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The Chinese Doctrine of Fundamental Principles of International Law: Comparison of Soviet, Euro-American, and Chinese Theories of International Law

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ARTICLES

THE CHINESE DOCTRINE OF FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW: COMPARISON OF SOVIET, EURO-AMERICAN, AND CHINESE THEORIES OF INTERNATIONAL LAW

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A number of states in the former communist bloc, such as Russia, have adopted the doctrine of the fundamental principles of international law, which originated from the former Soviet Union. What is the concept of the fundamental principles of international law in China? This study elucidates the uniqueness of the fundamental principles in China by comparing doctrines of international law in the Soviet Union and Western countries with reference to descriptions in contemporary international law textbooks in China.

In Chinese studies, the fundamental principles of international law are considered universally recognized by all States (公认); thus, they are applicable across a wide range of fields and provide the basic elements for framing individual rules of international law. In addition, the fundamental principles invalidate other rules of international law, such as treaties or customary international laws that conflict with them, similar to jus cogens norms.

The prevailing view in Euro-American international studies makes

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Editor's Note: English translations of Chinese and Russian texts have been provided and remain as faithful to the original texts as possible. Discrepancies in translation may exist.

significant room for the establishment of particular international laws that are distinct from general international law. Therefore, there is ample space for the unique development of international law among States with unitary political systems, societal institutions, and cultures. The Soviet school of international law explains the development of higher-level international laws within the Soviet bloc in accordance with these points. However, Chinese international law does not adopt the Soviet view of the formulation of international law. Instead, the Chinese doctrine of the fundamental principles of international law centers on a structure that identifies the superiority of international law as universally recognized by all nations (i.e., 公认) to that within blocs that have a single political system, social regime, and culture.

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For the present, the task of international lawyers is to take account of different histories and cultures of various countries and to find out principles of law and justice which are common to all. — Wang Tieya [1]

I. INTRODUCTION: THE CRUX OF THE MATTER

The former Soviet Union espoused a unique doctrine concerning the fundamental principles of international law.[2] While a similar term to the concept of fundamental principles of international law is often employed in Euro-American states and Japan, the Soviet idea of fundamental principles differs substantially from it in terms of content.[3] Notably, the proposition outlined by Vietnam at the

1. Wang Tieya, *International Law in China: Historical and Contemporary Perspectives*, 221 RECUEIL DES COURS 195, 356 (1990).

2. *See generally* 2 КУРС МЕЖДУНАРОДНОГО ПРАВА: ОСНОВНЫЕ ПРИНЦИПЫ СОВРЕМЕННОГО МЕЖДУНАРОДНОГО ПРАВА [COURSE OF INTERNATIONAL LAW: FUNDAMENTAL PRINCIPLES OF MODERN INTERNATIONAL LAW] 16, 33, 83, 111, 146, 161, 202, 235, 262, 295 (Академия наук СССР [Acad. of Sci. of the USSR] ed. 1967) (Russ.) (discussing the former Soviet Union's doctrine of "fundamental principles of international law").

3. The Soviet school of international law or the Soviet-socialist approaches to international law played a leading role in establishing the socialist conceptions of international law. Theodor Schweisfurthe, *Socialist Conceptions of International Law*, *in* 7 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 417, 417 (R. Bernhardt ed. Elsevier Science Publishers B.V. 1984). This article defines the socialist conceptions of international law as follows: "[s]ocialist conceptions of international law denote conceptions of international law which are advocated in States ruled by communist parties characterizing themselves as 'socialist' States"; "[s]ocialist conceptions of international law do not only comprise basic doctrines on international law but also deal with individual issues and problems arising out of international law." And the article explains their historical background as follows:

International Law Commission that advocates for the recognition of fundamental principles of international law as *jus cogens*[4] is descended from the Soviet school. Specifically, in Europe, Antonio Cassese embraces a suite of norms termed the "fundamental principles governing international relations," which is influenced by the Soviet fundamental principles.[5]

Among former and current communist states, however, the substance of the fundamental principles of international law considerably differs from country to country.[6] For instance, while the

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"Soviet legal scholarship, the only socialist school of international law between the two world wars, travelled down a 'long and complicated road . . . to understand the changes in the principles and existence of the law after the October Revolution' . . . After World War II the development of the socialist schools of international law in the various emerging 'socialist' States, generally speaking, depended on the degree of each State's political proximity to the Soviet Union and whether the latter's 'leading role' was acknowledged"; "By and large, the first phase of legal scholarship in the new socialist States was marked by the extinction of what was called 'bourgeois' legal thinking and the reception of Soviet-socialist approaches to international law"; "During the second phase, in some of the new socialist States legal scholarship freed itself from the Soviet model to a greater or lesser extent."

4. *See Vietnam Promotes Principles of Int'l Law & Obligation to Protect Environment in Relation to Armed Conflicts*, BÁO THẾ GIỚI VÀ VIỆT NAM (Oct. 27, 2022), https://en.baoquocte.vn/vietnam-promotes-principles-of-intl-law-obligation-to-protect-environment-in-relation-to-armed-conflicts-203610.html (" . . . the seven basic principles of the UN Charter and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter should be included in the list of mandatory norms.").

5. *See generally* ANTONIO CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 126–65 (Oxford University Press 1988) (noting, for example, that the principle of self-determination was first proclaimed at an international level by the USSR in 1917); PAOLA GAETA, JORGE E. VIUALES, & SALVATORE ZAPPAL, CASSESE'S INTERNATIONAL LAW 45–76 (3d ed., Oxford University Press 2020). However, Cassese does not consider all of these principles to be *jus cogens*. A textbook published after his death includes a chapter about the fundamental principles governing international relations. *Id.*

6. *See generally* ARATA FUJII, KITA CHOSEN NO HO CHITSUJO–SO NO SEIRITSU TO HENYO [LEGAL ORDER OF NORTH KOREA–ITS FORMATION AND TRANSFORMATION] 8–11 (Seorishobo 2014) (Japan) (noting how the issue of sovereign right, discussed in connection with the right of equality, is viewed differently in Russia, China, and other Eastern countries than it is in Western countries); *see also* Yoshihito Sumiyoshi, *Sobieto ni okeru Heiwa Kyozon no Gensoku no Kento* [*Examination of the Principle of Peaceful Coexistence in the Soviet*], *in* 51 HORITSU RONSO [COLLECTION OF LEGAL TREATISES] 1, 21 (1979) (Japan); *see also* Yoshiro Matsui, *Heiwa Kyozon to Kokusaiho – Gendai Kokusaiho ni okeru Shakaishugikokka no Chii* [*Peaceful Coexistence and International Law –*

Soviet school considered the principle of peaceful coexistence as among the most important fundamental principles, North Korea does not accept this principle.[7] Instead, North Korea recognizes four fundamental principles: respect for sovereignty, equality and reciprocity, nonintervention, and inviolability.[8]

Regarding China, a number of Chinese scholars or scholars of Chinese origin have translated 国际法基本原则 into "fundamental principles of international law" or "basic principles of international law" in their English studies.[9] Wang Tieya considers the Five

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Status of Socialist States in Contemporary International Law], *in* HENDO-KI NO KOKUSAIHO [INTERNATIONAL LAW IN TRANSITIONAL PERIOD] 3, 12–13 (Shigejiro Tabata & Kanae Taijudo ed., Yushindo 1973) (Japan) ("The Soviet regime that came to have power through the revolution of November 6-7, 1917 (October 24-25, lunar calendar) inherited many of the positions of the European labor movement mentioned above and offered several new perspectives previously unknown in international law and international relations.").

