Introduction

China and International Law – Not a Map but Perhaps a Compass

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INTRODUCTION

The new assertiveness of China in international law and global governance since the beginning of the tenure of Xi Jinping as China's Communist Party General Secretary and President has marked an overall shift from Deng Xiaoping's doctrine of 'hiding brightness' (韬光养晦) to 'striving with vigour' (奋发有为) and 'great renaissance' (伟大复兴). This development has triggered a mixture of apprehension and positive expectations in the West and the Global South. On the one hand, amidst the turbulent times of Covid-19 and the war in Ukraine, there is a common anxiety in the West that the consolidation of China as a new great power may lead to a gradual erosion of the rules-based liberal international order, with some commentators pointing to the dawn of a new age of 'authoritarian international law' in the twenty-first century.[1] On the other hand, however, the Western preoccupation with the rise of China is partly assuaged by China's long-standing commitment to its grand strategy of 'peaceful rise/development'. This is shown by reiterated pledges to be a 'staunch defender and builder of the international rule of law'[2] and 'a champion of multilateralism'[3] as part of its now constitutionally enshrined commitment to build a 'community of shared future for mankind' (CSFM). This is shorthand for a Chinese blueprint for a revamped twenty-first-century global governance system that includes among its overarching aims global peace, international common security, international inclusive development, international ecological civilization and inter-civilizational dialogue.

Underlying the renewed proactive engagement of China with international law and international institutions are guidelines issued by the Chinese Communist Party (CCP) Central Committee in 2014 calling for China to '[s]trengthen foreign-related *legal* work' and 'vigorously participate in the formulation of international *norms*, promote the handling of foreign-related economic and social affairs according to the *law*, strengthen our country's discourse power and influence in international *legal* affairs, and use *legal* methods to safeguard our country's sovereignty, security and development interests'.[4] These guidelines deepened an established understanding among various international legal regimes that a precondition for 'exercis[ing] greater influence on the norms of international society is yet further assimilation into them' or, if

[1] Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 *American Journal of International Law*, 221, 225.
[2] Wang Yi, 'China: A Staunch Defender and Builder of the International Rule of Law' (2014) 13 *Chinese Journal of International Law*, 635, 635–8.
[3] X. Wu, 'Chronology of Practice: Chinese Practice in Public International Law in 2017' (2018) 17 *Chinese Journal of International Law* 1017, at 1036.
[4] CCP Central Committee, Decision on Major Issues Concerning Comprehensively Advancing Governance According to Law (23 October 2014), part VII.7, at news.xinhuanet.com/2014–10/28/c_1113015330.htm.

preferred, that 'in order to become a respected norm-maker, China must first be seen to be fully integrated as an appropriate norm-taker'.[5] However, the degree to which China assimilates into international law, and how it may intend to put its stamp on it, remains shrouded in uncertainty for many in the West and other regions.

This handbook aims to provide much-needed clarity in this regard and to contribute to the burgeoning contemporary scholarship on China's relationship with international law by offering an up-to-date and fairly comprehensive perspective on the multifaceted contemporary engagement of China with the international legal order. In order to do this, the book disaggregates China's relationship with international law into eight topical areas, each of which is covered by one part of the handbook. These parts range from an analysis of China's renewed engagement with international institutions and its recent twin major diplomatic initiatives, the Belt and Road Initiative (BRI) and the CSFM, to an exploration of the interfaces between Chinese domestic law and international law at the constitutional and domestic judicial levels with attention to the relationship between the rule of law at the domestic level and the international rule of law. Selected areas of Chinese state practice are illustrated by studies on China's treaty practices, state immunity and the extraterritorial application of Chinese domestic laws. The handbook also encompasses the areas of international peace and security, including separate studies of Chinese perspectives on the use of force and cyberwarfare, transnational terrorism and international criminal law, together with human-centred international law that spans international human rights law, global health law and international humanitarian law. Moving forward, the next two parts of the handbook cover the international legal regulation of habitats and the global commons, notably international environmental law and climate change law, but also the law of the sea and outer-space law, and different sub-areas within the broader field of international economic law, ranging from international trade law through international investment law and international intellectual property law to international financial law. Last, but not least, the final part of the handbook is devoted to examining China's engagement with international dispute settlement including territorial disputes through adjudicative and other means.

