthrow the people's regime are "suppressed" in order to protect the people's interests. Thus the Chinese argue that the Soviet suppression of "counterrevolutionaries" in Hungary and the Chinese suppression of "counterrevolutionaries" in Tibet in 1959 are within the legitimate aim of the socialist states to protect the results of the people's revolution. In summary, consistent with their perception of power relationships, the Chinese believe that as long as the capitalist states are more powerful than the socialist states, the doctrine of human rights will be used to interfere in the internal affairs and to thwart the development of socialist states.
Another class of individuals subject to international law is aliens.\textsuperscript{125} The Chinese view the capitalist treatment of aliens as essentially discriminating against "the working people and progressive elements."\textsuperscript{126} They state that aliens deported or extradited from capitalist states are usually Communists or other progressive elements working for peace.\textsuperscript{127} Thus, while the Chinese admit that a state has a sovereign right to deport or extradite whomever it chooses, the practice of capitalist states reflects their class preferences.\textsuperscript{128} In this regard, the Chinese accuse the strong capitalist states of writing treaties in such a way as to give preferential treatment to their own citizens who are abroad.\textsuperscript{129} One frequently mentioned example of this non-reciprocal treatment of citizens is the Franco-American Agreement on Economic Cooperation, 1948, which allowed American citizens to enter France without a visa, but did not provide the same benefit to Frenchmen visiting the U.S.\textsuperscript{130}

Another way in which the Chinese see capitalist international law serving to afford advantageous treatment to their own nationals is the application of "international standards" for the treatment of aliens. The Chinese refer to Oppenheim\textsuperscript{131} to the effect that aliens must be treated according to "international standards," even if the citizens of a country are not treated at an equally high level. They also refer to Brierly to the effect that "international standards" are "objective" standards. Under this theory since there are objective standards, aliens do not have to order their lives according to the standards applied to the citizens of the host state if these are below the objective international standard.\textsuperscript{132} In the Chinese view, Brierly is arguing that the objectivity of "international standards" excludes them from being seen from a class viewpoint. The Chinese Com-

\begin{itemize}
  \item \textsuperscript{125} For the most recent regulations concerning aliens in the PRC, see An Act Regulating the Entry, Exit, Transit, Residence, and Travel of Foreign Nationals, passed by the 114th meeting of the National People's Congress Standing Committee, March 13, 1964; and promulgated by the Premier of the State Council, April 13, 1964; text in Jen-min jih-pao at 3 (April 20, 1964).
  \item \textsuperscript{126} T'iao Yiieh, A Preliminary Appraisal of the Bourgeois Concept of International Law, Kuo-chi wen-t'i yen-chiu, Union Research Service, Vol. 16 No. 21 at 303 (Sept. 11, 1959).
  \item \textsuperscript{127} Id.
  \item \textsuperscript{128} Ch'ien Ssu, supra note 111, at 86.
  \item \textsuperscript{129} See Min-ch'ien T. Z. Tyau, The Legal Obligations Arising Out of Treaty Relations Between China and Other States at 189-195 (1917), for the view of a Chinese international legal scholar on the matter of rights of "reciproc-ity," in the 19th and early 20th century treaties.
  \item \textsuperscript{130} Ch'ien Ssu, supra note 111, at 81-3.
  \item \textsuperscript{131} 1 Oppenheim, supra note 67, Book 2, at 193-194.
  \item \textsuperscript{132} J. L. Brierly, International Law at 220, referenced in Ch'ien Ssu, supra note 111, at 84.
\end{itemize}
munists reject this view as “unscientific”\textsuperscript{133} (not based on class analysis) and claim that the imperialists have established this principle to challenge the sovereignty and equality of less developed states.\textsuperscript{134}

