The People's Republic of China, and their Compliance With International Law Since 1949

An Honors Thesis (HONRS 499)

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surge of interest in the ancient, yet only relatively recently studied field of international law. A vast and extremely credible number of political, social, and legal experts such as Grotius, Vattel, and Wolff to name just a few have attempted to not only analyze, and predict, but define this age old function among nations. I will not entertain an immediate definition of international law due to my personal belief that the field of international law is an entity which is ever progressing and evolving in both principle and practice. Therefore, due to the primitive and somewhat volatile nature of international law, I will not inaccurately limit the scope of this subject by attempting to attach to it a definition. It will suffice to say at this point that international law is an elusive and fluctuating creature, and the final nature of the outcome is dependent upon the actions of the sovereign nations involved in a particular legal situation.

As was indicated earlier, international law is indeed a somewhat ambiguous and enigmatic subject, however there are some basic tenets and concepts which serve as fundamental foundations more or less for modern international law. First and foremost in international law, treaties and/or conventions serve as the primary and ensuing basis for international law among nearly all nations. The concept that treaties are "legal and binding" in international law, is embodied in the legal maxim _pacta sunt_
"recognized" international customs. In short, customs that are recognized are primarily pieces of legislation, resolutions, and other pertinent material legislated and issued from a credible, and recognized body or organization such as the United Nations. This principle of recognized customs is obviously another vague and uncertain ideal, in that many nations may differ from one another in their views on what is acceptable politically and therefore recognized legally, as credible components of international law. Another major principle on which international law is based is the concept of "principles of international law as recognized by civilized nations." This rule is in most cases, the source of greatest dispute among nations over international law. In the PRC's case, as well as several less developed nations today, the idea of "civilized" is extremely ambiguous and rather hypocritical following the humiliating, and often times brutal experiences of colonialism at the hands of Western nations in their respective histories. It follows that this principle tenet of international law often creates tensions over particular legal issues due to the arrogance of such an eccentric statement as perceived by several lesser developed nations, and more importantly the PRC. The fourth and final basis for international law is based on decisions and publications by relevant experts in the field. As was noted earlier, the field of international law is in an
extremely primitive stage of development, and many areas are in a sense unchartered territory. Therefore, some publications by recognized scholars/experts in the international legal field serve as the guide post for legal policy on particular issues. These four founding principles are enumerated in Article 38 of the statute of the International Court of Justice, and serve as the basic "guidelines" for international law today.

I will now present a concise overview of the historical background of China. It is my earnest opinion that in order to fully understand the PRC and their approach and compliance with international law, we must fully understand and appreciate the position and view of the Chinese culture historically speaking. We can not, and must not divorce the past from the present, and attempt to successfully forecast the future! China is a nation that boasts a vibrant and prolific history of roughly five thousand years in length. The history of China as a nation is unique in that she referred to herself as "zhong guo" or in English terms, the middle kingdom. This elitist view by the Chinese dynastic rulers had led to a general air of false superiority, by requiring neighboring nations to pay homage to the emperor as tributary protectorate states. The Chinese eventually came to regard the West as "uncultured barbarians", after the West encroached China in an unmannerly fashion for trade. This superior notion of the central kingdom served as an
opiate of xenophobia and weakened China to Western encroachment. This false sense of security/superiority lulled China into a stagnant and obsolete system of modernization, science, and social institutions which were mercilessly exposed and exploited by the Western nations. China endured the repeated attempts of forced economic relations by such nations as Portugal, Spain, and Britain for nearly two centuries. However, in the mid nineteenth century, the Chinese were forced into a series of "unequal treaties" with the West, most notably Great Britain, due to the sound military defeat of China in the Two Opium Wars in the 1850's. The harsh and rather oppressive system of imposed treaties on China by the West, still to some extent today leaves a bitter taste on the tongue of the Chinese! Hence, it immediately becomes obvious that suspicion and conflict not only over the principles of international law, but the position of Western nations within the international law arena arise due to past actions committed by the previously mentioned Western nations in relationship to China.