7. *See generally* FUJII, *supra* note 6, at 8–9 ("The four fundamental principles of international law set forth in the 'Study of Contemporary International Law' are respect for autonomy, equality and reciprocity, non-interference in internal affairs, and inviolability. . . . The four basic principles listed in the 'Study of Contemporary International Law' are not unique to North Korea. These principles are also recognized as fundamental rights of states in the international laws of Japan and Western countries. They are also consistent with the five principles of peaceful coexistence, which China claims to be the fundamental principles of international law, with the exception of the principle of peaceful coexistence itself, and they also share the same emphasis on the principle of sovereignty as the most important of the fundamental principles."); *see also* Sumiyoshi, *supra* note 6, at 21; *see also* Matsui, *supra* note 6, at 12–13 (noting the Soviet view of the principle of peaceful coexistence as the basis for peaceful coordination and future relations between socialist and capitalist states).

8. *See* FUJII, *supra* note 6, at 8–11.

9. *See* Wang, *supra* note 1, at 273 ("Nearly all the textbooks on international law written by Chinese scholars have a special chapter devoted to the fundamental principles of international law in which the Five Principles of Peaceful Coexistence are given prominence."); *see also* Kazuo Sumi, *Saikin no Chugoku no Kokusaiho no Kenkyu Doko* [*Current Research Trend of International Law in China]*, *in* CHUGOKU NO GENDAIKA TO HO–HORITSUKA NO MITA ATARASHII CHUGOKU [MODERNIZATION OF CHINA AND LAW–NEW CHINA AS SEEN BY LEGAL PROFESSIONALS] 359, 362–63 (Ichiro Kato ed., 1980) (Japan) ("Chinese international law scholars emphasize the five principles of peace (mutual respect for territorial sovereignty, mutual non-aggression, non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence) proclaimed at the Bandung Conference as the basic principles of modern international law."). Note that the Chinese government adopts not only "the fundamental principles of international law," but "the basic principles of international law" as the translation. In this regard, *see The Global Security Initiative Concept Paper*, Ministry of Foreign Affs., China

Principles of Peaceful Coexistence (和平共处五项原则) to be the fundamental principles of international law.[10] Further, Sumi demonstrates that contemporary Chinese international lawyers consider these Five Principles as the fundamental principles as well.[11]

However, these studies, which merely present the products of research that amplifies common legal theories in Chinese academia, do not show a complete grasp of the fundamental principles of international law.[12] In addition, papers written in English by Chinese

(Feb. 21, 2023), https://www.fmprc.gov.cn/mfa_eng/wjbxw/202302/t20230221_11028348.html ("Sovereign equality and non-interference in internal affairs are basic principles of international law and the most fundamental norms governing contemporary international relations.").

10. *See* Wang, *supra* note 1, at 263 ("The enunciation of the Five Principles of Peaceful Coexistence is one of the major contributions made by the PRC since its establishment to the development of international law.").

11. Sumi, *supra* note 9, at 362.

12. *See generally* Luo Guoqiang, *China and the Fundamental Principles of International Law*, *in* ANNUAL REPORT ON CHINA'S PRACTICE IN PROMOTING THE INTERNATIONAL RULE OF LAW 1–9 (Zeng Lingliang & Feng Jiehan eds., 2015) (discussing the breadth and depth of the five principles on peaceful coexistence on an international level); *see also* ZENG LINGLIANG, CONTEMPORARY INTERNATIONAL LAW AND CHINA'S PEACEFUL DEVELOPMENT 257-58 (2020) (discussing the fundamental principles of international law that guide international relations); *see also* CHAN PHIL C.W., CHINA, STATE SOVEREIGNTY AND INTERNATIONAL LEGAL ORDER 93 (2015) (stating that the Chinese government does not regard the Principles as the only fundamental principles of the international legal order); *see also* Zou Keyang, *Chinese Approach to International Law*, *in* CHINA'S INTERNATIONAL RELATIONS IN THE 21ST CENTURY 171, 171–77 (Hu Weixing, Chan Gerald and Zha Daojiong eds., 2000) (discussing the role of sovereignty in international law and China's realization that it is no longer absolute); *see also* JERRY Z. LI & SANZHUAN GUO, INTERNATIONAL LAW AND DOMESTIC LEGAL SYSTEMS: INCORPORATION, TRANSFORMATION, AND PERSUASION 159 (Dinah Shelton ed., 2011) ("Although the international community has not fully agree on the scope of fundamental principles of international law, China generally accepts that the five principles of mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence, adopted at the Bandung Conference of the Non-alignment Movement in 1955, are key parts of these fundamental principles."); *see also* XUE HANQIN, CHINESE PERSPECTIVES ON INTERNATIONAL LAW: HISTORY, CULTURE AND INTERNATIONAL LAW 109 (2012) (noting that in an increasingly interconnected and globalized economy, faithful fulfillment of international obligations constitutes one of the cornerstones of international legal order); *see also* Chen Yifeng, *The Customary Nature of the Principle of Non-Intervention: A Methodological Note, in* 2 RENMIN CHINESE LAW REVIEW: SELECTED PAPERS OF THE JURIST 319, 319 (Shi Jichun ed., 2014) (discussing the principle of non-intervention); *see also* HAN XIULI, LEGAL PROTECTION AND SUSTAINABILITY OF CHINESE INVESTMENTS IN AFRICA:

scholars that are oriented mainly toward readers outside of China are inconsistent with the discourse within the Chinese legal community.[13]

What is considered the fundamental principles of international law in China? Thus far, no treatises on these fundamental principles have been published in Chinese scholarship on international law by systematically collecting Chinese documents and analyzing the theoretical features of such principles. China is now the world's second-largest economic power and is a competitor of the United States.[14] Therefore, examining the fundamental principles of international law, which appear to be a key aspect of Chinese international law, is crucial.

By analyzing previous studies in contemporary China, including general textbooks of international law that are available both in China and abroad, a number of academic papers, and online organization papers of the Chinese Foreign Ministry and the Communist Party, this study elucidates the unique significance of the fundamental principles in China compared to the doctrines of international law from the Soviet Union and Western countries. An exhaustive accounting of such textbooks, articles, and publications is almost impossible, and their description and scope is extremely diverse. However, general trends can be observed and analyzed through randomly selected textbooks. Therefore, this study establishes underpinnings for developing studies on Chinese theories of international law.

UNDER THE CONCEPT OF INTERNATIONAL INVESTMENT RULE OF LAW 219 (2022); CAI CONGYAN, THE RISE OF CHINA AND INTERNATIONAL LAW: TAKING CHINESE EXCEPTIONALISM SERIOUSLY 86 (2019).

13. *See generally* XUE, *supra* note 12, at 147–60; *see also* WANG TIEYA (王铁崖) & WEI MIN (魏敏), GUOJIFA (国际法) [INTERNATIONAL LAW] 268–69 (1991) (China) [hereinafter WANG TIEYA (王铁崖) & WEI MIN (魏敏)].

14. *See* David Dollar & Ryan Hass, *Getting the China Challenge Right*, BROOKINGS INST. (Jan. 25, 2021), https://www.brookings.edu/articles/getting-the-china-challenge-right (discussing China's role in global geopolitics relative to U.S. hegemony); *see also* Quansheng Zhao, *Power Transition and the Dynamics of U.S.-China Competition*, GEO. J. OF INT'L AFFS. (April 7, 2022), https://gjia.georgetown.edu/2022/04/07/power-transition-and-the-dynamics-of-u-s-china-competition ("[I]t has become increasingly clear the U.S. is no longer the sole international superpower.").

II. GENERAL REMARKS ABOUT THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

A. THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW IN RELATION TO SOVIET CONCEPTUALIZATIONS OF INTERNATIONAL LAW

The concept of the fundamental principles of international law in China originated from international legal studies in the Soviet Union.[15] Thus, at the outset, the основные принципы международного права (fundamental principles of international law), which came into use in the 1960s in the former Soviet Union, should be examined.

