

## Examining China's Adherence to International Norms

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**ABSTRACT** China has often showed a lack of willingness to abide by not only established international law but also certain norms that the global community has fostered over the years. It has flouted the decision issued by an arbitration court at The Hague regarding its claims in the South China Sea; it has also appropriated intellectual property. In the 1970s when the Western economies were taking the lead in setting global norms while balancing the threat of the Soviet Union, economic ties were seen as a means to an end. Thus, the US and other countries enabled China to join groups such as the World Trade Organization, without insisting on formal entry conditions. Today it is clear that China intends to use extant international laws to serve its own interests when possible, to ignore them otherwise, and ultimately, change them to suit its own norms.

### INTRODUCTION

It was when the founding leader of the People's Republic of China, Mao Zedong, died in 1976 that his country began to make itself a part of the international community. Some members of the Communist Party of China took it for granted that in so doing, the new China was in effect acquiescing to the then existing international order. Today the international community of nations is

conceived of as comprising of equals that behave, ideally and often in reality as well, according to norms of international justice, rules of fair commerce, and a code of inalienable human rights. What is becoming increasingly clear, though, is that while China is *in* this community, it is not *of* it; rather, it is perceived as a disruptive power whose actions violate precisely these norms.

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The first of January, 1979 could be taken as the date when that process was fundamentally completed. The announcement — that Washington and Beijing had established formal relations — was intended to shake the world. After the Second World War, the previous government of the Republic of China had been driven to retreat to the island of Taiwan, about 100 miles off the East coast of China. Taiwan became an international outcast, was accorded legal status by only a few states, and was expected to join China in a matter of years. In fact, that refugee government still exists in Taiwan, which has since become a prosperous democracy with a GDP rated by the US Central Intelligence Agency as 19th out of 227 countries.<sup>1</sup>

China presents a dramatic contrast. There are at least three outstanding examples of how China's behaviour has proved an outlier in the global community. The first was its flouting of the ruling of the International Arbitral Tribunal at The Hague, whose basic Law of the Sea has been signed, ratified, and accepted as binding by China. The second is China's massive intellectual property theft, in violation of carefully-drafted contracts signed by the highest authorities, of high-speed railway technology from Japan. The third is China's dictatorship, which violates the Universal Declaration of Human Rights (1948) to which it is a signatory.<sup>2</sup>

China's failure to observe the basic norms that have been nurtured over many decades by the international community, will have a powerful impact on the future of the world's political and economic system. After all, China is a huge country, a military superpower, and the second largest trading economy.<sup>3</sup> Further, China's implicit repudiation of the

international order as it is codified today appears to be calculated. Although its preceding regime was instrumental in creating that order — Peng Chun Chang (1892-1957) of the Republic of China was amongst the chief authors of the Universal Declaration of Human Rights — the present establishment manifests a fundamental desire to alter the covenant in deleterious ways. Therefore, the stakes in this discussion are high.

## **THE LAW OF THE SEA**

In 1995 China seized the Mischief Reef, 250 kilometres off Palawan, a major island in the Philippines, and developed it as a military facility. China then began a territorial expansion, claiming islands one after another, including some belonging to Vietnam, Japan, and South Korea. China also asserted territorial claims to Arunachal Pradesh in India, covering some 84,000 square kilometres which China calls "south Tibet" and does not recognise as belonging to India. It also staked sovereign claims overseas to the East and South having an area bigger than the Mediterranean (2,500,000 square kilometres). Evidently, China believed its own propaganda about the inexorable "rise of China" to the status of "hegemon of Asia", and perhaps of the world. One suspects that Beijing expected its neighbours to readily accept such vast territorial claims. However, such was not the case.