The Chinese feel that their view has historical justification since the reasons given for the establishment of extraterritoriality in China in the nineteenth century were that the Chinese were “backward in civilization,” “imperfect in judicial facilities,” and “the laws of non-Christian states could not be applicable to the nationals of Christian states.”\textsuperscript{135} Professor James Hsiung suggests that the Chinese view coincides with the Soviet view that the “powerful imperialist states” extensively apply the principle of international standards in their trade agreements with small and weak nations “to confer legality upon their encroachments on the latter’s economy.”\textsuperscript{136} The Chinese Communists suggest the principle of “equal treatment” to replace “international standards” in order to accord the same level of treatment to both aliens and nationals. Thus, in such matters as technical assistance agreements with the African states, the Chinese have specified that Chinese technical assistance personnel were not to be allotted living standards higher than those of equivalent personnel in the host countries.\textsuperscript{137}

In summary, the Chinese oppose the dispersal of a state’s power by recognition of individuals as subjects of international law. This general principle pervades their policy on the rights and responsibilities of individuals under international law. Thus the Chinese argue that even though international law outlaws genocide, slave trade, and narcotic traffic, it is only because states agree through treaties and accords to prevent these acts that they are prohibited. A person who violates the “international order” by committing a crime such as genocide commits a crime only under mu-

\textsuperscript{133} See, e.g., Shen Chun-ju, Jen-min jih-pao (Oct. 30, 1951), referred to in Chiu Hungdah, supra note 32, at 12.

\textsuperscript{134} Ch’ien Ssu, supra note 111, at 84.

\textsuperscript{135} Ch’ien Ssu, supra note 111, at 82. Not ethat the concept of international law governing the relationships among “civilized” countries was a view held until the 1950’s. See for example, Lauterpacht’s Oppenheim, International Law at 4 (7th ed. 1948).


\textsuperscript{137} Chou En-lai’s report on his African trip to the Standing Committee of the National People’s Congress, excerpts released by the New China News Agency (NCNA), April 25, 1964; see also Eight Principles Governing China’s Economic and Technical Aid to Other Countries, PR No. 34 at 16 (1964), as referenced in Hsiung, Id. at 345.

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municipal law and does not become a subject of international law. Similarly, when an individual's private rights, for example his property rights or his admission to another state, are violated, the individual protests through his home government, "because only his home state is entitled to diplomatic protection under international law." In short, the Chinese believe that the state is sovereign and nothing shall be allowed to interfere so as to diminish that right.

V. Conclusion

This topic has been presented from the perspective of the Chinese Communists in order to facilitate an understanding of their views on state sovereignty and international law. While the Chinese Communists' attitudes evolve out of their conception of China's national interest, the same is true of any other state. Nevertheless, it appears that their highly political interpretation of sovereignty and its relationship to international law is singular. Essentially, Chinese Communist doctrine on international law consists of political statements about the nature of international relations and the position of the state within the international system. While the Chinese Communists do take advantage of the flexible and vague norms of international law to justify or to interpret their own state policy to their own advantage, these statements, encased in a Marxist-Leninist ideological framework, appear to be far more fundamental and enduring than mere propaganda to justify a current state policy. They reflect in large part China's perception of its evolving power status in the international community.

Although the PRC, since its establishment in 1949, has been a participant in the international community, this participation has been restricted until recently by the American policy of containment and isolation. However, since the Nixon administration began to terminate this policy in 1971, China has felt less isolated and has begun to play a more active role in the international community. The apparent settlement of the Vietnam War on January 27, 1973, which at least temporarily reduced any sense of threat from the capitalist world, and her admission to the United Nations, which allowed her to have a more active hand in the formulation of international law, have contributed to China's more positive attitude toward the international community as a whole. Communist

138. K'ung Meng, supra note 24, at 40.
139. Id.
140. See, e.g. PR, Nos. 5, 6, 7, (1973), and in most issues thereafter in which the articles about the U.S. give almost no indication that they are being written from an ideological perspective hostile to capitalism.
Chinese scholars have had little opportunity to say anything significant about sovereignty and international law since the PRC's relations with the United States began to improve, but the decline in invective concerning the intentions of the capitalist states and international organizations seems to indicate that the Chinese perceive the threat posed by the United States as significantly diminished. Since the PRC's sovereignty is not currently being challenged by the capitalist world, the need to insist on its integrity with the Western world has diminished.