According to a textbook published by the Academy of Sciences of the Soviet Union, the Soviet school's conceptualization of the fundamental principles of international law is as follows. The international norms established by the Charter of the United Nations are basic norms of international law as humans transition from capitalism toward socialism.[16] These fundamental principles are basic and peremptory norms and are the criteria for rulings on the legality of other international norms among states in the field of international relations.[17] Any voluntary and discretionary rules that are not in agreement with the fundamental principles must be considered null and void.[18]

The textbook enumerates ten principles under this rubric: peaceful coexistence, respect for state sovereignty, equality of state rights, non-aggression, peaceful settlement of international disputes, nonintervention in domestic jurisdiction, self-determination of people,

15. *See* XUE, *supra* note 12, at 25 ("In its early years, the People's Republic of China's approach towards international law was greatly influenced by the Soviet theory and practice.").

16. КУРС МЕЖДУНАРОДНОГО ПРАВА: ОСНОВНЫЕ ПРИНЦИПЫ СОВРЕМЕННОГО МЕЖДУНАРОДНОГО ПРАВА [COURSE OF INTERNATIONAL LAW: FUNDAMENTAL PRINCIPLES OF MODERN INTERNATIONAL LAW], *supra* note 2, at 12.

17. *See id.* ("The basic principles (fundamental principles) of international law are the criterion for the legitimacy of all other norms elaborated by States in the sphere of international relations").

18. *See id.* at 12–13 ("All other rules of international law must be in conformity with its basic principles. Any rule contrary to these principles cannot be considered a valid legal norm.").

respect for human rights, respect for international obligations, and armament limitations.[19] A great deal of emphasis is given to the principle of peaceful coexistence, which takes a leading role among the principles of international law.[20]

B. THE CHINESE DOCTRINE OF THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

According to Chinese international law, the fundamental principles of international law are universally recognized by all states (公认), have the leading function with universal significance in the realm of all areas of international law, and are basic elements that make up all specific international law.[21] Certain aspects of the fundamental principles are different from *jus cogens* norms. *Jus cogens* norms cover specific areas that contrast with the fundamental principles that form the foundation for all international law. With the same characteristics as *jus cogens* norms, the fundamental principles vacate general international law or treaties inconsistent with them. The Western school of thought considers *jus cogens* norms to have a feature that can be modified by subsequent norms with the same character, but there seems to be no reference to the potential of the amendment of the fundamental principles by novel ones in Chinese international law.

There certainly are controversies within the Chinese international law community regarding the fundamental principles.[22] However, in general, the following are commonly listed as the fundamental principles: the sovereign equality of states and respect for sovereignty; territorial inviolability; peaceful settlement of international disputes;

19. *See id.* at 16, 33, 83, 111, 146, 161, 202, 235, 262, 295 (listing the ten principles and explaining each principle in separate chapters).

20. *See* Sumiyoshi, *supra* note 6, at 21.

21. *See* Wang Huhua (王虎华), Guojigongfa Xue (国际公法学) [Public International Law Studies] 47 (4th ed., 2015) (China) [hereinafter Wang Huhua (王虎华)] ("The fundamental principles of international law are the most important core rules in international law and constitute the cornerstone of the entire system of international law. . . . They have been widely accepted by all countries of the world and have played a positive role in the development of international law. . . .").

22. *See* Guojifa Xue (国际法学) [International Law Studies] 22 (Wang Lihua (王丽华) ed., 1st ed. 2012) (China) [hereinafter Wang Lihua (王丽华)] (explaining that unlike scholars in the former Soviet Union, some Western and Chinese works on international law do not discuss fundamental principles of international law).

nonintervention in internal affairs; fulfillment of international obligations in good faith; international cooperation; and the self-determination of peoples.[23] Of course, the specifics of these principles vary somewhat across textbooks.

While the Soviet fundamental principles include respect for human rights (принцип уважения прав человека),[24] textbooks in China rarely include human rights among the fundamental principles of international law.[25] Naturally, these textbooks do consider and provide descriptions of the protection of human rights.[26] However, this consideration is limited by the idea that the restriction of sovereignty due to the protection of human rights is considered undesirable.[27] For instance, Wang Tieya and Wei Min assert "the principle of human rights is subordinated to that of state sovereignty and cannot outweigh it (人权原则只能从属于国家主权原则，而决不能高于国家主权原则)."[28] Moreover, Wang Huhua states that human rights can be

23. *See* Guojigongfa Xue Bianxiezu (国际公法学编写组) [Public International Law Studies Writing Team], 国际公法学 [Public International Law Studies] 111–13, 243 [hereinafter Guojigongfa Xue Bianxiezu (国际公法学编写组)] (3d ed., 2022) (China) (describing each of these principles as being universally accepted and explaining each briefly).

24. *See* КУРС МЕЖДУНАРОДНОГО ПРАВА: ОСНОВНЫЕ ПРИНЦИПЫ СОВРЕМЕННОГО МЕЖДУНАРОДНОГО ПРАВА [COURSE OF INTERNATIONAL LAW: FUNDAMENTAL PRINCIPLES OF MODERN INTERNATIONAL LAW], *supra* note 2, at 235 ("The principle of respect for human rights is embodied and enshrined in a number of international legal instruments, and it is now possible to speak of the establishment of this principle in international law").

25. *See* Tetsuya Ouchi, *Chugoku Kokusaihogaku ni okeru Ajia no Chiiki Jinken Hosho ni kansuru Ichi Kosatsu* [*A Consideration on Asian Regional Human Rights Protection in Chinese International Law Studies*], 2005 Gendai Ajia Gaku no Sousei [Creation of New Contemp. Asia Stud.] 193, 195–96 (2006) (Japan) ("[T]he principle of human rights has not yet become a fundamental principle of international law . . . ").

26. *E.g.*, *id.* at 193, 195–96 ("[M]any international legal scholars in China have held that international treaties on human rights . . . are the legal basis or foundation for the international protection of human rights . . . ").

27. *See* Akira Ishii, *Fukansho Gensoku to Chugoku* [*Principle of Non-intervention and China*]*, in* Toa no Kouso–21 Seiki Higashi Ajia no Kihan Chitsujyo wo motomete [Visions of East Asia–Seeking for Legal Order of East Asia in the 21st Century] 65, 72–81 (Yasuaki Onuma ed., 2000) (Japan).

28. WANG TIEYA (王铁崖) & WEI MIN (魏敏), *supra* note 13, at 268–69 ("The principle of State sovereignty is the most important principle of modern international law and the foundation of international law. The principle of human rights is subordinated to that of state sovereignty and cannot outweigh it, and it is only on the basis of the principle of State sovereignty that the implementation of human rights

protected only after the state's sovereignty is firmly established.[29] Thus, it is disputed whether human rights constitute an issue of internal affairs; however, at any rate, textbooks consistently adopt the basic stance that human rights must be protected through state sovereignty.[30] Therefore, in emphasizing and championing state sovereignty, Chinese textbooks make little mention of human rights in the fundamental principles of international law.[31]

Zhou Gengsheng, credited as the father of the Chinese school of international law, published the first international law textbook in China since the foundation of the People's Republic of China in 1949. However, this textbook does not embrace the fundamental principles of international law.[32]

To our knowledge, the first textbook in China to espouse the fundamental principles is written by Wang Tieya.[33] This book provides the following definition of the principles:

> What are called the fundamental principles of international law are not those that are specific in each area but are legal principles that are

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can be effectively guaranteed.").

29. *See* Wang Huhua (王虎华), *supra* note 21, at 452 ("[I]t is only through adherence to State sovereignty that human rights can be effectively protected").

30. *See id.* at 452 ("Only by upholding State sovereignty can human rights be effectively protected; in exercising State sovereignty, human rights must be respected and protected, and the realization and protection of human rights in the fundamental purpose of the State."); *see* WANG TIEYA (王铁崖) & WEI MIN (魏敏), *supra* note 13, at 268–69.

