

THE CAMBRIDGE HANDBOOK OF CHINA AND INTERNATIONAL LAW

This handbook provides a comprehensive road map of China's engagement with international law and an upgraded bridge between Chinese and Western approaches in times of turmoil. Written by a leading group of Chinese and Western specialists, it examines how China is assimilating into and putting its stamp on the global legal order. It offers updated analyses of China's relationship with international institutions, human rights law, international trade law, the law of the sea, the laws of peace and war, international criminal law, global health law, international investment law, international environmental law, climate change, international terrorism law, outer-space law, intellectual property law, cyberwarfare, international financial law, international dispute settlement, territorial disputes, judicial application of international law, state immunity, treaty practices, the international rule of law, extraterritorial application of Chinese laws, as well as international law in its own constitutional law, the Belt and Road Initiative and the Community of Shared Future for Mankind.

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The Cambridge Handbook of China and International Law

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Foreword

I have been living and working in Europe for more than eighteen years so far, first as the Chinese Ambassador to the Netherlands (2003–8) and then as a judge at the International Court of Justice (since 2010). Perhaps because of my background in international law, one of the questions that I have frequently been asked is about China's perspectives on international law. Such interest in the West continues to grow, certainly not just out of intellectual curiosity but out of concern over China's role in international affairs in the twenty-first century. This handbook, a project initiated and organized by Professors Ignacio de la Rasilla and Congyan Cai, is intended to give a comprehensive review of China's perspectives on and practice of international law, partly addressing the West's 'anxiety' over China's rapid development in the past four decades, which, as some scholars have claimed, 'may lead to a gradual erosion of the rules-based liberal international order'.¹ Although a question mark remains over whether this project will be able to address such concern, this collective scholarship will definitely be conducive to promoting intellectual interactions between China and the West and will further clarify the direction in which international law studies in China should go. I wish to express my warm congratulations and pay tribute to all the participants in the project for their valuable contributions.

By its virtue, international law has often been perceived as a universal or cosmopolitan system, where national perspectives and practice deserve only limited recognition. The West's anxiety over China's practice, in a way, reaffirms the research conclusion reached by Professor Anthea Roberts, namely that national approaches to international law generally feature in international law studies, at least with major power states. International lawyers neither are taught with the same understanding and appreciation of the law nor graduate from an invisible college of international lawyers', as liberalism wishes people to believe.² Instead, international law students are taught with textbooks and teaching materials that inevitably reflect the national interests, policy preferences and practice of certain major states. Although the normative character of international law as a credible international legal system governing the conduct of states and international relations is in no way diminished by the fragmented pedagogical approaches, it is imperative to bear in mind that as the rules are created, interpreted and applied by states, the conduct of those states, individual or collective, as well as their perspectives on the law constitute the basis of legal studies.

¹ See the Introduction to this volume.

² According to the cover of Roberts's book, '[i]nternational lawyers in different states, regions and geopolitical groupings are often subject to distinct incoming influences and outgoing spheres of influences in ways that reflect and reinforce differences in how they understand and approach international law. These divisions manifest themselves in contemporary controversies, such as debates about Crimea and the South China Sea.' Anthea Roberts, *Is International Law International?* (Oxford: Oxford University Press, 2017).

This handbook is an updated presentation of China's perspectives on and practice of international law, with many young Chinese scholars participating in the project. In the past forty-five years since China embarked on economic reforms and adopted the opening-up policy in 1978, China has gradually shifted to the market economy and fully integrated into various multilateral legal systems. In the process, it has amended, revised and repealed hundreds of national laws and regulations in light of the international obligations it has undertaken. In fulfilling its socio-economic development agendas and pursuing United Nations Millennium Development Goals, China has alleviated the poverty of more than seven hundred million people and achieved enormous economic and social progress, which is unprecedented in human history. China's rise is a great success story of a developing country in its national construction and development. Its engagement with international law and international institutions, of course, is part of the process. Each chapter of the handbook records those efforts.