In contrast to the diminished threat from the Western states, the Chinese now perceive a real threat from within the socialist bloc itself, particularly from Russia. When problems first developed in the Sino-Soviet relationship in the 1960s, the Chinese dropped all discussion of "socialist international law," which had formerly been stated as embodying the "higher principles of international socialism." Subsequently, the Chinese voiced concern that the concept of the "socialist community" be explicitly defined by the Soviet Union and the rights of the socialist nations therein be protected from "great-nation chauvinism." The emphasis has been shifted away from common socialist goals to "fraternal aid" based on mutual independence, mutual equality, and mutual respect for sovereignty within the socialist community. Thus, once again the Chinese have altered their attitude towards sovereignty and international law on the basis of a perceived power relationship.

Despite current problems within the socialist community, the Chinese have shown increased interest in the development of an international legal order based on the principles of peaceful coexistence (which include mutual respect for sovereignty, equality, territorial integrity, non-intervention in the affairs of other states, and mutual aid). Indicative of the Chinese desire to participate in the formulation of new norms of international law is the fact that China attended the United Nations World Conference on the Human Environment in Stockholm in June 1972, in spite of the boycott of the Conference by the other Communist states in protest against the exclusion of East Germany as a participant. They are particularly interested in development along "progressive" lines: changes which tend to increase the representation in international organizations of the small and middle-sized nations, those which enable or encour-


142. China's Stand on the Question of Human Environment, PR, No. 24 at 5 (1972). While the PRC abstained from voting on the Declaration on the Human Environment, they did express an interest in cooperating in international efforts
age "progressive" forces of nationalism to establish their independence and equality, and those which incorporate "socialist" principles of "mutual aid." Thus they suggest that the wealthy countries should aid the developing countries on the basis of "equality" (i.e., prevent the development of relationships of "dependency" by giving outright grants or low interest loans). Particularly when the wealthy countries have been at fault, as in pollution, and in international finance where the policies of the wealthy nations have adversely affected the developing states, they should give compensatory aid. Thus, at the Stockholm Conference the Chinese Communist delegation chairman denounced the United States and other "imperialistic superpowers" as the major creators of the global environmental problem and demanded that the developing nations be compensated for the pollution of their environments by the developed countries.\textsuperscript{143} The Chinese Communists are anxious that socialist and "progressive" states participate in the development of international law and are equally concerned that once acceptable principles of international law have been formulated, that they be respected by all states.

Sovereignty, with its implied sovereign equality, has in the Chinese view been central to nearly every issue of international law: it is fundamental to "peaceful settlement of disputes, observance of treaties, special privileges and immunities in foreign relations . . ."\textsuperscript{144} and it is fundamental to the concepts of non-interference and mutual non-aggression. Since the Chinese Communists credit the recognition and acceptance of the concept of national sovereignty by imperialist and socialist imperialist states as constituting the principal theoretical obstacle to unfettered expansionism by those states, they have naturally been unequivocal in their rejection of both the theory of "relative sovereignty," which would limit the sovereignty of a nation state, and the theory of "absolute sovereignty," under which a state would be justified in disregarding the sovereignty of other states.\textsuperscript{145} Furthermore, the Chinese oppose the concentration of power in international organizations and the dispersal of a state's power by recognition of individuals as subjects of international law, since these theories converge on the state from both ends, to form the basis of a "world government." In the Chinese Communist view, the rights of international organizations and individuals only begin where states' sovereign rights end, and international law is a law among states, not above them.

\textsuperscript{144} Id. at 9-11.
\textsuperscript{145} Yang Hsin and Ch'en Chien, supra note 35, at 13.