At the 2010 meeting of the Association of Southeast Asian Nations (ASEAN) in Hanoi, US Secretary of State Hillary Clinton denounced China's illegal activities. At the same meeting, it was reported, Chinese Foreign Minister Yang Jiechi hurled insults at the Singapore Secretary of Foreign Affairs, George Yeo and declared, "China is a big

country and other countries are small countries, and that's just a fact.”<sup>4</sup>

In 2013, the Philippines filed a suit before the UN Arbitral Tribunal at The Hague, a move that China refused to acknowledge. After prolonged arguments, on 12 July 2016, the Tribunal ruled in favour of the Philippines, and concluded that China had no legal basis to claim “historic rights” to the bulk of the South China Sea and other disputed areas.<sup>5</sup> China denounced the decision. The Philippines, however, by then under its new president, began to seek a modus vivendi and never spoke about the decision at The Hague. China continues to occupy the Philippines' territory militarily to this day, and has succeeded in ignoring the decision by switching discussions to a bilateral format which it finds more favourable. Manila appears uncertain about how to proceed. On one hand, it seeks resolution with China, and on the other, it refuses to give up its rights to the territory, slowly acquiring patrol boats and fighter planes.<sup>6</sup>

China seems to fail to grasp the full significance of these developments, and refuses to talk about the decision in The Hague. However, that ruling remains the definitive finding under international law, and may be able to give guidance to other countries with which China has territorial disputes. It is quite conceivable that when the time comes, the Philippines will use its new weapons to push back China. Will China retreat when that happens, or will it start a war that it is likely to lose?

Thus, in January 2017, when Chinese and India's troops had a standoff at the Doklam Plateau in the Himalayas over China's road-

building, the Indian government stood firm. The stalemate was temporarily resolved when both sides withdrew. Perhaps remembering how they had humiliated India in 1962, China's position was one of puzzlement. The Asian behemoth is unwilling to negotiate anything that might remotely appear like a settlement, as it continues to occupy territory from the earlier war. Beijing understands that a war with India in the Great Northern Massif would be a challenge, and that it would be battling a competitor that possesses potent weaponry. Such a war would render an outcome that would be ghastly at a minimum, and not necessarily favourable to China.<sup>7</sup>

These and other territorial disputes, initiated by China, suggest that Beijing is now in a difficult position. Without exception, China's neighbours view its expansion since 1995 as an amalgamation of First-World-War-era Germany's strategies with Chinese characteristics. Rather than surrendering to China's claims, they are re-arming. A two-front war proved too much for Germany, then a superpower. How can China, whose multiple claims are separated by thousands of miles, expect to use military force to subdue a coalition that surpasses it in strength? The answer is, it cannot; yet a graceful retreat for China would be difficult.

## **TRADE AND INTELLECTUAL PROPERTY NORMS**

In December 2001, China became a member of the World Trade Organization (WTO); the US had welcomed it as a way to resolve political friction with then president Bill Clinton. Before 2001, to the great frustration of China, its Most Favoured Nation (MFN) trade status had to be voted every year by the US Congress.

At the 1992 Democratic Convention, Clinton, joined by a group of Chinese dissidents, denounced the “butchers of Beijing” who had, three years earlier, murdered at least 3,000 Chinese civilians in the streets of the Chinese capital.<sup>8</sup> Typically, Clinton wanted to renew MFN but with some conditions to punish China symbolically.

To do this, Clinton needed China to make some statements or agree to such conditionality. China refused to provide any cover for Clinton. Instead it made an example of him, rubbing his nose in his own scheme. China refused to change its position. Clinton veered, deciding that ushering China into the august economic group would be an important achievement, even though doing so would reverse previous policy. China thus joined the group, enabled by the US – permanently and theoretically bound by rules concerning convertibility of currency (27 years later the Chinese yuan is still not convertible), tariffs, and others. “Free Market Economies” are favoured in international trade agreements. Most recently, China requested to be accorded this status. Yet most analysts agree that China is not a free-market economy; it remains overwhelmingly state-owned and controlled.