The contributing authors have provided thoughtful and up-to-date analytical appraisals of China's evolving engagement with, and contribution to, each of these areas and the contemporary international legal regimes covered by them. In doing so, they have contributed useful materials for those engaged in researching the emerging field of 'comparative international law' understood as that which examines 'cross-national similarities and differences in the way that international law is understood, interpreted, applied, and approached by actors in and from different states'[6] across different specialized international legal regimes. In particular, the authors have considered whether China's relationship with each of these areas can be characterized as falling into one or several of the following categories: international norm-taking, international norm-upholding, international norm-selective adaptation, international norm-entrepreneurship, international norm-shaping, international norm-challenging and international norm-making.

As editors, we consider that these framing categories may help the reader to gain a more dynamic perspective on the increasingly relevant international normative role of China and also to appraise whether the latter contributes to the fairer and more equitable international order that the Global South has long been calling for. Moreover, understanding China's past, contemporary and prospective regime-specific patterns of compliance and engagement with different key specialized areas of the contemporary international legal order will enable the

[5] Ian Clark, 'International Society and China: The Power of Norms and the Norms of Power' (2014) 7 *Chinese Journal of International Politics*, 3, 315.

[6] Anthea Roberts, *Is International Law International?* (Oxford: Oxford University Press, 2017), 2.

reader to gain a more holistic and demystified perspective on China's revamped approach 'with Xi-era characteristics' to the law that, as Mirabeau once foretold, 'one day will rule the world' and its accompanying regional and global institutional architecture. The emerging post-Western-centric international order will be very much defined by the extent to which international law manages to fulfil its quintessential function as a bridge between different nations and peoples living in different places and under often starkly different material conditions.

NAVIGATING THE CONTENTS OF THE HANDBOOK

Part I *Taking Centre Stage in Global Governance and the International Legal Order*

The first part of the volume tackles China's relationship with international institutions and its growing participation in the global governance system since the beginning of the 'opening up and reform' process. Chapter 1 by Yun Zhao focusses on the impact of China's international norm-taking and norm-shaping role through its move into international institutions in the late 1970s up to the current transition period from a Western-led-and-dominated global governance system to a multipolar and more globally inclusive one. Zhao analyses the four main features that, in his view, characterize China's engagement with international organizations. First, it is an economy-led approach comprising diverse forms of participation on the basis of sovereign equality and peaceful coexistence that is aimed at contributing to a more transparent international system to promote the interests of developing countries. Second, this overarching multilateral strategy has become translated into China's latest efforts at international institution-building. Third, these efforts have been characterized by a focus on regional integration through multilateral means, a continuation of China's diplomatic policy of non-aligned partnership, respect for diversity and upholding openness within new institutional frameworks. Finally, China has international norm-shaping and norm-making roles via its participation in international organizations in the areas of peace and security, economic development, the environment and sustainable development. Zhao concludes his chapter with a reflection on how China's roles as international norm-taker and international norm-maker are not mutually exclusive but instead mutually reinforcing.

The next two chapters logically follow on from this background perspective. They do so by focussing on the ongoing and lasting impact on the international legal order of two pivotal and interconnected diplomatic initiatives with important implications for international law that have emerged during President Xi Jinping's mandate. These are the BRI and the CSFM. Chapter 2 by Congyan Cai first provides an overview of the origins and main characteristics of the BRI, which has involved the signing of more than 200 BRI-related documents between China and around a 150 countries and 32 international organizations. After highlighting some of the criticisms addressed at the BRI and its relationship with the CSFM, the chapter examines the three main strategies with which Western powers have presented alternatives to the BRI in a context of increasing geo-economic and geopolitical competition. Cai then divides the BRI's legal framework into four components: a BRI-specific international framework; a BRI-specific domestic framework; a BRI-related international framework; and a BRI-related domestic framework. He identifies its main characteristics, including its flexible soft-law-oriented approach. He subsequently examines how the BRI's legal framework works in practice and analyses its implications for the international legal order and the Chinese legal system. The conclusion highlights the timely and well-targeted character of the BRI, which explains its appeal among

developing countries. At the same time, he notes how competing Western alternative proposals are indirectly contributing to making it be implemented in a more accountable way.