China's renewal of its commitments to multilateralism and international law should not be regarded as a change of its foreign policy; China has consistently and relentlessly maintained those commitments as the basis of its foreign relations. The purpose of its reassurance, in my view, is twofold. First, it is a direct response to the prevailing scepticism over existing multilateral institutions and the role of international law in maintaining world peace and security. The world is undergoing turbulent times; crises such as the Covid-19 pandemic, regional armed conflicts, climate change and green energy each require concerted and effective global actions. Never before has consensus-building proven to be so crucial in dealing with these common challenges. China's reassurance in relation to multilateralism and international law demonstrates its political will to defend the role of the United Nations and the principles of the Charter as the basic norms of international relations. Second, China's renewal of its commitments is also a response to the West's concern over its development strategy. As illustrated in this handbook, instead of aiming at creating a new order, China has embraced the existing institutions earnestly. Its proposals of reform are intended not to replace but to strengthen the legal order.

The characterization of the existing legal order as 'a rules-based liberal international order' admits the Western dominance in the current political, economic and legal order, which, as pointed out by Professor Andrew Hurrell, is oriented by the preferences of the Western world and mainly reflects Western liberal values.³ The West's anxiety over China's rise apparently relates to whether this legal order can be maintained. While this handbook does not directly address that concern, it does provide a comprehensive and objective presentation of China's positions and practice in various fields of international law. The reader may tell for themselves whether China intends to change the legal order.

The distinction between 'liberal international order' and 'authoritarian international law' has no basis either in theory or in practice.⁴ It carries political and ideological implications and preferences that contemporary international law does not recognize. Historically, international law was supposedly solely applicable among states that were deemed 'civilized' or 'semi-civilized'. Those states or colonial territories that were described as 'barbarians' had no status in international law, hence no entitlements or legal interests to be protected. Western cultural supremacy and discrimination against other forms of civilization were gradually abandoned in international law after World War II, particularly with the process of decolonization, when most colonial states got independence and became active players on the world stage. In the post-war legal order, by virtue of the fundamental principles of international law as enshrined in the

³ Andrew Hurrell, 'International Law 1989–2010: A Performance Appraisal' in James Crawford and Sarah Nouwen (eds.), *Select Proceedings of the European Society of International Law, Volume III*: 2010, ch. 1 (Oxford: Hart, 2012), 3.

⁴ Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 *American Journal of International Law*, 221, 225.

Charter of the United Nations, all states, being members of the international community, enjoy equal rights and obligations, regardless of their political, economic, social and cultural differences. Every state is entitled to choose and develop freely its own political and social systems without external interference.⁵ In other words, for purposes of peaceful coexistence and common development, international law must transcend different forms of political system, ideology and cultural tradition.

Notwithstanding the liberal pluralism that features in the post–Cold War legal order and recognizes non-state actors and their role in international law, states remain the major and decisive players for the direction of international law development. Geopolitical tensions among major powers, while threatening the security and stability of the existing legal order, will in any event accelerate the process of legal reforms in global governance. The emerging powers, including China, will exert their influences in the contemporary debates on the global issues, enhancing the voices of the Global South in international law. Hopefully, constructive dialogues and interactions among the various actors will prevail over detrimental confrontation, promoting mutual understanding and cooperation among states. I am confident that this handbook will contribute to such dialogues and interactions.

Xue Hanqin
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⁵ See, in particular, Principles 4 and 6, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970.

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Abbreviations

3GPP	Third Generation Partnership Project
AAAQ	availability, accessibility, acceptability and quality (of health facilities)
AB	WTO Appellate Body
ABNJ	areas beyond national jurisdiction
ACFTA	ASEAN–China Free Trade Agreement
ADB	Asian Development Bank
ADR	alternative dispute resolution
AI	artificial intelligence
AIIB	Asian Infrastructure Investment Bank
AML	Anti-Monopoly Law 2008
AMS	aggregate measurement of support
AOA	articles of agreement
APA	alternative procurement arrangements
APEC	Asia-Pacific Economic Cooperation
APSCO	Asia-Pacific Space Cooperation Organization
ASAT	anti-satellite
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of Southeast Asian Nations
ASEM	Asia–Europe Meeting
ATT	Arms Trade Treaty
AUCL	Anti-Unfair Competition Law
B3W	Build Back a Better World
BBNJ	biodiversity beyond national jurisdiction
BDN	Blue Dot Network
BIT	bilateral investment treaty
BLEU	Belgium–Luxembourg Economic Union
BOT	build–operate–transfer
BRFIC	Belt and Road Forum for International Cooperation
BRI	Belt and Road Initiative
BRI-DSF	Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative
CAAC	Civil Aviation Administration of China
CAI	China–EU Comprehensive Agreement on Investment
CASCF	China–Arab States Cooperation Forum