The People's Republic of China was born in October of 1949, following roughly a decade and a half long bitter and violent civil war. This brutal struggle pitted the forces of the Kuomintang Nationalist Party led by General Chiang Kai-shek, and the Chinese Communist Party led by Mao Tse-tung. Through a combination of excessive corruption and a poorly organized
infrastructure, the KMT nationalist party forces were defeated both militarily and politically by the dedicated and principled popular Chinese Communist Party. This victory by the CCP and Mao Tse-tung forced Chiang Kai-shek's KMT party remnants and followers to the island of Formosa, leaving the entire mainland of China as the ripe fruit of victory for the CCP, which quickly renamed China, the People's Republic of China. This "popular" victory ushered in a radically different China. The CCP not only supported but encouraged anti-Western views and sentiments among the Chinese people in a vicious and reckless manner. This anti-Western campaign, and the encouragement of righteous age old Chinese-Confucian values, was partly an act of vengeance sponsored by the Chinese Communist Party in response to the historical acts of aggression perpetrated against China by the Western nations. This sweeping tide of nationalism has had a profound impact on the PRC's position on international law, as I shall address in a later portion of this paper.

The Western civilization has had a tendency to view law throughout the ages as somewhat of a personal and intangible force or entity, which derives its legitimacy and existence from the common masses of a particular sovereignty. Therefore, the popular view of Western law in its most basic form, is that law is required to serve and protect the people of that particular nation by virtue that its creation and legitimacy is granted and
insured by the people. The state is second in priority to the people in Western law, and in short the West tends to view law and politics as divorced from one another. The basis of law in China is radically different than Western law. A prevalent air of norms and values surround the basic concept of Chinese law. It would seem that age old Confucian values, such as personal conduct, and relations, form the firm foundation of a holistic school of law. This holistic view suggests that the needs of the many outweigh the needs of the few, therefore maintaining that the basic function of law is to serve and protect the state first, and the individual secondly. It should be noted that this traditional Chinese view of law, conforms with the Socialist nature of the PRC, primarily with the notion that the individual must provide unselfish service for the betterment of the collective good (the state). Furthermore, unlike the Western view of law and politics as divorced subjects, the Chinese view maintains that law and politics are indeed closely related, as I shall address in more depth later.

I would now like to address the PRC and its views, and compliance with international law. In order to exemplify the wide diversity in opinion on international law today I will quote two experts on a working definition of international law. "The function of international law is to provide a legal basis for the orderly management of international relations," this was a
statement by the famous American Judge Jessup. The PRC and their legal scholars are of a differing opinion however, fervent reactionary international law scholar Ch'en T'i-ch'iang writes, "...bourgeois international law is a theoretical instrument to defend the aggressive or colonial policy of the strong capitalist countries...!" One can now fully begin to comprehend the vast fundamental differences over international law, particularly from the PRC's point of view, as a direct result from these fundamental differences as was indicated by these citations.

The PRC's basic and most prioritized goal and/or mission concerning international law, deals with the ideal that the overriding function of international law is to provide loyal service first and foremost to the state. This notion also fosters the belief that law and politics are complimentary functions, and in a basic sense abide in the same house. This view is drastically different than the earlier mentioned Western concept of a separate, but somewhat equal relationship between law and politics. This view of international held by the PRC, is a direct result of a government by men, as opposed to government by law. Thus, the PRC view of international law as an extension or "tool", which is implemented for political benefit or advantage, is brought to its full fruition by Chinese legal scholar and writer Chu Li-lu, he maintains, "International law is
one of the instruments of settling international problems. If this instrument is useful to our country, to the socialist enterprise, or to the peace enterprise of the people of the world, we will use it. However, if this instrument is disadvantageous to our country, to socialist enterprises or to peace enterprises of the people of the world, we will not use it and should create a new instrument to replace it."