The first part is completed by Chapter 3, in which Ignacio de la Rasilla and Yayezi Hao discuss the CSFM. This is the latest conceptual expression of China's time-honoured 'grand strategy of peaceful rise/development' and the soft-power cornerstone of a new phase of greater Chinese assertiveness in international relations known as 'the strategy of striving for achievement' (fenfayouwei, 奋发有为). The first section of the chapter retraces the origins and evolution of the CSFM up to its incorporation in the preamble to the Chinese Constitution in 2018. The chapter proceeds by examining the main tenets of the CSFM on the basis of XI Jinping's writings with the visual aid of a 'paifang' (牌坊). In this representation of a Chinese architectural arch or gateway structure, the foundation of the CSFM is first assimilated to China's acknowledgement of the centrality of interdependence in the international community. Second, the pillars of the CSFM are identified as the aims of global peace, international common security, inclusive international development and international ecological civilization. Third, the wooden beams that bind the CSFM together are assimilated in the principles of sovereign equality, inter-civilizational dialogue and multilateralism, while the principle of win–win cooperation is represented as the CSFM's frontispiece. The concluding section points to the benefits of China deepening its revamped legalist approach to international relations as the most fitting companion to its grand strategy of peaceful rise/development.

Part II *Interfaces between National and International Law*

The second part of the volume is devoted to key interfaces between the Chinese domestic legal system and international law, including the Chinese Constitution, different Western and Chinese conceptions of the rule of law and the place of international law in Chinese courts. Chapter 4 by Chao Wang and Xin Xiang examines how the Chinese Constitution characterizes China's position in international relations and its evolving relationship with the international legal order. The first section provides a textual analysis of the position of international law in the Chinese Constitution in the light of the three types of article concerning treaties that are usually found in national constitutions: the so-called general policy article, the legal standing article and the contracting capacity article. The chapter continues by analysing the evolution of the Chinese Constitution from a revolutionary state constitution in the Mao era through the 1982 transitional state constitution in the post-Mao era to an emerging global power one, with a focus on the current 1982 constitution and the 2018 amendments of it in the Xi era in the light of the notion of selective adaptation. The authors conclude that the global power constitution, as featured in the latest 2018 amendment, suggests an effort on the part of the PRC to move beyond selective adaptation in order to pursue normative consensus with the international community.

Chapter 5 by Karen Alter and Ji Li provides a thoughtful problematizing of China's extrapolation of the rhetoric on the rule of law (ROL) to the international plane. The authors identify two variants that are at the heart of the disagreement. The first is a commercial and private ROL variant, which reduces the ROL to following through on contracts, paying compensation for breaches and providing dispute settlement for business actors. The second is a constitutional and institutional ROL variant that is concerned with whether the most powerful political actors and governing bodies are subordinate to the ROL as interpreted and upheld by independent adjudicators, and whether this ROL upholds the separation of powers and rights guaranteed in national constitutions. According to Alter and Li, while China's idea of an international ROL is a hypothetical yet coherent and attractive possibility, Western scholars, including most legal

scholars and political scientists, are significantly more sceptical for a variety of reasons. This does not mean that there is no role for international law, but it does mean that for many Western scholars and practitioners, domestic conversations about an ideal ROL do not travel up to the international level. Alter and Li conclude that the very different Western and Chinese understandings of the ROL ideal and its international implications may limit China's efforts to build international support for the vision that China's leaders are intentionally and assiduously creating.

To conclude this part, Chapter 6 by Björn Ahl tackles the implementation of international law in China by shedding new light on the judicial application and interpretation of international law by Chinese domestic courts. In addition to reviewing scholarly writings and analysing legislation, the chapter also makes use of new open-access court decision databases to analyse a number of treaties in various areas of international law in order to, inter alia, answer the following questions: What kind of international treaties are applied by the courts? Do judges give primacy to national law or to international law in cases of conflicting provisions? What standards of interpretation do judges apply when interpreting international treaties? The chapter further analyses court practice with regard to other sources of international law such as international customary law. Moreover, it addresses the questions of how Chinese courts follow global trends of applying international law in domestic courts and whether Chinese judges selectively adapt international norms or engage in international norm-making.