31. *See, e.g.*, Wang Huhua (王虎华), *supra* note 21, at 452 (mentioning human rights only in the context of upholding State sovereignty, not as its own fundamental principle); *see* WANG TIEYA (王铁崖) & WEI MIN (魏敏), *supra* note 13, at 268–69 ("The principle of State sovereignty is the most important principle of modern international law and the foundation of international law."); *but see* Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 111–13, 243. Note that this textbook only states that the right to life and development are cardinal fundamental human rights; therefore, differences in environment, history, culture, social system, or level of economic development of the specific states should be considered. *Id.* at 243. In addition, this book candidly states that since China's reform and opening-up, China has proactively participated in United Nations activities to promote and protect human rights, despite facing many complications, such as the Cultural Revolution.

32. *See* Wang Lihua (王丽华), *supra* note 22, at 22 ("Nor is there a chapter on the fundamental principles of international law in the book written by Zhou Gengsheng, a scholar in China.").

33. *See* Wang Tieya (王铁崖), Guojifa (国际法) [International Law] 1, 49 (1981) (China) [hereinafter Wang Tieya (王铁崖)].

> recognized by all states, have universal significance, are applied to all operative ranges of international law, and serve as a basis for international law.[34]

From this point, the definitions of the fundamental principles remain essentially unchanged. For example, Wang Huhua explains,

> The fundamental principles of international law are important legal principles that are recognized by all states, are applied to all areas of international law, and form the basis for international law.[35]

The conceptualization of the fundamental principles of international law in present-day China remains similar to what is given above by Wang Tieya. A large number of international law textbooks in China devote a section to the relationship between the fundamental principles and *jus cogens* norms. According to these books, the fundamental principles and *jus cogens* norms are separate ideas despite sharing commonalities.[36]

C. RATIONALE FOR THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW IN CHINA

A number of general statements of international law in China consider the Charter of the United Nations ("U.N."), U.N. General Assembly Resolution 2625, and the Five Principles of Peaceful Coexistence as dominant rationales for the fundamental principles of international law.

First, Article 1 of the Charter of the U.N. indicates that the purposes of the U.N. is to peacefully bring about adjustment or settlement of international disputes or situations that might lead to a breach of the peace and to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples.[37] Further, Article 2 stipulates that the U.N. is based on the principle of the sovereign equality of all members and is obliged not to intervene in matters that are within the domestic jurisdiction of a state. All members shall fulfill their obligations in accordance with the Charter in good faith, settle their international disputes by peaceful

34. *Id.* at 48.
35. Wang Huhua (王虎华), *supra* note 21, at 47.
36. *See generally supra* section II.A.
37. U.N. Charter art. 1.

means, and refrain from the threat or use of force in a way that is inconsistent with the above purposes.[38] International law textbooks in China attach importance to these provisions of the Charter and view them as clear indications of the fundamental principles of international law.

Second, U.N. General Assembly Resolution 2625, commonly known as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, is used to support seven principles as general rules of international law: (1) states shall refrain from the threat or use of force in any manner that is inconsistent with the purposes of the U.N. in their international relations; (2) states shall settle their international disputes by peaceful means; (3) there is a duty not to intervene in manners within the domestic jurisdiction of any state, in accordance with the Charter; (4) states have a duty to cooperate with one another in accordance with the Charter; (5) people have equal rights and the right of self-determination; (6) states have sovereign equality; and (7) states shall fulfill the obligations that they assume in accordance with the Charter in good faith.[39] Some textbooks in China, giving this resolution the status of commentary concerning the definitions of the principles provided in the Charter, interpret these seven principles as legally binding under international law. Alternatively, one source bases its explanation on Bin Cheng's doctrine of instant international customary law.[40]

Third, international lawyers in China emphasize that the Five

38. *Id.* art. 2.

39. G.A. Res. 2625 (XXV), at 122 (Oct. 24, 1970).

40. *Compare* Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 95 ("[I]t is generally agreed that General Assembly resolutions . . . may serve as strong evidence of the formation of an international custom . . . and may even be regarded as constituting an element of the present practice of State and a necessary proof of opinio juris sive necessitatis"), *with* Cassese, *supra* note 5, at 127 ("The process of formulation of universal principles was initiated in the U.N. in the 1950s . . . "). Cassese considers that Resolution 2625 changed the principles in the Charter of the United Nations to a new general standard of universal values due to the initiative of socialist or developing countries. He construes that the resolution extends and updates the principles in the Charter. Furthermore, a scholar of international law in India considers it possible to argue that the principles elaborated in the Resolution are *jus cogens*. *See also* V.S. Mani, Basic Principles of Modern International Law 1, 6 (1993) (noting that it is possible to argue that the principles elaborated in the Resolution are *jus cogens)*.

Principles of Peaceful Coexistence ("Panchsheel") are the fundamental principles of international law.[41] These scholars are emotionally attached to the Five Principles because China itself proposed and propagated them.[42] The Five Principles were advocated for by Zhou Enlai, then premier of China, and Jawaharlal Nehru, then prime minister of India, in the 1954 Sino-Indian Agreement on Trade and Intercourse between Tibet Region of China and India.[43] These principles were as follows: (1) mutual respect for sovereignty and territorial integrity; (2) mutual non-aggression; (3) non-interference in each other's internal affairs; (4) equity and mutual benefit; and (5) peaceful coexistence.[44] China has repeatedly mentioned these principles or phrases in line with them in treaties and in joint declarations with other states.[45] However, it should be noted that the Five Principles were propounded before the proposition of the fundamental principles from the Soviet school of international law.[46] Accordingly, the Five Principles were not characterized as having a *jus cogens* nature at the time they were determined. In addition, while elements of the Five Principles were inserted in treaties and declarations prepared by China, the United States, and Japan in the 1970s, it is not possible to interpret this as meaning that the United

41. *See* Huang Jin (黄进), *Shizhong Jianchi Guojifa Jiben Yuanze (始终坚持国际法基本原则) [Consistently Stand Firm on the Fundamental Principles of International Law]*, Renmin Ribao (人民日报) [People's Daily], July 20, 2020 (http://paper.people.com.cn/rmrb/html/2020-07/20/nw.D110000renmrb_20200720_1-09.htm) ("[I]n the 1950s, together with a number of other countries, [C]hina put forward the Five Principles of Peaceful Coexistence, which have become widely recognized as fundamental principles of international law.").

42. *See* External Publicity Div. Ministry of External Affs. Gov't of India, Panchsheel 1–2 (2004), https://www.mea.gov.in/Uploads/PublicationDocs/191_panchsheel.pdf ("*Panchsheel*, or the Five Principles of Peaceful Co-Existence, were first formally enunciated in the agreement on Trade and Intercourse between the Tibet region of China and India . . . .").

43. *See id.* ("[Premier Zhou Enlai] and Prime Minister Jawaharlal Nehru issued a Joint Statement on June 28, 1954 that elaborated their vision of *Panchsheel* as the framework, not only for relations between the two countries, but also for their relations with all other countries, so that a solid foundation could be laid for peace and security in the world.").

44. *Id.* at 1.

45. *See id.* at 2 (writing that the principles were enunciated in the multilateral declarations in 1955 and 1957).

46. *See* Akihiro Iwashita, Sobieto Gaiko Paradigm No Kenkyu–Shakaishugi, Shuken, Kokusaiho [Study on Soviet Foreign Diplomacy Paradigm—Socialism, Sovereignty, International Law] 135 (1999) (Japan) [hereinafter Iwashita].