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CBD	Convention on Biological Diversity
CBDR	Common But Differentiated Responsibilities
CBTT	capacity building and the transfer of marine technology
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CCCC	China Communications Construction Co. Ltd
CCG	China Coast Guard
CCM	Convention on Cluster Munitions
CCP	Chinese Communist Party
CCS	Convention on the Continental Shelf
CCW	Convention Prohibiting Certain Conventional Weapons
CD	Conference of Disarmament
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Hong Kong Court of Final Appeal
CFCLR	Convention on Fishing and Conservation of the Living Resources of the High Seas
CFIUS	Committee on Foreign Investment in the United States
CHM	common heritage of mankind
CHR	United Nations Commission on Human Rights
CHS	Convention on the High Seas
CICC	China International Commercial Court
CIETAC	China International Economic and Trade Arbitration Commission
CIS	Commonwealth of Independent States
CISG	United Nations Convention on Contracts for the International Sale of Goods
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLCS	Commission on the Limits of the Continental Shelf
CMPort	China Merchant Port Holdings
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
COMRA	China Ocean Mineral Resources Research and Development Association
COP	Conference of the Parties
Covid-19	coronavirus disease
CPL	Civil Procedure Law
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRA	contingency reserve arrangement
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSFM	Community of Shared Future for Mankind
CSIL	Chinese Society of International Law
CTL	Counter-Terrorism Law
CTS	Convention on the Territorial Sea and the Contiguous Zone

CUSMA	Canada–US–Mexico Agreement
DOC	Declaration on Conduct for the South China Sea
DPRK	Democratic People’s Republic of Korea
DSB	WTO Dispute Settlement Body
DSS	WTO’s Dispute Settlement System
DSU	Understanding on the Rules and Procedures Governing the Settlement of Disputes
ECOSOC	United Nations Economic and Social Council
ECRL	East Coast Rail Link (Malaysia)
ECT	Energy Charter Treaty
EDB	European Development Bank
EEC	European Economic Community
EEZ	exclusive economic zone
EIA	environmental impact assessment
EJV	Equity Joint Venture
EMDCs	emerging markets and developing countries
ESF	Environmental and Social Framework
ESG	environmental, social and governance
ESSs	Environmental and Social Standards
ETS	Emissions Trading System
EU	European Union
FAO	United Nations Food and Agriculture Organization
FDI	foreign direct investment
FIE	foreign-invested enterprises
FIL	foreign investment law
FOCAC	Forum on China–Africa Cooperation
FTAs	free trade agreements
FTZ	free trade zone
G8	Group of Eight
G20	Group of Twenty
G77	Group of Seventy-Seven
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GBF	Global Biodiversity Framework
GDP	gross domestic product
GGE	Group of Governmental Experts
GHG	greenhouse gases
GMD	Guomindang
GPA	WTO’s Agreement on Government Procurement
HKSAR	Hong Kong Special Administrative Region
HPC	High People’s Court
HRC	United Nations Human Rights Council
IAEA	International Atomic Energy Agency
ICANN	Internet Corporation for Assigned Names and Numbers
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICDPASO	International Commercial Dispute Prevention and Settlement Organization

ICEC	International Commercial Expert Committee
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICoC	International Code of Conduct for Outer Space Activities
ICP	internet content provider
ICRC	International Committee of the Red Cross
ICS	investment court system
ICSID	International Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ICSID	International Centre for Settlement of Investment Disputes
ICTR	United Nations International Criminal Tribunal for Rwanda
ICTs	international criminal tribunals
ICTY	United Nations International Criminal Tribunal for the former Yugoslavia
IFC	international finance corporation
IFD	investment facilitation for development
IFIs	international financial institutions
IHL	international humanitarian law
IHR	International Health Regulations
IAs	international investment agreements
ILC	United Nations International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IMTFE	International Military Tribunal for the Far East
INB	intergovernmental negotiating body
INF	intermediate-range nuclear forces
IP	intellectual property
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	United Nations Intergovernmental Panel on Climate Change
IPRs	intellectual property rights
IPSF	International Platform on Sustainable Finance
IR	international relations
ISA	International Seabed Authority
ISA	investor–state arbitration
ISDS	investor–state dispute settlement
ITLOS	International Tribunal of the Law of the Sea
LAC	Line of Actual Control
LAWS	lethal autonomous weapons systems
LCD	liquid crystal display
LIC-DSF	Debt Sustainability Framework for Low-Income Countries
LOAC	law of armed conflict
LPCT	Law on the Procedure of the Conclusion of Treaty
MC12	12th Ministerial Conference
MCDF	Multilateral Cooperation Center for Development Finance