Part III *Selected Areas of Chinese State Practice*

The third part of the book focusses on Chinese state practice in three classical regimes of international law, namely treaty-making, state immunity and jurisdiction. This part is significant and timely because many traditional regimes have recently been witnessing remarkable transformations and international lawyers around the world are wondering how they will evolve.[7] Moreover, as China becomes a world-leading power, it is in the process of recalibrating its traditionally conservative policy on these classical international legal regimes. In Chapter 7, Carrie Shu Shang and Wei Shen first review the main existing theories and find that they are insufficient to explain China's treaty practice. Therefore, they propose their own analytical framework for the legalization of politics and the politicization of law. Using this analytical framework, they examine three categories of Chinese treaties, namely peace and security treaties, private international law treaties and investment treaties, and find that China legalizes domestic political and policy agendas by embracing more treaty obligations while it advances its transnational political agenda by gradually increasing its norm-entrepreneurship role through more active treaty practice.

In Chapter 8, Timothy Webster engages with China's approach to state immunity, a century-old issue in international law rife with controversy and uncertainty. Webster first reviews the global situation of state immunity. He finds that, on the one hand, absolute immunity remains widespread in the developing world but, on the other hand, not all Western states have abjured the doctrine of absolute immunity, even though almost all of them had embraced this doctrine. This implies that the doctrine of relative immunity is not 'absolute'. Against this global background, Webster examines China's state immunity policies and practice in depth,

[7] See, for example, Vassilis Pergantis, *The Paradigm of State Consent in the Law of Treaties: Challenges and Perspectives* (Cheltenham: Edward Elgar, 2017); Cedric Ryngaert, *Jurisdiction in International Law*, 2nd ed. (Oxford: Oxford University Press, 2015); Charlotte Beaucillon (ed.), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Cheltenham: Edward Elgar, 2021).

including how China has handled cases in which it has been involved. He is of the view that China is unlikely to renounce its traditional policy of absolute immunity. However, he suggests that a subtle change is possible owing to some new circumstances that China will face. In particular, Webster provides a short review of China's (draft) Foreign State Immunity Law issued in late 2022.

In Chapter 9, Yongping Xiao and Lei Zhu tackle the extraterritorial application of domestic law. Extraterritoriality often reminds Chinese people of Chinese history, in which powerful Western states trampled on Chinese sovereignty by applying their domestic laws in Chinese territory in the nineteenth and early twentieth centuries.[8] Therefore, China has long been critical of the extraterritorial application of domestic law. However, this policy has begun to subtly change in the Xi era, during which China has adopted a number of laws authorizing the extraterritorial application of Chinese laws. These include the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (2021) and the Anti-Foreign Sanctions Law (2021).[9] In fact, in 2019 President Xi required the building of a legal system of extraterritorial application of domestic laws to be speeded up.[10] In their chapter, Xiao and Zhu focus on how China exercises extraterritorial jurisdiction based on the 'effect doctrine', which represents the most controversial legal basis for extraterritoriality. By surveying several cases involving offensive maps, marine environment protection and prohibition of monopolies, Xiao and Zhu evaluate the relevant legal provisions and how they are applied by Chinese executive authorities and the judiciary.

Part IV *International Peace and Security*

The next five parts of the book are dedicated to examining China's engagement with the main contemporary international law regimes. The fourth part focusses on the maintenance of international peace and security. History shows that great powers are crucially involved in international peace and security. They are key guardians of international peace, but they may also be sources of major threats to international peace. International concern has emerged regarding the role played by China in the maintenance of international peace. China is a permanent member of the United Nations Security Council, which is entrusted with shouldering the primary responsibility for maintaining international peace, and it is also a (potential) party to disputes that may deteriorate into threats to international peace.[11] In this context, Chapter 10 by Zhixiong Huang and Yaohui Ying looks into the Chinese approach to the legality of using force in international relations and its likely extension to the domain of cyberwarfare. By undertaking a thorough investigation of diplomatic statements and occasions of China using force up to the latest war in Ukraine, Huang and Ying observe that China maintains a formalist and 'restrictivist' approach to the legality of the use of force in international law. In particular, they examine China's approach to the use of force in cyberspace, which is becoming a new

[8] See, for example, Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China* (Cambridge: Cambridge University Press, 2010), 149–90.