States and Japan had acquiesced to the Five Principles as the fundamental principles in the same way as China because China only first accepted the fundamental principles in a book by Wang Tieya published in 1981.[47]

D. CHINA'S RECENT FOREIGN DIPLOMACY AND THE FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

The following section examines the extent to which Chinese diplomatic authorities recognize the fundamental principles of international law will be examined. A white paper published by the Chinese government in 2019 states the following:

> In the 1950s, China, India and Myanmar jointly proposed the Five Principles of Peaceful Coexistence (mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence). These have become basic norms for international relations and fundamental principles of international law.[48]

Yang Jiechi, who served as the Minister of Foreign Affairs from 2007 to 2013, and the Director of the Office of the Central Foreign Affairs Commission from 2013 to 2022, published a treatise in the organ of the Central Committee of the Communist Party of China, which includes the following:

> The foundation of the United Nations after the end of the Second World War is an important milestone for the development of contemporary international law. Fundamental principles of international law and basic standards of international relations such as sovereign equality, non-use of force and peaceful settlement of disputes stipulated in the Charter of the United Nations have been universally accepted. . . .When China was newly established in 1949, its international law project opened a new page. In the 1950s, the Five Principles of Peaceful Coexistence propounded by China and many states have become the fundamental principles of international law, universally recognized by the international community.[49]

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47. *See* Wang Tieya (王铁崖), *supra* note 33, at 48–49 (explaining and recognizing the significance of the fundamental principles of international law).

48. State Council Info. Off. of China, China and the World in the New Era (2019), http://english.scio.gov.cn/2019-09/28/content_75252746.htm.

49. "第二次世界大战结束以后，联合国的成立成为现代国际法发展的重要里程碑。联合国宪章确定的主权平等，不使用武力，和平解决争端等国际

At the bureaucratic level, Wang Wenbin, spokesperson for the Chinese Foreign Ministry, delivered the following a statement regarding Taiwan:

> The definition of the one-China principle is crystal clear, i.e., there is only one China in the world, Taiwan is part of China, and the government of the People's Republic of China is the sole legal government representing the whole of China. The applicability of this principle is universal, unconditional and indisputable. All countries having diplomatic relations with China and all Member States of the UN should unconditionally adhere to the one-China principle and follow the guidance of UNGA Resolution 2758. What some individual countries have done is essentially an attempt to misrepresent and distort the one-China principle. This is in effect challenging the basic principles of international law and basic norms governing international relations. This is also a challenge to the post-WWII world order.[50]

Articles 32 and 34 of the Law on Foreign Relations of the People's Republic of China, which came into force on July 1, 2023, include the phrase "fundamental principles of international law."[51] These articles hold as follows:

法基本原则和国际关系基本准则得到普遍接受。. . . 1949年新中国成立，中国的国际法事业翻开了崭新一页。新中国成立伊始就郑重声明：愿与遵守平等，互利及相互尊重领土主权等项原则的外国政府建立外交关系，并对国民党政府与外国签订的条约进行全面审查，坚决废除不平等条约。20世纪50年代，中国与有关国家共同倡导的和平共处五项原则成为国际社会普遍认可的国际法基本原则。" Yang Jiechi (杨洁篪), *Shenke Renshi He Yong Hao Guojifa Jianding Hanwei Guojia Liyi Gongtong Weihu Shijie Heping Yu Fazhan* (*深刻认识和用好国际法坚定捍卫国家利益共同维护世界和平与发展*) [*Recognize Profoundly and Make Good Use of International Law, Determinedly Protect National Interests, and Protect International Peace and Development Together*], Qiushi (求是) [Seeking Truth] (Oct. 16, 2020), http://www.qstheory.cn/dukan/qs/2020-10/16/c_1126613584.htm.

50. *Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on August 8, 2022*, Ministry of Foreign Affs., China, (Aug. 8, 2022), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/202208/t20220808_10737507.html.

51. Law on Foreign Relations of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 2023, effective July 1, 2023), arts. 32-34 (China).

> Article 32: The State shall strengthen the implementation and application of its laws and regulations in foreign-related fields in conformity with the fundamental principles of international law and fundamental norms governing international relations.
>
> Article 34: The People's Republic of China, in accordance with treaties and agreements it concludes or accedes to as well as the fundamental principles of international law and fundamental norms governing international relations, may take diplomatic actions as necessary including changing or terminating diplomatic or consular relations with a foreign country.[52]

These provisions are extremely important, as they demonstrate that these fundamental principles govern Chinese foreign affairs.

Additionally, some documented international agreements between China and other states include expressions that appear to reflect the fundamental principles of international law.[53] For example, the Declaration of China and Russia on the Promotion of International Law (2016) provides the following:

> The People's Republic of China and the Russian Federation reiterate their full commitment to the principles of international law as they are reflected in the United Nations Charter, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. They are also guided by the principles enshrined in the Five Principles of Peaceful Coexistence. The principles of international law are the cornerstone for just and equitable international relations featuring win–win cooperation, creating a community of shared future for mankind, and establishing common space of equal and indivisible security and economic

52. "第三十二条　国家在遵守国际法基本原则和国际关系基本准则的基础上，加强涉外领域法律法规的实施和适用，并依法采取执法、司法等措施，维护国家主权、安全、发展利益，保护中国公民、组织合法权益。. . . 第三十四条　. . . 中华人民共和国根据缔结或者参加的条约和协定、国际法基本原则和国际关系基本准则，有权采取变更或者终止外交、领事关系等必要外交行动" *Id.*

53. *See, e.g.*, *Joint Statement Between the People's Republic of China and the Republic of Uzbekistan*, The America Times (May 19, 2023), https://www.america-times.com/joint-statement-between-the-peoples-republic-of-china-and-the-republic-of-uzbekistan ("The two sides emphasized the need to abide by the international order based on the UN Charter and basic principles of international law, that is, to respect the independence, sovereignty and territorial integrity of all countries, and to uphold multilateralism with the UN at its core.").

cooperation.[54]

The Joint Ministerial Statement of Afghanistan's Neighboring Countries (2021) refers to the "universally accepted principles of international law."[55] The Samarkand Declaration of the Council of Heads of State of Shanghai Cooperation Organization (2022) reaffirms a world order "based on the universally recognized principles and norms of international law" and stresses that "the principles of mutual respect for sovereignty, independence, territorial integrity of States, equality, mutual benefit, non-interference in internal affairs, and non-use or threat of use of force are the basis for sustainable development of international relations."[56] These documents do not use the phrase "fundamental principles of international law," but, judging from the context, the language they use—especially the universally recognized and accepted principles of international law—seem to overlap considerably with the fundamental principles that are discussed in Chinese international law textbooks. Besides, one can infer that many of the states that worked with China on the above international documents share, to a certain degree, the theory of the fundamental principles. The practices discussed in this section indicate that the fundamental principles form a momentous doctrine supporting Chinese foreign policy from a theoretical perspective and that the Chinese Society of International Law closely cooperates with the Chinese government.

54. *The Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law*, Ministry of Foreign Affs., China (June 25, 2016), https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201608/t20160801_679466.html.

55. *Joint Ministerial Statement of the Second Meeting of Foreign Ministers of Afghanistan's Neighboring Countries*, Consulate Gen. of China in N.Y. (Oct. 27, 2021), https://www.fmprc.gov.cn/mfa_eng/gjhdq_665435/2675_665437/2676_663356/2678_663360/202110/t20211030_10404009.html.

56. *Leaders of SCO Member States Sign Samarkand Declaration*, The State Council Info. Off. of China (Sept. 17, 2022), http://english.scio.gov.cn/topnews/2022-09/17/content_78424919.htm#:~:text=During%20the%20SCO%20Summit%20in,the%20procedure%20for%20Belarus'%20accession.

III. STRENGTH OF UNIVERSALITY-ORIENTED INTENTION OF FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW COMPARED TO THE SOVIET DOCTRINE OF INTERNATIONAL LAW

Undoubtedly, China's fundamental principles of international law are heavily influenced by the Soviet school of international law. However, with respect to specific discussions, China's fundamental principles are more oriented towards universality than the Soviet school, as evinced by the following features.