The achievement of such recognition, at odds with the facts, will require ignoring the meaning of words—not an uncommon practice in China, summed up by the often recounted story of an emperor who instructed all, when they saw a horse, to call it a deer, a decree with which all are said to have complied. As for China, its argument is not based on a serious assertion that its economy is “free market”. This is an example of China feeling entitled to a benefit, simply because it is the behemoth that it is.<sup>9</sup>

This brings the discussion to intellectual property. China’s new fighter plane, the J-20, is a twin-engine version of the American F-35; it is believed that the blueprints for the fighter plane were purloined by web hacking.<sup>10</sup> The American F-35 has only one engine, though. The story is revealing. For reasons of safety, any US aircraft intended for carrier use must have two engines. However, an exception was made late in the design process, owing to weight considerations, which led to the aircraft being made with only one engine. What the Chinese blueprint ended up with was the two-engine version.<sup>11</sup>

China has also managed to acquire a Japanese crown jewel—the bullet train technology. Japan’s Kawasaki Corporation drew up tight, legally-binding contracts that forbade any copying or reverse-engineering of their bullet trains. These were fully signed by senior Chinese officials, senior enough that Japanese believed they would be observed. Then Kawasaki sold several train sets to China while aiding them with what China described as its “independent work.” Some at Kawasaki saw the occasional infusions of technology as a money maker, but others were suspicious. Within a few months, China had “independently invented” bullet-train technology, planning and building an immense network at home and attempting to sell it abroad.

## HUMAN RIGHTS

China is a signatory to the Universal Declaration of Human Rights, drafted in part by the Chinese intellectual, P.C. Chang. It has since become a tragic irony, that today China is categorised by the Freedom House as “Not

Free.”<sup>12</sup> Observers point to various examples of why the Freedom House's label would be accurate: the death in prison of a dissident, a Nobel laureate; the lack of a constitutional succession system; and the absence of a free press. Freedom House is a private organisation, in the founding of which Eleanor Roosevelt was instrumental. It regularly makes honest assessments of freedom across the world, including in the United States.

## CONCLUSION

China's flagrant violations in the areas of international laws of the sea, property rights, and human rights, do not appear to be simple oversights. Rather, these comprise the country's policies and pose a threat to some of the foundations of a civilised world. As China's government is now rich and its market beguiling, many governments have simply given up on human rights while taking other issues as “costs” of doing business.

In each of the aforementioned areas, China is facing increasing problems. There is the military aspect, to begin with. Beijing expects that its neighbours will acquiesce to its acquisition of new territories, aware as they are that China has become the inevitable hegemon of Asia that is not to be resisted. That assessment, however, has proven wrong.

When US President Donald Trump visited China in November 2017, he received, by far the warmest and most solemn and well-executed welcome of any US President. How did he manage this? For one, he said nothing about security issues or, in China, about human rights. He did not need to. Ahead of his arrival in Beijing, an almost unprecedented three American carrier strike groups, CSGs as

they are known, entered the Pacific. These CSGs are formidable instruments of force projection: roughly speaking each can be considered as equaling in firepower an entire European country such as England or France. These carriers no longer have nuclear weapons, but one suspects they will soon be restored. Trump could say nothing to add to what the Chinese military was scrutinising — namely, a vast, impressive, and totally unexpected demonstration of US military might — dozens of ships but less than half of the country's total carrier force. In the Spring of 2018 the British carriers, Queen Elizabeth II and Prince of Wales (real carriers, comparable to the American), are expected also to cruise Asia. The outpouring of enthusiasm as they make courtesy stops along the way, in India for example, is likely to be considerable.

There is also the French. France's single carrier, the Charles de Gaulle, has a seemingly intractable propulsion problem. Paris has just bought the last French yard capable of building such a craft. One suspects that proud and highly developed France will find intolerable the British possession of this capacity while they lack it. Therefore, they will build their own state-of-the-art carriers to sail down the African coast to the Indo-Pacific, which one must add also makes military sense for France. In other words, the dispute that began in the Philippines has now reached Europe, with India as the bridging power. Such expansion will be beyond China's capacity to contain threats—either losing war or losing court cases loom ahead.

