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FROM CHINESE
YEARBOOK OF
INTERNATIONAL LAW**

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Publisher's Note

The increasingly important role of the Third World countries in the international political arena as well as rapid advances in science and technology today have presented major new topics for jurists of international law the world over. It was in recognition of the pressing need to promote in-depth studies in various fields of international law that the *Chinese Yearbook of International Law* (1982) was compiled by the Chinese Society of International Law, currently the only national journal of its kind in China.

The present collection includes 12 important articles selected and translated from the "1982 Yearbook". The contributors include some of the leading jurists of international law in China. Translations of the Nationality Law of China and various laws and regulations relating to foreign trade and investments promulgated by the Chinese Government in recent years have been included in an appendix (not authorized by official quarters, for reference only). It is hoped that this book will serve to promote academic exchanges between Chinese specialists in international law and their colleagues abroad in the effort to build up an international legal system which will truly reflect the interests of all peoples, especially those of the developing countries.

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STRIVE TO BUILD UP NEW CHINA'S SCIENCE OF INTERNATIONAL LAW

by Huan Xiang*

We warmly greet the first publication of the *Chinese Yearbook of International Law*, a major event indeed for China's international jurist circles. It is our hope that the book will serve to promote academic exchanges and further enhance our theoretical level in international law.

With the founding of the People's Republic of China ended the history of the old China, a semi-feudal and semi-colonial country which had suffered from oppression and enslavement for nearly a century. Since then a fundamental change has taken place in China's international status. As an independent socialist state towering in the East, new China is playing an increasingly important role in international affairs. This has created the best political, social and historical conditions for the development of her science of international law.

Under the leadership of the Communist Party, new China has pursued a foreign policy of maintaining independence and keeping the initiative in her own hands. The Chinese Government, under the guidance of Chairman Mao Zedong and Premier Zhou Enlai, set forth a series of new propositions in its international activities and gained rich experiences enabling it to contribute greatly to the development of contemporary international law. By proposing the famous Five Principles of Peaceful-Coexistence in 1954, Premier Zhou summed up the positive factors in traditional inter-

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national law and put forward the correct principles and theoretical concepts of international law in the light of the present-day international situation. They have since been accepted throughout the world as the fundamental principles governing the relations between nations. In international struggle, China has consistently and firmly supported the anti-imperialist and anti-colonialist national liberation movements of the Asian, African and Latin American peoples and firmly supported the just struggles and correct stand of the people of the Third World. Later, the principle of opposing hegemonism was formulated on the basis of Chairman Mao's thesis in defining the three worlds. This is of great importance to the development of present-day international law.

Normally, under such historical conditions, China's study of international law should have made rapid advances and in a creative way. However, the regrettable fact is that, instead of advancing, China's study of international law came to a standstill for a fairly long time — particularly during the ten chaotic years — when it was weighed down by the influence of nihilism and liquidationism and strangled by the Left-deviationist line of Lin Biao and the Gang of Four as well as by the feudal policy of closing the country to the outside world. In that period, it suffered from incessant interferences and assaults, and the number of researchers dwindled in the neglect of this science.

Since the downfall of the Gang of Four, and particularly since the Third Plenary Session of the Eleventh Party Central Committee, the Party and Government have resolutely criticized and corrected the "left" errors and set forth the correct ideological line of emancipating the mind and seeking truth from facts. This has breathed a new life into the study of international law.

In the fulfilment of China's historical task of socialist modernization, a most important condition is required, that is, a peaceful international environment, so that she may greatly expand her economic relations with other countries, make use of foreign capital, learn from advanced science and technology, and increase cultural and other exchanges. All this has

proposed new subjects for our study of international law.

Since the Second World War, large numbers of international conventions, treaties and agreements having important bearings on international law have been signed. Moreover, new branches have been developed in international law in recent years, including new laws concerning the sea, outer space, international economic relations and international environmental protection. They represent new fields of science which we must catch up with in our studies.

China has always stood for equality among nations, irrespective of size or strength. As the rule of conduct to be followed by all countries in their mutual relations, international law should be an institution reflecting and protecting the common interests of these countries. Though noteworthy achievements have been made in the formulation of principles and norms of international law in the more than 300 years since Hugo Grotius' time, many of them reflected mainly the interests and demands of the bourgeoisie, the colonialists and in particular of the imperialists. The present world is full of contradictions and conflicts; the big and strong nations are constantly bullying the small and weak nations, sometimes even resorting to armed aggression. In these circumstances, international law has often been used by the imperialists and hegemonists as a means to carry out aggression, oppression and exploitation and to further their reactionary foreign policies. Apologies for aggression and oppression can often be found in writings on international law. All this has aroused feelings of strong resentment from the Chinese international jurists, as with the rest of the Chinese people who have many bitter memories of being oppressed and humiliated. The question remains to be, therefore, of how to make international law work truly for upholding international justice in the interests of the oppressed small and weak nations, an embodiment of the Five Principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence, and a means of defending world peace. This is a subject of historic importance to be studied seriously. It requires our international

lawyers to work diligently, unremittingly and fruitfully in their theoretical study under the guidance of Marxism-Leninism and Mao Zedong Thought and in the light of the realities of international struggle, so as to build up our own science of international law which serves to promote world peace and truly represents the interests of the people the world over.