First, China's fundamental principles do not accept the Soviet theory regarding principles and international law that are shared among most socialist countries.[57] Soviet studies of international law present a twofold norm: the fundamental principles of international law shared among states with varying frameworks that include capitalism and socialism, and the principles and international law shared among socialist states. Furthermore, the latter socialistic principles and international law are regarded as higher norms.[58] A textbook published by the Academy of Sciences of the Soviet Union explains:

> The fundamental principles, laws, and other norms in the relations of socialist states, are not inconsistent with the fundamental principles of universal international law. They go beyond the minimum of democracy and humanism achieved by general international law, thereby contributing to democratic and progressive developments of general international law and having a beneficial effect on it.[59]

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57. *See* Hungdah Chiu, *Communist China's Attitude Toward International Law* 60 AM. J. INT'L L. 245, 245–52 (1966) (explaining that China shares some Soviet principles of international law but has developed different views on international law in many respects).

58. *See* Iwashita, *supra* note 46, at 133–37.

59. "Основные принципы, право как и иные нормы, действующие во взаимоотношениях социалистических государств, не вступают в противоречат с основными принципами универсального международного права. Они идут дальше минимума демократизма и гуманизма, достигнутые общим международным правом, содействуя тем самым демократическому и прогрессивному развитию общего международного права, оказывая на него благотворное влияние." *Ponyatiye i Sushchnost' Sovremennogo Mezhdunarodnogo Prava* (*понятие и сущность современного международного права*) [*The Concept and Essence of Modern International Law*], *in* 1 Kurs

Tunkin, a master in the field of Soviet international law, points out that socialistic principles take the place of the principles of general international law:

> The principles of proletarian internationalism and other socialist norms arising in relations between countries of the socialist camp are international legal principles and norms of a new, higher type of international law—a socialist international law, the basis of which is being formed in relations among states of the socialist system and which is coming to replace contemporary general international law. Socialist principles and norms are replacing the corresponding principles general international law in relations between countries of socialism. This does not mean, however, that general international law simply are cast aside in relations between countries of the socialist commonwealth. The emergence of the principles of socialist internationalism, of course, is a negation of an old quality, the quality of the respective principles of general international law. But, as any dialectic negation, it is a moment of development, a stage of transition to a higher quality. The new which has emerged is linked with the old, the progressive aspects of the old being retained therein in their diluted form. The progressive elements of the content of the respective principles of general international law corresponding to the new conditions are retained in the principles of socialist internationalism.[60]

As evinced by Tunkin's discussion of socialistic principles, for Soviet studies of international law, the fundamental principles that were shared among states with diverse social systems were only minimum standards. Tunkin considers a number of principles held by Soviet bloc countries as being a greater priority than the general democratic principles of general international law or the fundamental principles. He writes:

> The situation with regard to relations among socialist States is such that there function two types of norms: the socialist principles and norms and the general democratic principles and norms of general international law. According to the maxim *lex specialis derogat generali*, whenever there are socialist principles and norms they function first and where there are no such norms, norms of general international law do apply.[61]

Mezhdunarodnogo Prava (КУРС МЕЖДУНАРОДНОГО ПРАВА) [Course of International Law] 24 (Akademiya nauk SSSR (Академия наук СССР) [Academy of Sciences of the USSR] ed., 1967).

60. Grigory I. Tunkin, Theory of International Law 444–45 (William E. Butler trans., 1974).

61. Grigory I. Tunkin, *International Law in the International System*, 147

In contrast, international law textbooks written by Chinese academics in mainland China never mention the principles and norms shared among socialist states, apart from the fundamental principles that are shared among states with different social frameworks.[62] International law studies in China often stress that the fundamental principles that are shared among countries with distinct regimes are the supreme law.[63] For instance, Li Jinrong views the fundamental principles as the highest ones and considers them the core of international law.[64] A more recently published international law textbook reports the following:

> The fundamental principles of international law occupy the superlative position in the entire system of international law and act as, like constitutional principles in domestic law, standards or basis for establishing, applying, interpreting, evaluating other principles, rules, or institutions of international law.[65]

Another textbook explains that the fundamental principles assume a supreme legal status.[66] In addition, Wang Huhua views the fundamental principles as the most important core rules in international law.[67] Additionally, another textbook claims that the fundamental principles lay the foundation for international law norms, and they belong in the topmost rank of these norms.[68] Judging from

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Collected Courses Hague Acad. Int'l Law 110, 112 (1975).

62. *See, e.g.,* Guojifa (国际法) [International Law] 58 (Shao Shaping (邵沙平) ed., 4th ed. 2020) [hereinafter Shao Shaping (邵沙平)] (recognizing the fundamental principles of international law rather than socialist principles as having the highest legal status).

63. *See* Li Jinrong (李金荣), Guojifa (国际法) [International Law] 28 (1989) (noting that the fundamental principles of international law are the highest-regarded principles and are the core of international law).

64. "国际法基本原则是国际法的最高原则和核心" *Id.*

65. "国际法基本原则在整个国际法体系中，具有最高的法律地位，类似于国内法中的宪法原则，是确立、适用、解释、评价其他国际法原则，规则和制度的基础和标准" Shao Shaping (邵沙平), *supra* note 62, at 58.

66. *See* Guojifa (国际法) [International Law] 1, 18 (Cheng Xiaoxia (程晓霞) & Yu Mincai (余民才) eds., 5th ed. 2015) [hereinafter Cheng Xiaoxia (程晓霞) & Yu Mincai (余民才)] (writing that "the fundamental principles of international law have the highest legal status in the entire system of international law").

67. "国际法基本原则是国际法中最为重要的核心原则" Wang Huhua (王虎华), *supra* note 21, at 47.

68. *See* Guojifa (国际法) [International Law] 1, 26 (Liang Shuying (梁淑英) ed., 2d ed. 2016) [hereinafter Liang Shuying (梁淑英)] (writing that the fundamental principles "represent the highest common denominator of relevant rules in

these examples, international law researchers in China persistently deny the existence of international legal norms that are shared within a certain segment of countries and that have higher-level status or that are preferentially applied apart from the fundamental principles.[69] However, doctrines in the former Soviet republics, including the Russian Federation, seem to have naturally become similar to those in China because of the extinguishment of international law in those former Soviet republics.[70]

Second, with regard to China's fundamental principles of international law, it is considered that recognition by the entire international community is linked to allocation of authority or acknowledgment of value.[71] Soviet doctrine emphasizes the function of the fundamental principles as a basis for international law. Therefore, the doctrine merely indicates that overall recognition of such principles means the formation of state consent concerning what the principles are.[72] As such, the principles acquire binding force in the international community as a whole, including among states with different structures. This is a corollary to the Soviet school's international law doctrine, where Soviet international law held a higher position among communist countries than the fundamental principles of general international law.[73] By contrast, Chinese international law textbooks posit公认 (universal recognition by every state) as the first element of characteristics of the fundamental principles.[74] One such book presents that universal recognition is the

international law, or the supreme norms of international law").

69. *See, e.g.*, *id.* (identifying fundamental principles of international law as both supreme norms and global principles).

70. *See* Tunkin, *supra* note 60, at 444–45 (writing that proletarian internationalism and socialist norms are an emerging, higher type of international legal norms shared by states of the socialist system).

71. Wang Tieya (王铁崖), *supra* note 33, at 48 (explaining that international law by definition requires universal recognition by all states and cannot be created by any one state alone).

72. *See* Takeo Matsuda, *Sobieto Kokusaiho no Chosen to Zasetsu: G. Tunkin no Gakusetsu wo Tegakari ni* [*Challenge and Setback of the Soviet International Law: Theory by G. Tunkin as a Clue*] 20 Sekaiho Nenpo [Yearbook of World Law] 131, 138–39 (2001) (Japan) (stating that the binding force of international law is rooted in the conformity of the will of states).