It has certainly been suggested in some quarters that the PRC policy on international law has been synthesized from the Soviet experimental policies of the mid 1950's, as Mr. Chu's statement would seem to suggest. However, I would suggest that although the PRC's policy has studied and considered for use that particular Soviet policy, they have created and adapted their own unique policy and approach to international law. Much in the manner that Mao Tse-tung broke from Moscow in the late 1950's, and blazed a trail for Chinese communism, so to is there an unique difference in PRC international law theory and application from the Soviet Union's international law policies. Therefore, it is my opinion that the PRC's basic foundation concerning international law is based on traditional Chinese/Confucian values, supplemented greatly by historic experiences, particularly those with the West, and ultimately imbued thoroughly with Marxist-Leninist-Maoist ideologies to provide a sense and direction of official purpose.
As was indicated earlier in this paper, the PRC view international law in a fundamental sense as primarily an extension of the state. This extension is utilized to improve the PRC’s position in formal and informal relations, relative with other members of the family of nations. This view fostered by the PRC of international law as tool to better the state’s position in foreign affairs, is brought to its full fruition by the famous Chinese legal scholar Mr. Chou Fu-lun, he states, "International law, in addition to being a body of principles and norms which must be observed by every country, is also, just as any law, a political instrument; Whether a country is socialist or capitalist, it will to a certain degree utilize international law in implementing its foreign policy." In short, the bottom line in terms of the PRC approach and compliance with international law deals with the question of national interest. Is this particular legal principle or perspective in China’s best national interest? Many scholars of the international legal community would suggest that the PRC seems to follow a pattern of inconsistency, bordering on a motley assortment of policy extremes, in terms of international legal matters. I would suggest that this seemingly capricious approach to international law, actually is orderly in that the PRC acts only with any sense of certainty in legal situations where it is beneficial to their national interest. This approach is nothing unusual, the
national interest minded approach is a common trait among all nations, this is the ultimate mission of international relations. The goal of maximum benefit and/or advantage politically speaking, is as old as the nations themselves!

Obviously the PRC is not, and can not be in full agreement with the principled foundations of international law, as provided for by Article 38 statute of the International Court of Justice. The PRC is still very much a socialist nation, as is enumerated in Deng Xiaoping's four cardinal principles and the socialist road political platform, plus the somewhat lingering revolutionary nature of the PRC is still a powerful and determining force in terms of PRC approach and compliance in international law. The view that international law is something of a basic form of white man's or Westerner's law, which was created by a minority to enslave a majority, is still a very prevalent sentiment in the Chinese international legal community today. This is due mainly to some degree, by the bitter remnants of a not too distant past when the West forced China into a series of humiliating and oppressive "Unequal Treaties," as was indicated earlier. It is in this light that the PRC continues to view these basic tenets of international law, as somewhat bourgeois and class related in their very essence. It is also in this light that the PRC, in retrospect to these tenets, are led to believe of the erroneous foundations of international law, and
consequently feel no binding obligation to follow such ideologically and morally adverse principles. Basically put, the Chinese reason that since the nation of China was not involved or consulted directly in the foundation and legislation of international law, China therefore has no allegiance to international law! It should be noted that interestingly enough, the PRC has fed off this bitter resentment of Westernized white man's law, as perceived by many lesser developed nations, in an attempt to establish the PRC as the head of non-aligned nations. Following the unofficial split of Chinese communism and Soviet communism in the late 1950's, the PRC has attempted to form a non-aligned camp and furthermore install itself as the spokesman for this unofficial body. This political move by the PRC at international law's expense, is indicative of the previously mentioned approach wherein the PRC utilizes international law as an extension or tool to improve the nation's position in foreign affairs. Initially, following the conception of the People's Republic of China in 1949, the PRC adopted a semi-official stance of revisionism in terms of the principle foundations of international law. Along with the previously mentioned reasons for Chinese disagreement and opposition to international law, it should also be noted that the PRC initially felt extremely insecure and threatened by many Western nations over their newly acquired sovereignty following the civil war with, and subsequent
victory against, the Kuomintang party. Many nations which had supported the KMT party, such as the United States, would not officially recognize the Chinese Communist Party or the People's Republic of China as the legitimate government of China. This accordingly prompted the PRC to adopt a bitter revisionist view towards international law, which was staunchly supported by such opposing nations. In short, the PRC would not participate in an arena of international law espousing Western values, which had oppressed China in the past, and now threatened China's sovereignty in the present and future.