[9] Anti-Foreign Sanctions Law, 10 June 2021, www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml.

[10] 'Xi Jinping Presided Over the Second Meeting of the Central Committee for the Comprehensive Rule of Law and Delivered an Important Speech', 25 February 2019, www.gov.cn/xinwen/2019–02/25/content_5368422.htm?cid=303.

[11] See, for example, Lisa MacLeod, 'China's Security Council Engagement: The Impact of Normative and Causal Beliefs' (2017) 23 *Global Governance*, 383–401; Congyan Cai, 'International Security: How Law and Politics Work' (2021) 64 *Germany Yearbook of International Law*, 117–46.

frontline in military conflicts.[12] According to them, China is likely to maintain a 'wait and see' approach regarding *jus ad bellum* in cyberspace and to continue with its overall restrictive understanding of the rules on cyberspace. However, considering the anonymity of cyberspace and the increasing frequency of cyber-attacks, the possibility that China may adopt a more flexible understanding of some specific rules cannot be completely ruled out.

The 9/11 terrorist attacks started a new chapter in the history of international terrorism law. However, this international legal regime is yet to be fully completed. States have much discretion to define what terrorism is and how to counter it. As a result, counterterrorism measures are quite likely to be misused or abused and so infringe human rights. As in many other countries, terrorism has posed a great threat in China and caused serious casualties. In the light of this, China has adopted or updated several counterterrorism laws and taken severe enforcement measures, some of which have been strongly criticized by certain Western states as breaching human rights. In Chapter 11, Congyan Cai and Yifei Wang review the evolution of China's counterterrorism legal system before and after 9/11. Cai and Wang then tackle China's engagement with and contribution to international anti-terrorism law in the Security Council and in particular its norm-entrepreneurship role in leading the anti-extremism convention within the framework of the Shanghai Cooperation Organisation (SCO) in 2017. They also attempt to recalibrate the relationship between counterterrorism and human rights protection, and provide an evaluation of the implications of the Chinese counterterrorism legal framework and related measures to protect human rights in China.

Chapter 12 by Dan Zhu turns its attention to China's participation in the field of international criminal law with the aim of understanding the evolving relationship China has entertained with it by examining substantive issues that have influenced the nature of this relationship to date and factors that are likely to influence China's interactions with this body of law in the years to come. Zhu first traces the history of China's engagement with international criminal law, and sketches out in broad terms China's specific concerns regarding this body of law, including traditional ones. She discusses the extent to which these concerns are still as relevant in China's future engagement with international criminal law as they were in the past. In Zhu's view, China's dual identity as both a developing country and a rising great power lead to different kinds of interests and preferences and give rise to competing concerns in its relationship with international criminal law.

Part V *Human-Centred International Law*

The next part is devoted to fundamental elements of what we may term the 'human-centred dimension' of international law and focusses on China's relationship with international human rights law, global health law and international humanitarian law. First, Chapter 13 by Ruijun Dai examines China's engagement with international human rights law and stresses that China has made substantive contributions to the creation of this specialized international legal regime and to promoting it as part of a global moral consensus on human rights. Dai argues that China's proactive role in shaping international human rights law discourse does not challenge, or attempt to weaken, existing norms but instead aims to preserve the 'original intention' of international human rights law. This is reflected in China's interaction with international human rights mechanisms, including the Universal Periodic Review, special procedures and

[12] See generally Marco Roscini, *Cyber Operations and the Use of Force in International Law* (Oxford: Oxford University Press, 2014); Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2nd ed. (Cambridge: Cambridge University Press, 2017).

treaty bodies, and in how it practises the principles of respect, dialogue and cooperation with other parties in this area rather than engaging in confrontation, while resisting politicization, selectivity and double standards. Moreover, for Dai the Chinese emphasis on economic, social and cultural rights should not be equated with China ignoring civil and political rights or selectively adapting to certain human rights standards but not to others. In fact, according to Dai, considering China's positive commitment to civil and political rights during the third Universal Period Review and its most recent National Human Rights Action Plan (2021–5), one may indeed expect China to make substantive progress in the balanced protection of all human rights domestically while also positively influencing international developments.