73. *See* Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 36.

74. Wang Lihua (王丽华), *supra* note 22, at 22.

most important feature of the fundamental principles.[75]

There are often discussions that associate universal recognition with *jus cogens*. For instance, a textbook indicates the following:

> Because the fundamental principles of international law universally recognized by every nation, they are naturally applicable to overall range and every field of actions of international legal personality, have universal effects, and possess the action of instructing every field of international law and binding force. Specific principles and rules of international law never have such characteristics.[76]

Another book states:

> (1) Universal recognition by every state
>
> The fundamental principles of international law are universally recognized by every State and are approved by all countries. Therefore, they have supreme power and universal binding effect, and are the highest norm to be observed when each state engages in international activities and participates in international legal relationships.[77]

Huang Jin, the President of Chinese Society of International Law and Professor at China University of Political Science and Law, includes the following in an article in *People's Daily*:

> In the system of international law, its fundamental principles are legal rules with basic significances and characteristics. First, universal recognition by all states. That is, the fundamental principles are generally recognized by every nation, and repeatedly evinced in treaties concluded by the states, or accepted by all parties as customary international law. Second, retention of universality. That is, these principles are not specific principles for specific areas and are not local principles in international relations but are applied to a number of areas of international law, yielding an impact on the whole network of international relationships. Third, the maintenance of dignity.

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75. *Id.*

76. "国际法基本原则因被各国公认,自然就适用于国际法主体活动的全部范围和一切领域,具有普遍效力,对国际法的各个领域都具有指导作用和拘束力。这一特征是国际法的具体原则和规则所不具备的" Guojifa Xue (国际法学) [International Law Studies] 23 (Li Guangmin (李广民) & Ou Bin (欧斌) eds., 2006) [hereinafter Li Guangmin (李广民) & Ou Bin (欧斌)].

77. "（一）各国公认　国际法的基本原则是得到各国普遍承认的,即得到所有国家的认可。因此它们具有最高权威和普遍拘束力,是各国进行国际活动,参加国际法律关系应该遵守的最高准则。" Liang Shuying (梁淑英), *supra* note 68, at 26.

> That is, as they are unanimously recognized by all nations and widely applied in the fields of international law, these principles are to be strictly respected and fulfilled and norms that violate them or add arbitrary modifications to them become void.[78]

This view accurately captures the Chinese concept of international law, as Huang Jin was the president at the Chinese Society of International Law at the time the article was published.[79] Although discussions of this concept may be somewhat naive in the sense that they bring up universal recognition by all states with no question, it is likely for this reason that the general predisposition in the arguments of Chinese international law scholars appears in the above arguments. Inferring from what is analyzed in this section, for China, the fundamental principles are considered to be those that have been approved by all states.[80]

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78. "在国际法体系中，国际法基本原则是具有基础意义的法律原则，具有鲜明特征。一是各国公认，即国际法基本原则被各国普遍接受，表现为反复出现在各国缔结的条约中，或者作为国际习惯被各方接受。二是具有普遍性，即这种原则不是个别领域的具体原则，也不是国际关系中的局部原则，而是适用于国际法众多领域范围，影响国际关系全局的原则。三是具有权威性，即国际法基本原则被国际社会一致公认并广泛适用，因此必须严格遵守和执行，违反或随意更改这些原则的其他规范无效。" Huang Jin (黄进), *supra* note 41.

79. *See id.* (describing the author Huang Jin as the President of the Chinese Society of International Law and Professor at the China University of Political Science and Law).

80. Given that Chinese President Xi Jinping often uses the expression "天下为公 (the world is for all)" at international conferences, the concept of公 (all; the public; common) should be paid attention to from the perspective not only of Chinese politics, culture, or society but also of the Chinese understanding of international law. *Cf.*, Xi Jinping (习近平), Guojia Zhuxi (国家主席) [President], *Juesheng Quanmian Jiancheng Xiaokang Shehui Duoqu Xinshidai Zhongguo Tese Shehuizhuyi Weida Shengli (决胜全面建成小康社会夺取新时代中国特色社会主义伟大胜利) [Securing a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Striving for the Great Success of Socialism with Chinese Characteristics for a New Era]*, (Oct. 18, 2017) (using the phrase 天下为公 in speech delivered at 19th National Congress of the Communist Party of China).

IV. SPECIAL CHARACTERISTICS OF THE HIERARCHICAL STRUCTURE OF CHINESE INTERNATIONAL LAW: COMPARATIVE CONSIDERATIONS FOR EURO-AMERICAN INTERNATIONAL LAW

A. HIERARCHICAL STRUCTURE OF EURO-AMERICAN INTERNATIONAL LAW BASED ON THE INTRODUCTION OF *JUS COGENS*

Jus cogens norms in contemporary international law has the following specific significances. First, *jus cogens* norms are defined as a higher norm that negates the formulation of any treaties or customary international law that are incompatible with it.[81] Articles 53 and 64 of the Vienna Convention on the Law of Treaties provides that the infringement of *jus cogens* norms are an element that absolutely invalidates a treaty[82] and terminates it,[83] indicating the higher norm nature of *jus cogens*.

Second, the substantive rights and obligations derived from *jus cogens* norms are, based on the legal consequences of their breaches, more important than those derived from treaties or customary international law.[84] In particular, a grave violation of *jus cogens* norms are regarded as a serious breach,[85] and states are required to deal with

81. *See* Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention] (defining jus cogens as a peremptory norm of general international law accepted and recognized by international community).

82. *Id.* ("A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law").

83. *Id.* art. 64. ("If a new peremptory norm of general international law emerges, any existing treaty that is in conflict with that norm becomes void and terminates.").

84. *See* Ulf Linderfalk, *The Legal Consequences of Jus Cogens and the Individuation of Norms*, 33 LEIDEN J. INT'L L. 893, 896–98 (2020) (describing the assumption that *jus cogens* norms exceeds authority of ordinary international law and resulting effect on international law making and legal consequences).

85. Chapter III of the Articles on Responsibility of States for Internationally Wrongful Acts (adopted in 2001, unenforced) covers "Serious Breaches of Obligations under Peremptory Norms of General International Law." Article 40 mentions, "1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if in involves a gross or systematic failure by the responsible State to fulfil the

such breaches more strictly than they would for contravening treaties or customary international law.[86] In addition, international obligations arising from *jus cogens* norms are regarded as obligations *erga omnes* (obligations to the entire international community) such that states other than the victim states can invoke the responsibility of the offending states.[87] This framework regarding state responsibility suggests that *jus cogens* norms are more important and clearly distinguishable from treaties or customary international law.

This section reviews leading views in Euro-American international law that positively assess the significance of *jus cogens* norms. In modern positivist international law, which is based on the freedom of forming treaty norms important to state sovereignty, international communities (the Family of Nations) postulate a system of international law involving *jus dispositivum* (voluntary norms), permitting the unfettered amendment of treaty rules.[88] In this system, mutual rights and obligations based on the principle of *pacta sunt servanda* (agreements must be kept) provides the foundation of legal relationships among international legal personalities.[89] Therefore, the principle of *lex specialis derogate legi generali* (special law repeals general laws) prioritizes *jus dispositivum* in setting particular legal relationships, which has been accepted in applications of international law.[90] As a consequence of the critical reconsideration of this

obligation." Note that, despite the Articles on Responsibility of States is not a treaty and never has the force of law in itself, a number of rules in the Articles have the nature of customary international law. G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (Dec. 12, 2001).

86. *See id.* art. 41 ("1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.").

87. *See id.* art. 48 ("1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 . . . (b) the obligation breached is owed to the international community as a whole").

