

CHINA AND INTERNATIONAL LAW

This panel was convened at 9:00 am, Friday, April 5, by its moderator, Julian Ku of Hofstra University, who introduced the panelists: Jacques Delisle of the University of Pennsylvania School of Law; Bing Bing Jia of Tsinghua University Law School; and Stephanie Kleine-Ahlbrandt of the International Crisis Group.

INTRODUCTORY REMARKS BY JULIAN KU*

It is my pleasure to chair this panel on one of the most important and interesting topics facing international lawyers today: the role of China in the international legal system. I do not need to invest too much time explaining to this audience why China is particularly important to the future of the international legal system. Let me just briefly make some remarks about the rise of China and the impact that this rise will have on the international legal system.

Members of this Society have long concerned themselves with this question. As early as 1966, Professor Jerome Cohen of New York University hosted a panel at the Annual Meeting of this Society to consider China's treatment of international law. Just over a decade ago, a very similar panel which included one of our participants today, Professor Delisle, considered China's treatment of international law. The focus of these earlier discussions is revealing. In 1966, Professor Cohen was concerned with how and whether China would re-enter the world community after its isolation during the Cultural Revolution. In 2000, Professor Delisle focused on China's view of human rights law and its domestic policies.

But in the past decade, scholars and analysts have increasingly considered the "rise of China" on the global stage. This change in focus is not surprising. China is now the world's second largest economic and military power, behind the United States. China has even surpassed the United States to become the world's largest source of carbon emissions. It is hard to disagree that China is now having a serious and significant impact on the world. To put this in cruder terms, the rest of the world should worry less about what we will do to China, but should increasingly worry about what China will do to us.

The rise of China naturally makes China's attitude toward international law unusually significant. In just the past year, we have seen China's actions impact international legal institutions in significant ways.

First, China is embroiled in a series of maritime disputes with Japan, the Philippines, and Vietnam involving both the East and South China Seas. Although China grounds its claims in principles of international law, it has resolutely rejected any attempt to seek international arbitration. It has continued to resist, for instance, the attempt by the Philippines to bring one of these disputes to an arbitral tribunal convened under the UN Convention for the Law of the Sea.

Second, China has been a key player in debates over humanitarian intervention or other kinds of military interventions in the Middle East. It did not oppose the Security Council's authorization of the use of force in Libya, but it is aggressively resisting similar authorization for Syria. It grounds its objections in the principle of state sovereignty and the rule of non-interference in domestic affairs.

Third, China is obviously a key player in any discussions over a global system for regulating climate change. As the world's largest carbon emitter, its refusal to commit to binding targets

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for carbon emission reductions has had a serious impact on the commitments of other large emitters, like the United States.

None of this is to say that China is wrong in any of its actions. Rather, it is simply to illustrate the importance of China to the operation and development of international law. For better or for worse, China will have an outsized influence on the future of international law. Fortunately for us, we have three extremely knowledgeable experts who will share their insights and analysis with us today on this important question.

REMARKS BY BING BING JIA*

First of all, I would like to express my sincere gratitude to the Program Committee of the 107th Annual Meeting of the American Society of International Law for inviting me to this grand gathering of international lawyers, and to speak on this panel.

My talk today under the assigned topic consists of three general points, all drawn from my personal experiences that cover extensive periods of stay in Europe and China. I do not, however, presume to be expressive of any view that is representative of the collective experience of Chinese international lawyers, past or present. More capable minds are left with that challenge. I am content with sharing with this distinguished audience my own view as a lawyer on several matters that fall under the topic.

The first point is that China's approach to international law was, from the very beginning of its contact with the countries that wrought modern international law, a rather positive one. I am referring to the late nineteenth century when the door of China was forced open by war. International law, or the law of nations, provided a modicum of assistance to preserve some dignity and integrity of the anxious but pressurized Middle Kingdom.¹ However, a single legal battle won could not turn back the tide of a losing war. And yet the function of international law was benign. Indeed, this observation is linked with another that the basic tenets of international law—nowadays conveniently embodied in the UN Charter—preserve and uphold statehood on the basis of respect for sovereignty, independence, and territorial integrity. States can thus survive physical destruction by grace of international law. To that extent, the benign effect of this legal order is personally felt by the applier, and objectively seen by others. I revert to my point. The government of the People's Republic of China had its seat in the UN organization restored in 1971, implemented the reform and open-up policy in 1978, and joined the WTO in 2001. Out of the three monumental events in contemporary Chinese history, international law has played an important role in two.

Hence, my second point. It follows from the first point that it is not difficult to see why the integration of China into the international legal order in the years past has been a voluntary but measured process. Symptomatic of this cautious process is China's contemporary attitude towards international law, which is at times quiet and reactive since the country is still learning its trade while adapting to a globalizing world. More importantly, it should be seen that China accepts the basic principles and rules of international law, being by now an active member of over 130 international organizations. It considers itself a developing country, upholding the principles of sovereignty, independence, and territorial integrity. But the partly auspicious beginning of China's association with international law, as mentioned above, has exerted an enduring influence upon it, in that China has been vocal in support of the

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¹ Wang Tieya, *International Law in China: Historical and Contemporary Perspectives*, 221 RECUEIL DES COURS 195, 243–44, 354–55 (1990).