The main revisionist school of thought endorsed in the PRC in the last two decades calls for a "generally recognized" form of international law above and beyond political camps or ideologies. Mr. Ying T'ao, a fervent activist of hardline revisionism in the PRC, calls for a new breed of international law which, "...reflects the aspirations of the great majorities of peoples in the world," in response to the, "blatant violations of the inviolability of sovereignty of nations, by the bourgeois legal system." Many scholars today would suggest with the decline of tensions associated with the cold war, and its ideological adverse period, that revisionism in the PRC is waning. It is my opinion however, that despite the easing of conflict as a result of the descent of the cold war, the PRC is still to some extent in the throes of Maoism, with Deng Xiaoping
firmly at the helm of the PRC and continuing to stress "cardinal ideologies," therefore revisionism still resides in the PRC to some degree. Even with many previous hardline communist nations such as East Germany, Rumania, and more recently Albania rejecting and reforming Marxism and Leninism, the PRC still views itself as a revolutionary, shining beacon, for all lesser developed ex-colonized nations to emulate. In this sense, namely the previously mentioned role of the PRC as a leader among non-aligned nations, the PRC will utilize or even oppose international law as it best suits the interests of the PRC in a particular situation. This point is accurately addressed by Mr. Gary Scott in his work on Chinese treaties, he writes, "It nonetheless (PRC) considers itself a champion of a world revolutionary struggle and thus is forced into a position of continuing to espouse revolutionary rhetoric, but acting in a manner which will gain it recognition as a member of the global community."

The early stages of suspicion and insecurity felt by the PRC as a young, developing, and relatively immature nation, by the general state of affairs surrounding the PRC embraced an approach to international law which culminated into a revisionist stance. Accordingly however, with this process of maturation in the PRC, this revisionist mindset has given way to what I describe as an opportunist approach to international law. The PRC, since the
advent of the partially pragmatic Deng Xiaoping as the head of the state in the mid to late portion of the 1970's, began to adopt the opportunist stance in foreign affairs, particularly in the way of international law. The Chinese under Deng's brilliant and often times cunning leadership, have become masters of elusive and capitalizing diplomacy and policy. In this opportunist approach, the PRC, instead of attacking and demanding a new international legal system as was the case in the revisionist school of thought, utilize the existing structure and principles of international law to in essence, hang the Western nations with its own rope (laws). The PRC now seeks to capitalize and benefit from the primitive stage of international law, by seeking and exploiting loopholes within the system, as opposed to demanding a complete refurbishment of the international legal system as was the demands of the revisionist school of thought. With this opportunist view on international law fully endorsed and employed by the PRC, I am led to believe that the established legal system does have some legitimacy, as was proved by the PRC's ability to operate within the confines of international law in more recent years. Furthermore, I would suggest that most conflicts concerning international law, in the PRC's case, are not so much blatant violations of international law and pertinent doctrines, but rather vague or ambiguous interpretations by individual nations such as the PRC concerning
international legal principles or tenets. This opportunist approach to international law by the PRC is much more in line with the traditional Chinese character within the family of nations. Whereas the revisionist school of thought on international law endorsed an offensive, and pro-actionary approach to resolving differences on international legal matters, much in the mindset of Mao’s belief in force that, "Power comes from the barrel of a gun!" The opportunist approach is quite docile and much less obtrusive in it’s basic form, much in the defensive nature of the PRC as is manifest in the military arsenal of the PRC, such as short to medium range nuclear weapons and associated delivery systems. Throughout her long history, China has for all practical intents and purposes been a defensive nation, therefore, the opportunist stance on international law seems much more in line with the traditional Chinese posture. A fine example of the PRC utilizing the opportunist approach with relatively decent success, despite the fact that it took place at a time when the revisionist school of thought had a great deal of credibility in the PRC, and the domestic setting was extremely turbulent, due to the early beginnings of the violent Cultural Revolution will now be examined.