Chapter 14 by Qingjiang Kong and Shuai Guo provides an up-to-date analysis of China's engagement with global health law in and beyond the shadow of the Covid-19 global pandemic. Kong and Guo tackle the 'accountability question' and conclude that China met its notification obligation under the World Health Organization (WHO) International Health Regulations 2005. However, they stress that current international health governance is facing great challenges. In particular, they argue that international cooperation should be a duty under global health law and that therefore more effective global health governance should be in place, and especially a binding mechanism to ensure a global response strategy in cases of international public health crisis. The analysis is complemented by the formulation of a 'Chinese view' to enhance cooperation on combating global health crises in the form of information-sharing, technology-sharing, support for developing countries and a global health monitoring and aid system.

Part V concludes with Chapter 15 by Binxin Zhang, which examines China's relationship with international humanitarian law (IHL) from both a historical and a contemporary perspective and its contemporary contributions to the field. These contemporary contributions are characterized by China's need to adequately address the realities of modern warfare, which have led to a new era of rule-shaping and rule-making for China in the field of IHL. Against this background, the chapter first covers the period from the late Qing dynasty until the early decades of the People's Republic of China. It then examines China's contemporary IHL practices, including its ratification of and accession to IHL treaties, its domestic legislation, military traditions and strategies, and its participation in international rule-making. The chapter then focusses on how the development of new technologies has called into question the applicability, relevance and sufficiency of IHL. In this context, Zhang stresses that as IHL is in the process of being adapted, (re)interpreted and expanded, China is seeking to play an active role in these processes. The chapter concludes with a reflection on China's changing role and the prospects for its future engagement with IHL.

Part VI *The Habitat and the Global Commons*

The sixth part of the volume is dedicated to examining China's relationship with the habitat and global commons dimension of international law. With its ever-growing technological, economic and military power, China has acquired a greater ability to reach the sea, space and outer space, and Chinese public and private activities are having a sizeable impact on the planet. In this context, in Chapter 16, Nengye Liu first examines China's legal efforts at conservation of biodiversity and then evaluates China's participation in the two latest negotiations on global ocean governance – biodiversity in areas beyond national jurisdiction (BBNJ) and the Mining Code in the deep seabed. Liu reviews China's position and its leadership in the BBNJ negotiations, which finally reached a breakthrough in March 2003 after five years of bargaining among

states.[13] He shows the ambiguous role of China in global environmental governance as a major emitter but also the main producer of renewable energy technology. It is a developing country claiming the historical responsibility of developed countries but also a powerful state commanding massive financial and technological resources, a great power with cautious regional and targeted ambitions, and both a norm-taker and a norm-shaper, depending on the particular normative environmental context.

Chapter 17 by Tianbao Qin and Bingyu Liu focusses specifically on China's engagement with international climate change law. Qin and Liu provide an analytical framework by identifying two approaches to climate change law: a top-down or state-centric governance approach; and a multi-stakeholder engagement approach. In line with this analytical framework, they examine China's participation in global climate change governance and investigate the measures that China has taken in the fields of climate change lawmaking, green investment and foreign aid to tackle climate change. They also explore how China participates in climate change governance in the wake of the Paris Agreement on Climate Change and its aftermath. They show that China is shifting from being a norm-follower to being a positive participant and further normative contributor to global climate change governance, and that adopting a combination of the top-down and the multi-stakeholder engagement approaches can enhance the coordination of stakeholders at different levels of governance and across various sectors, and help to accelerate the reduction of carbon emissions globally.

Disputes between China and several neighbouring states including Japan and the Philippines in the East Sea and the South China Sea (SCS) have attracted much international attention, which was aggravated when China rejected the award made by an international arbitral tribunal established in accordance with Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) in favour of the Philippines in 2016.[14] Many states participated in the dispute over the SCS arbitration,[15] and there have been numerous publications in this regard.[16] However, the SCS arbitration is only a small part of China's law of the sea practice. In Chapter 18, Haiwen Zhang provides a comprehensive picture of Chinese practice regarding the law of the sea. She undertakes a thorough investigation of Chinese involvement with the law of the sea since the nineteenth century, including China's participation in the UNCLOS negotiations. She also reviews how China applies and enforces UNCLOS, including how it has developed its domestic legal system and its settlement of sea-related disputes.