This is an arduous and glorious task. To fulfil so important a historic task, we must not only make a scientific analysis and correct summation of the historical development of international law with the help of Marxism-Leninism and Mao Zedong Thought, but should also study the different schools of bourgeois and revisionist theories and propositions of international law, analyze and criticize them scientifically, and create a correct theoretical system in the course of expounding our own correct stand. We need to make an intensive study of not only the theory of international law, but the different realms and branches of international law as well to facilitate China's international activities and her legislative work. While doing scientific research in this field, we also have the responsibility to train a new generation of specialists and scholars in international law.

The *Chinese Yearbook of International Law* should contribute to the realization of this historical task.

It should adhere to the policy of letting a hundred flowers blossom and a hundred schools of thought contend, while advocating and encouraging the application of the Marxist stand, viewpoint and method to the study of international law. At present, continued attention should be paid to eliminating the pernicious influence of nihilism and "Leftist" thinking in the study of international law, and encouraging people to emancipate their mind and be bold in airing their views in the search for truth. Of course, any Right tendencies to uncritically accept bourgeois views on international law should also be criticized.

The *Yearbook* should devote certain space to the academic activities, new theoretical viewpoints and writings in other countries so as to promote

academic exchanges, and broaden the vision of Chinese international lawyers to enable them to make comparative studies.

The *Yearbook* provides Chinese international lawyers with a new channel to publish the results of their study. Its success depends on their joint efforts as well as on the support and assistance of all departments concerned.

The situation in China today is excellent and we have all favourable conditions to make the *Yearbook* a success. Let us work together to usher in the "spring" in our study of international law when hundreds of flowers will blossom.

THE THIRD WORLD AND INTERNATIONAL LAW

by Wang Tieya*

I

A major feature of present-day international relations — or the international relations since World War II — is the rise of new nations and the formation of the Third World. This feature is inevitably mirrored in present-day international law. If contemporary international law — the international law that came into being after the October Socialist Revolution of 1917, as distinct from traditional, modern international law — was characterized by the emergence of a socialist state, then the international law that has shaped up since the end of World War II in 1945 should be characterized by the formation of the Third World as a result of the rise of new nations.

In the past decades, many international lawyers have analysed the characteristics of international relations and their impact on international law, which has changed greatly with the rapid expansion of the relations among nations since World War II. In his new work, *Conflict and Compromise: International Law and World Order in a Revolutionary Age*,¹ the Canadian international law scholar McWhinney remarks that the modern world is “in a revolutionary age.” While regarding all recorded history as “a process of revolution or at least of change,” he holds that

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¹ 1981, p.13.

the present era is different from previous ones, because it is an era of "world revolution" unprecedented in scope and depth, characterized by "a series of continuing revolutions." This thesis is unexceptionable, if a proper view is taken of the nature and the significance of "revolution."

In McWhinney's opinion, the current "revolution" has four facets: political changes, ideological revolution, economic growth and rapid progress in science and technology. He regards decolonization as the most striking political development in postwar history, which has resulted in the explosion of "new nations."¹ The Nigerian international law scholar Taslim O. Elias also points out that since the end of World War II the development of public international law has been affected by two major facts: One is the unprecedented increase and expansion of international organizations, and the other is the rise of former colonies and dependencies mainly of Britain, France, Belgium and the Netherlands as independent sovereign states.² Obviously, much can be said to characterize the postwar international relations, but, I think, their main characteristics are: the rise of newly independent nations, the proliferation of international organizations, the changes in the international economic order and the speedy advance in science and technology, all of which have affected international law in significant ways.³ Though analyses have differed, it is generally agreed that a major characteristic of international relations of the past decades is the rise of new nations and the formation of the Third World. As the Indian international jurist R.P. Anand says, the period we have just lived through has been an era of unprecedented upheaval and one of the most important changes in the past years is the vast horizontal expansion of the international community, i.e., the proliferation of new nations resulting from the decadence of colonialism and the collapse of the colonial system.⁴ The American international

¹ *Ibid.*, pp. 14-16.

² *Africa and the Development of International Law*, 1972, p. 5.

³ Wang Tieya, "Current Trends in International Law," *Beijing University Journal* (Philosophy and Social Sciences Edition), No. 2, 1980, pp. 17-27.