The particular situation involved violations of standing international law, and the adoption of an opportunist approach to remedy the problems, came in the form of the Sino-Indian border
dispute of 1957. The PRC had documented evidence incriminating the Republic of India for knowingly condoning several secret missions conducted by the Indian Air Force. The Chinese alleged that Indian reconnaissance aircraft violated Chinese airspace, in an effort to assess Chinese ground forces strength, and positions along the Sino-Indian border. The PRC followed proper ICJ channels and regulations, and lodged complaints against the Republic of India. The PRC did not retaliate militarily or subversively in any manner against the ROI. The PRC also refrained from violating the McMahon Line, which was the set border between India and China created by the 1914 Simla Conference. This is extremely important in that, the PRC did not officially recognize the McMahon Line as the boundary in relationship to Indian claims of portions of southern Tibet, due to the principle of ad referendum. In this principle, the Chinese assert that from their perspective the Simla Conference treaty is invalid, due to the fact that the Chinese delegate only initialed the treaty rather than fully signing it. At any rate the PRC maintained a rather defensive posture both politically and militarily, by refraining from violating the McMahon Line. Furthermore, it can be concluded from this approach on the Sino-Indian border dispute in 1957, that it provided valuable lessons for the PRC which carried over into future policy on international law. In this particular incident, the PRC opted
for an opportunist approach rather than a revisionist approach toward international law, as it related to the alleged airspace violations by the ROI, and disagreement over the McMahon line. It is evident from the events that the PRC not only recognized the legality of the set McMahon line, but complied with it, and furthermore, the PRC utilized the ICJ to bring charges against the ROI in 1957. This in my opinion, was quite a step in the right direction for the PRC, in terms of becoming a viable and respected member in the family of nations, by not only recognizing the validity of international law in this particularly tedious situation, but complying with it fully, to avert a possibly violent, and bloody confrontation with the Republic of India.

Although the PRC does to some extent, particularly since the late 1970’s, recognize and abide by international law in many circumstances, their actions within, and policies towards international law still leaves a great deal to be desired! This lack of full endorsement of international law, is no more evident or strikingly sensitive than in the area of human rights. It can be logically deduced that as a result of the "state first" concept as a major foundation of Chinese legal doctrine, there is a subliminal fostering of a negligent human rights policy prevalent among PRC laws and leaders alike. Respected author/analyst on Chinese law Jerome Cohen is quick to note, "Yet
one major similarity stands out...law and legal institutions still serve principally as instruments for enhancing the power of the states and for disciplining the people to carry out its policies. In the Chinese value system the interests of the State and the group have always dwarfed those of the individual."

In June of 1989, a large group of semi-organized Chinese students, and intellectuals, in a brash counter-revolutionary movement, attempted to bring to the forefront of Chinese society a demand for democratic reforms. This student movement concentrated their greatest demonstration in Beijing's Tiananmen Square. Deng Xiaoping and Premier Li Peng, utilized various elements of the People's Liberation Army to crush the democratic movement, and in the process kill and wound untold numbers of Chinese civilians. The United Nations through various fact-finding organizations such as Amnesty International reported numerous and blatant occurrences of human rights violations, ranging from summary executions to unlawful imprisonment. This horrendous act of repression perpetrated by the Chinese Communist Party in the name of vanguarding the revolution, was denounced by nations and organizations worldwide. With the onslaught of international condemnation towards the actions of the PRC, in regards to human rights within international law, prompted a vehement and zealous stand of defense in relation to the military crackdown, and subsequent quelling of the student democratic
movement in Tiananmen Square.