List of Abbreviations

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MDB	multilateral development bank
MEE	Ministry of Ecology and Environment
MEPA	Marine Environment Protection Act 1982
MFA	Ministry of Foreign Affairs
MFN	most favoured nation
MGRs	marine genetic resources
MILs	multilateral investment treaties
MOU	memorandum of understanding
MPAs	marine protected areas
MPIA	WTO multi-party interim appeal arrangement
MSC	Mediterranean Shipping Company
MSMEs	micro, small and medium-sized enterprises
MSR	Maritime Silk Road
NAFTA	North American Free Trade Agreement
NASDAQ	National Association of Securities Dealers Automated Quotations
NATO	North Atlantic Treaty Organization
NBSAP	National Biodiversity Conservation Strategy and Action Plans
NDB	New Development Bank
NDC	nationally determined contribution
NDRC	National Development and Reform Commission
NGO	non-governmental organization
NHRAP	National Human Rights Action Plan
NPC	National People’s Congress
NPCSC	National People’s Congress Standing Committee
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NYSE	New York Stock Exchange
OECD	Organisation for Economic Co-operation and Development
OEWG	Open-Ended Working Group
OHCHR	Office of the High Commissioner for Human Rights (UN)
OPSCC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PAFMM	People’s Armed Forces Maritime Militia
PAROS	Prevention of an Arms Race in Outer Space
PCIJ	Permanent Court of International Justice
PCT	patent cooperation treaty
PFC	Priority Foreign Country
PHEIC	public health emergency of international concern
PLA	People’s Liberation Army
POW	prisoner of war
PPM	Project-affected People’s Mechanism
PPP	Policy on Prohibited Practices
PPWT	Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force Against Outer Space Objects
PRC	People’s Republic of China
R2P	Responsibility to Protect
RCEP	regional comprehensive economic partnership
RMB	renminbi

ROC	Republic of China
ROK	Republic of Korea
ROL	rule of law
RTAs	regional trade agreements
S&D	special and deferential treatment
SAIC	State Administration for Industry and Commerce
SAR	Special Administrative Region
SCM	Subsidies and Countervailing Measures
SCMI	Sustainable Capital Markets Initiative
SCNPC	Standing Committee of the National People’s Congress
SCO	Shanghai Cooperation Organization
SCS	South China Sea
SDGs	Sustainable Development Goals
SDR	special drawing rights
SEPs	standard essential patents
SOE	state-owned enterprises
SPC	Supreme People’s Court
SPP	Supreme People’s Procuratorate
SREB	Silk Road Economic Belt
TLO	transnational legal ordering
TORNIL	Theory on the Relational Normativity of International Law
TPP	Trans-Pacific Partnership
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCS	use of country systems
UDHR	United Nations Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNAO	United Nations Alliance of Civilizations
UNCHR	United Nations High Commissioner for Refugees
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UN GGE	United Nations Group of Governmental Experts
UNIDO	United Nations Industrial Development Organization
UNMICT	International Residual Mechanism for Criminal Tribunals
UNOOSA	United Nations Office for Outer Space Affairs
UNSC	United Nations Security Council
UPR	Universal Periodic Review
USA	United States of America
USSR	Union of Soviet Socialist Republics
USTR	United States Trade Representative

List of Abbreviations

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VCLT	Vienna Convention on the Law of Treaties
VCST	Vienna Convention on Succession of States in Respect of Treaties
VET	vocational education and training
WA	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
WBG	World Bank Group
WEOG	Western Europe and Others Group
WHA	World Health Assembly
WHO	World Health Organization
WIC	World Internet Conference
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
XUAR	Xinjiang Uyghur Autonomous Region