⁴ *New States and International Law*, 1972, p.1. The author notes that there are both quantitative and qualitative changes in international relations, and by quantitative changes he means the increase in the number of nations participating in international relations. *Ibid.*, pp. 52-53.

lawyer O.J. Lissitzyn is another writer who believes that decolonization and the emergence of many new nations have been major factors behind the changes which have been taking place in the past decades.¹

"The Third World" is a political concept. It stems from the strategic division of the globe into three worlds on the basis of a scientific analysis of the development and the prospect of postwar international relations. Comrade Mao Zedong said, "In my opinion, the United States and the Soviet Union constitute the First World. Japan, Europe and Canada — the middle section — are the Second World. We are the Third World." He added, "The Third World has a big population. All Asia except Japan belongs to the Third World, so does the whole of Africa and Latin America." Some Western writers identify the United States and the other Western countries as the First World, the Soviet Union and other "communist countries" as the Second World, and all developing countries as the Third World.² But no one has ever denied that the Third World consisting of the developing countries of Asia, Africa, Latin America and other continents is a major force playing an increasingly big role in international relations and that it is, therefore, a major characteristic of postwar international relations affecting the development of present-day international law.³

Different terms have been used for the "new" nations. The French scholar Hasner mentioned five of them: newly independent states, un-

¹ *International Law, Today and Tomorrow*, 1965, p. 102.

² *Renmin Ribao* Editorial Department, "Chairman Mao's Theory Defining the Three Worlds Is an Important Contribution to Marxism-Leninism," *Xinhua Monthly*, No. 11, 1977. There is also an article by Yaschek entitled "*Die Chinesische Völkerrechtsdoktrin im Lichte der 'Drei-Welten' Theorie*," in *German Yearbook of International Law*, Vol. XXI, 1976. But the article does not delve into the question.

³ Cf. L. Henkin, *How Nations Behave*, Second edition, 1979, p. 119; Fatouros, "International Law and the Third World," *Virginia Law Review*, Vol. V, No. 5, p. 785, in which the author says that one of the basic facts of international relations is the present division of the globe into three different worlds. *Ibid.*, p. 811.

derdeveloped countries, non-aligned countries, Afro-Asian countries and the Third World. Explaining how these terms are adopted from different angles, he said that "newly independent states" is a historical designation now having a certain legal connotation; "underdeveloped countries," also called "less-developed countries" or, more frequently, "developing countries," is mainly an economic designation; "non-aligned countries," once called "neutralist countries," is a designation indicating their political stand and attitude in international relations; "Afro-Asian countries" is a geographical term which is now often replaced by the term "Asian, African and Latin American countries" to include Latin America; "the Third World" is the broadest term which has a geographical as well as a political meaning and implies both the economic and the cultural characteristics of these countries.¹ Considering the rise of new nations being a characteristic of international relations and its impact on international law, "the Third World" and "Third World countries" are the most appropriate terms because they combine the geographical concept (mainly Asian, African and Latin American countries) with the historical concept (mainly countries that have become independent in the past decades), the political concept (including all non-aligned countries) and the economic concept (including all developing countries).

The birth of new states through the struggle for liberation and against colonial rule is a phenomenon that appeared in international relations long before World War II. In fact, it already occurred after World War I, especially under the influence of the October Socialist Revolution. Some Western international lawyers quickly observed this phenomenon

¹ "Le système international et les états nouveaux," in Duroselle et Meiller (ed.), *La Société internationale et les états nouveaux*, 1968. Lacharrière held that the developing countries can be subdivided into several categories according to the level of their economic development — See "La catégorie juridique des pays en voie de développement," *Colloque d'Aix-en Provence: Pays en Voie de Développement et Transformation du Droit International, par la Société française pour le Droit International*, 1973. R.A. Falk classified "new states" into eight categories — See "New States and International Legal Order," *Recueil des cours de l'Académie de droit international de La Haye*, 1966, tome 2, pp. 10-11.

and recognized the challenge it represented to traditional or “classical” international law. Taking note of the many new phenomena in international relations that caused a series of changes in international law after the First World War, the American international lawyer J.L.Kunz drew particular attention to the “anti-colonialist rebellion,” i.e., the rise of the movement against colonialism in Asia and Africa.¹ However, it should be noted that the advance of the anticolonialist movement, the rise of new nations and the formation of the Third World are primarily characteristics of the international relations after World War II. Their impact on postwar international law is quite obvious.² Many international jurists acknowledged the “newness” of postwar international law.³ Alejandro Alvarez, the Chilean Judge of the International Court of Justice, said a new world order required the creation of a “new international law”; the Nigerian international law scholar Okoye also spoke of “the evolution of contemporary international law.”⁴ J. L. Kunz put it most clearly when he distinguished the international law existing between the two world wars from that which came into being after World War II by calling the former the “new international law” and the latter “the newest international law.”⁵

The impact on international law of the rise of new nations and the formation of the Third World has aroused the attention of international jurist circles in the past decades and become a major topic in the study of present-day international law. International lawyers began discussing the question as early as the 1950s. Since the 1960s, which started with an upsurge of the movement against colonial rule and for independence, many Asian, African and Latin American as well as European and American writers have published books and treatises on a wide range of questions about the relations between the new nations — or the Third World

¹ “The Crisis and Transformation in International Law,” *Recueil des cours de l'Académie de droit International de La Haye*, 1955, tome 2, pp. 9-101.

² Cf. Wang Tieya, *op. cit.*, pp. 17-20.

³ Taslim O. Elias, *International Law and African States*, 1972, p.5.

⁴ Quoted in Roling, *International Law in an Expanded World*, 1960, p.7.

⁵ *Ibid.*, p.9.