The PRC maintains that this repression of the "radical counter-revolutionaries" was a response made by the CCP, in order to guarantee a stable, and safe domestic state of affairs for the Chinese people. The PRC claimed that the demonstrators were not truly students, but rather they were "bandits" posing as students to gain popular support and sympathy from the international community. This event is important to international law in that the PRC maintains that this was purely a matter of internal affairs, and international law has no jurisdiction or power to address internal affairs, actions, or policies as supported by the legitimate government of a sovereign nation. The PRC are in complete disagreement with the Western interpretation of non-interference on human rights issues. The PRC charge that the West seriously distort the United Nations charter, and norms of international law to serve their desires to undermine PRC domestic policies. Once again the historical experiences of China, in relationship to the West, have a profound impact on this particular international legal issue. The PRC tends to note a degree of hypocrisy, and double-standard principles over the Tiananmen Square incident, and the following condemnations by the international community, particularly from the West’s position. The PRC charged many Western nations with aiding in fanning the flames of dissent, and corrupting Chinese youth with indecent and
immoral Western thought, in an effort to undermine the revolutionary, and socialist road policies of China.

The People's Daily newspaper unleashed a vicious stream of attacks against the United States in particular saying, "While seriously abusing human rights at home, the United States wantonly tramples human rights in other countries and encroach on their sovereignty....Panama, Grenada, and the Philippines? Where can even a single trace of democracy, freedom, human rights, and humanitarianism be found in this?" Noted PRC international law professor at Beijing University Zhao Lihai attacked, "the international hostile forces for their wanton interference in China's internal affairs and wilful trampling upon the norms governing international relations." It is obvious that the previously mentioned notion of holism within the fundamental principles of Chinese law, creates a serious conflict over not only the jurisdiction or of international law, but the very ability of international law to protect individual human rights. This vast difference of cultural values and norms, particularly concerning the proper position of the state and the individual, within the realm of law, leads one to assume that indeed there are faults with the basic foundation of international law. These faults without a doubt desperately require solutions to maintain a credible international legal structure, as is indicated by the Tianammen Square incident.
In closing, it would seem that the PRC does have some semblance of order in relation to international law. I addressed the importance of the seemingly vague and ambiguous structure of international law, as contained in Article 38 of the ICJ. Furthermore, the importance of the historical experiences with the Occidentals was presented, along with the ensuing tide of nationalism prompted by the birth of the People’s Republic of China, and the authoritarian/socialistic ideologies. Yes indeed, all of these constituent elements form the whole, in terms of the PRC and international law. In most cases, the conclusion of such a work would present answers to many questions, however the topic of international law produces more questions. Will the PRC be able to successfully employ law to serve and forward the causes of socialism? Will the specter of Tiananmen Square continue to cast a shadow of uncertainty on Chinese compliance with international law, in regards to human rights? Will Deng Xiaoping’s successor be able to continue on the opportunist path towards compliance with international law? Is there a need for a more equitable and just international legal system today? These are just the beginnings of the perpetual volume of unanswered questions concerning international law, and the People’s Republic of China. It must be remembered that both the PRC and international law are both evolving, therefore answering any questions with a high degree of accuracy is highly unlikely. The
PRC can be expected though, to continue to adapt its successful opportunistic policy to the various and unique legal situations which arise. It is my honest opinion that the PRC will basically adopt a relative position within the standing confines of international law.

In this vortex of uncertainty concerning the PRC, there are some obvious notes to be made. The PRC has made it evident to the conscience of the international community, and the West in particular, that we are all part of a ever growing people, residing on an ever shrinking planet. With this pressing thought in mind, we must, and shall find a way to live together in peace and harmony. International law is the key to this locked door of humanity. We can solve our disputes and grievances with paper in conference rooms, rather than with weapons on battle fields.

There is much to be said about the Chinese approach to international law. The PRC maintains that there are three cardinal cornerstones in relations with other nations: equality, mutual benefit, and mutual respect for territorial sovereignty. Imagine for a moment a world in which all nations would utilize this "golden rule" that the Chinese have embodied. A world where people are treated as people, and all are human beings under the skin. Today is reality, but tomorrow is yet to be forged. We may dream now, to provide for tomorrow, and through the functions and applications of international law help to usher in the true
family of nations, where all are brothers and sisters!

"All within the four seas are true brothers."
-Ancient Chinese Maxim
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