This part of the handbook concludes with Chapter 19, which provides an up-to-date analysis of the normative impact of China's policies on the governance of outer space. Matthias Vanhullebusch examines China's differential approach vis-à-vis developing and developed countries in advancing its normative agenda on the non-weaponization of outer space at the Conference on Disarmament and the UN General Assembly. He observes that, following the

[13] 'UN Delegates Reach Historic Agreement on Protecting Marine Biodiversity in International Waters', *UN News* (5 March 2023), news.un.org/en/story/2023/03/1134157.

[14] Award, PCA Case No. 2013–19, 12 July 2016.

[15] See China Ministry of Foreign Affairs, Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines (7 December 2014), www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201412/t20141207_679387.html; and China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea (13 July 2016), www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160713_679474.html; Antony J. Blinken, Fifth Anniversary of the Arbitral Tribunal Ruling on the South China Sea (11 July 2021), www.state.gov/fifth-anniversary-of-the-arbitral-tribunal-ruling-on-the-south-china-sea/.

[16] See, for example, Chinese Society of International Law, 'The South China Sea Awards: A Critical Study' (2018) 17 *Chinese Journal of International Law*, 207–748; Bernard H. Oxman, 'The South China Sea Arbitration Award' (2017) 24 *University of Miami International & Comparative Law Review*, 235–84.

logic of democratization of international relations, China has gained the support of the majority of developing countries for its agenda on their commonly shared values of peace and development and other forms of functional cooperation in their outer space activities – increasing its international legitimacy in their eyes. He also finds, however, that China has yet to gain the trust of technologically advanced – developed – nations in order to give its future regulatory framework governing peaceful relationships in outer space a much-needed normativity. Vanhullebusch suggests that past efforts at disarmament in outer space during the Cold War can guide China's norm-entrepreneurship, in which it must seek consensus among the main space powers, the United States in particular, on the basis of trust. However, without nurturing fertile soil in this area through negotiation and consensus-seeking, any rules on the prevention of an arms race in outer space are unlikely to take root.

Part VII *International Economic Law*

The seventh part of the handbook tackles China's relationship with the central dimension of international economic law. As is well known, China's 'reform and opening-up policy', which it embarked on in the late 1970s, centred on the economic field. That nowadays China is widely recognized as a leading power with a great capacity to reshape the traditionally Western-led international order is fundamentally a result of its amazing economic growth in the past four decades. China has largely embraced liberal international economic rules by negotiating and signing bilateral, regional and multilateral economic treaties and joining or rejoining relevant international economic organizations. Recently, China has been proactive in advocating its own economic agenda, one of the major purposes and consequences of which is an increasing international norm-shaping and norm-making role. In this context, in Chapter 20, Jiangyu Wang develops an analytical framework based on 'compliance versus incorporation' to understand how, as the second largest trading power in the world, China interacts with international trade law. Wang examines several periods from initially 'leaning to one side' – namely the side of the Soviet Union in the 1950s – to complete isolation after breaking away from the Soviet camp in the 1960s and 1970s, to opening up to the West in the late 1970s up to partially decoupling from the United States in the late 2010s. Wang argues that in its 'reform and opening-up period' (1978–present), as far as compliance with international trade law is concerned, China has been a rule-taker and a responsible – although possibly reluctant at times – status quo-oriented power in the United States-led, Western-dominated international economic system. In parallel, China has also taken an instrumentalist approach to international trade law with a foreign trade policy pragmatically oriented towards achieving a balance between trade liberalization and protectionism based on a calculated use of industrial policy tools and non-tariff barriers to support selected domestic industries.

In recent decades, international investment law has been undergoing a profound transformation[17] and this makes it particularly timely to examine how China, as both the second largest host-state and home-state of international investment and also the second largest signatory of investment treaties, engages with international investment law. In Chapter 21, Freya Baetens and Sheng Zhang do precisely this by first analysing the Chinese domestic international investment legal framework and the evolution of Chinese investment treaties.

[17] See generally Christina Binder, Ursula Kriebaum, August Reinisch and Stephan Wittich (eds.), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (Oxford: Oxford University Press, 2009); Steffen Hindelang and Markus Krajewski (eds.), *Shifting Paradigms in International Investment Law: More Balanced, Less Isolated, Increasingly Diversified* (Oxford: Oxford University Press, 2016).