Most worrying to China is the new Japan, which China had long assumed would never arm itself. The election of Prime Minister

Shinzo Abe in October 2017 has, however, changed that. Now Japan may begin increasing its power, which is already substantial, to begin with. It will do so in a calibrated manner, intended to match China. Japan's submarines are already the best and stealthiest. Its intelligence satellites are also the best, though their deployment has only begun. Japan is also currently developing a generation six fighter, the Mitsubishi X-2 Shinshin, which is expected to be as good as any. Advanced missiles are also being developed. While Tokyo may not have a desire to conquer neighbours, all it needs to do is present an obstacle that China cannot stare down. That means when China tries nuclear blackmail, the Japanese nuclear force would be sufficient to deter it. Tokyo will become an alternative to the United States for military supply. If China keeps pushing, the "Quad" of India, Japan, Australia, and the United States will provide a formidable counterweight.


China must walk back on its expansive plans. Yet the country is intoxicated by economic success, which it imagines to be unique, and the country's leaders feel feisty. Nothing is fundamentally different to the experience of Germany, Japan, the "Tiger economies", and now post-Nehruvian India. If anything, China's economy is poorly structured compared to the others, and thus, is less likely to produce continuing growth.

On industry, the free economies must insist on their rights and interests, rather than

imagine that China would change its course. This will mean measures such as heavy tariffs, punitive retaliation for intellectual property theft, among others.

The international community must also sanction China in the area of human rights. This would entail denying visas to human rights violators, and anyone associated with the oppression of Tibet and East Turkestan. Global leaders should speak out robustly in favour of the oppressed.

The global community must, in other words, return to reality. For 30 years since Henry Kissinger's "secret" trip (in fact Zhou discussed it daily with Taipei)<sup>13</sup> other countries have developed certain habits of dealing with China in a friendly way, driven above all by concern about the Soviet Union. China's unexpected military activity is rapidly leading the formerly garrulous champions of "engagement" to silence.

This will mean simple things. Let the democracies group together against the dictatorships and enforce laws against criminal economic behaviour. Today, the politically and economically free world is being economically exploited by China, even as it props up and apologises for its regime. This will be a test of whether the international community believes what it says it does, and whether these pronouncements can be translated into action on the ground. 

#### ABOUT THE AUTHOR

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## ENDNOTES

- 1 . *CIA World Factbook 2017*, Washington, D.C. s.v.
2. <http://www.un.org/en/universal-declaration-human-rights/index.html>
3. “*China Fastest Growing Consumer Market in the World*”. IMF direct - The IMF Blog .
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5. <http://www.cnn.com/2016/07/12/asia/china-philippines-south-china-sea/index.html>
6. For example, <http://www.philippineflightnetwork.com/2014/02/philippines-nears-purchase-completion.html>
7. <https://journal-neo.org/2017/08/08/china-india-confrontation-on-the-doklam-plateau-continues/>
8. <https://www.washingtonpost.com/news/wonk/wp/2016/12/06/american-presidents-have-a-long-history-of-walking-back-tough-talk-on-china/> My figure of 3,000 comes directly from one of my mentors the then American ambassador James Lilley (1928-2009) who dispatched pairs of American embassy personnel to visit the emergency rooms of the Beijing hospitals and count dead. If China ever discloses the real figures, they will almost certain be higher.
9. <https://www.ft.com/content/5b5cd5d0-c14d-11e6-9bca-2b93a6856354>
10. Author's personal information.
11. Author's personal information.
12. <https://freedomhouse.org/report/freedomauthor world/2017/china>
13. See Arthur Waldron “How secret were Washington's talks with China” Taipei Times March 8, 2017. The senior scholar/diplomat Jay Taylor first discovered in Taipei that China, baffled by what America was up to, consulted the greatest expert on American tricks, President Chiang Kai-shek (1897-1975), who of course had known many, such as his former deputy Zhou Enlai (1898-1976) since the 1920s. This other figured out a way to obtain authoritative confirmation from the PRC. The story of course turns everything upside down, but has found no major publisher, They want to know how I confirmed it.



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