88. *See generally* Alfred Verdross, *Jus Dispositivum and Jus Cogens in International Law*, 60 AM. J. INT'L L. 55, 55–56, 58 (1966) (contrasting the character of *jus cogens* against that of *jus dispositivum* in international law); Georg Schwarzenberger, *International Jus Cogens?*, 43 TEX. L. REV. 455, 470, 472 (1965) (discussing principles of consent and good faith underlying *jus dispositivum* and *jus cogens* in treaties and international responsibility).

89. *See* Schwarzenberger, *supra* note 88, at 469–70 (stating that the rules of *pacta sunt servanda* and good faith form part of the body of international law).

90. *See generally* Study Grp. of the Int'l L. Comm'n, Fragmentation of

positivism,[91] and to constrain the freedom of a wide range of states to conclude treaties, a hierarchical structure of norms is adopted. Among these norms, *jus cogens*, the paired concept to *jus dispositivum* in Roman law,[92] is generically embraced in the system of international law and ranked ahead of treaties and customary international law.[93]

International Law: Difficulties Arising from the Diversification and Expansion of International Law, U.N. Doc. A/CN.4/L. 682, ¶¶ 78–81, 103–05, 107, 154 (Apr. 13, 2006) [hereinafter Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law] (using international cases to demonstrate that general international law may be subject to derogation by *lex specialis* treaty agreements because *jus dispositivum* rules allow parties to establish specific rights or obligations).

91. This direction was presented at the Vienna Conference, where the Vienna Convention on the Law of Treaties first introduced the concept of *jus cogens*. For example, the delegate of the Federal Republic of Germany said that "his delegation, like many others, recognized the existence of a category of peremptory norms of international law. It was definitely a new category in the structure of international law and its emergence called for reconsideration of the positivist theory and of the relations between the various sources of international law as enumerated in Article 38 of the Statute of the International Court of Justice." U.N. Conference on the Law of Treaties OR, 2d Sess., 7th plen. mtg. at 95, U.N. Doc. A/CONF.39/11/Add.1 (Apr. 28, 1969) [hereinafter 2d Sess.]. *See also* U.N. Conference on the Law of Treaties OR, 1st Sess., at 258, U.N. Doc. A/CONF.39/11 (Apr. 30, 1968) [hereinafter 1st Sess.] (the statement by the delegate of the Holy See) (1969).

92. In its analysis of *jus cogens* in international law, the United Nations International Law Commission introduced a distinction created in Roman law between *jus cogens* (*jus strictum*) and *jus dispositivum*. Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, *supra* note 90, ¶ 361. During the second phase of the case of Southwest Africa in the International Court of Justice, Judge Tanaka regarded *jus cogens* as a contrastive concept of *jus dispositivum*. *See* South West Africa Cases (Eth. v. S. Afr.; Liber. v. S. Afr.), Judgment, 1966 I.C.J. 6, 298 (July 18) (dissenting opinion of Tanaka, J.).

93. It should be reasoned that *jus cogens* is a positive law in principle in light of the drafting process of the Vienna Convention on the Law of Treaties. At the Vienna Conference, when adopting this convention, some States seemed to consider *jus cogens* as originating from *jus naturalis* (natural law). *See* 1st Sess., *supra* note 91, at 294, 320, 324 (presenting the statements of delegates from several states including Mexico, Ecuador, and Monaco). However, adopting the definition of *jus cogens* considering assent or recognition by the entire international community as an element, the positivist viewpoint, which identifies the origin of *jus cogens* as the consent of States, is introduced such that assertions considering *jus cogens* as positive law frequently appear. *See* 2d Sess., *supra* note 91, at 99, 102–4 (identifying assertions of delegations from several states including Poland, Bulgaria, Iraq and Italy). *See generally* Gennady M. Danilenko, *International Jus Cogens: Issues of Law Making*, 2 EUR. J. INT'L L. 42, 44, 56 (1991) (discussing the views of different States regarding the development of *jus cogens* under theories of natural law and

Studies that present the formation of such hierarchical structure based on *jus cogens* norms in Euro-American international law studies, are described below.

Before the concept of *jus cogens* norms were disseminated, Oppenheim, from the University of Cambridge, and Hall, a U.K.-based lawyer, set forward the concept of "universally recognised principles of International Law"[94] and "fundamental principles of international law,"[95] arguing that treaties or agreements among states that fall foul of such principles are invalid. In this way, in the era of modern international law, views emerged that insisted on circumscribing the freedom to form treaty norms and provided the groundwork for building out a hierarchical structure of norms.[96]

Verdross, from the University of Vienna, considers that states are free to make treaty rules under contemporary international law, which rests on positivism, and points out the existence of general international law that has a *jus cogens* nature that restricts certain treaty norms.[97] Here, the positivist legal system that is created by *jus dispositivum* as agreements based on states' own free will is regarded

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positivism).

94. *See* 1 Lassa F. Oppenheim, International Law: A Treatise 528 (1905) ("It is a unanimously recognised customary rule of International Law that obligations which are at variance with universally recognised principles of International Law cannot be the object of a treaty.").

95. *See* W. E. Hall, International Law 275 (1880) ("The requirement that contracts shall be in conformity with law invalidates . . . all agreements which are at variance with the fundamental principles of international law and their undisputed applications").

96. *See* Verdross, *supra* note 88, at 55–56, 58 (defending the norms with which treaties must not conflict); Juan Antonio Carrillo Salcedo, *Reflections on the Existence of a Hierarchy of Norms in International Law*, 8 EUR. J. INT'L L. 583, 591, 594, 595 (1997) (arguing that *jus cogens* introduced hierarchy into contemporary international law); Joseph H. H. Weiler & Andreas L. Paulus, *The Structure of Change in International Law or Is There a Hierarchy of Norms in International Law?*, 8 Eur. J. Int'l L. 545, 559 (1997) (contrasting naturalist and positivist views on hierarchies in international law); Dinah Shelton, Jus Cogens 93, 106–07 (2021) (concluding that *jus cogens* is a necessary development in international law and has achieved widespread acceptance despite impeded implementation and development).

97. *See* Alfred von Verdross, *Forbidden Treaties in International Law: Comments on Professor Garner's Report on "The Law of Treaties"*, 31 AM. J. INT'L L. 571, 571 (1937) (establishing first that states are free to create treaties on any subject before asserting that the freedom is limited by *jus cogens* rules); Verdross, *supra* note 88, at 55–56, 58.

as a fundamental composition of international law; *jus cogens* norms are a limiting point here that can deny *jus dispositivum*.[98]

Salcedo, from the University of Seville, understands that the introduction of *jus cogens* norms brings about objectivistic norms based on international public order in the international community with respect to traditional subjectivism, relativism, or voluntarism based on the horizontal relationship among equal sovereign states. These norms make up the hierarchical structure of contemporary international law.[99] While assuming that the international order is based on treaties with the principle of reciprocity of states' will, the hierarchical structure of norms introduces *jus cogens* as an objectivistic norm (or norms rarefying states' subjective will), in contrast with the mutualistic perspective of their nature.[100]

Weiler, from New York University School of Law, and Paulus, from Georg-August University of Göttingen, in the context of the role of *jus cogens* norms for non-member states of the Vienna Convention on the Law of Treaties, maintain that the hierarchical structure of norms based on *jus cogens* is a challenge to the underpinnings of traditional positivist international law that is grounded in sovereign equality and agreement among states.[101] Here too, a relationship where *jus cogens* norms present an opposing view of positivism based on states' consent is observed.[102]

Shelton, from George Washington University, believes that *jus cogens* norms not only entail the freedom to conclude treaties but also overrides issues such as the effect of international law on non-member states for certain treaties in a traditional, consent-based international legal order or in the case of a persistent objector.[103] This discussion,

98. *See* Verdross, *supra* note 88, at 55–56, 58 (discussing the positivist view that the majority of norms are voluntary law created by will of states but *jus cogens* rules are absolute).

99. *See* Salcedo, *supra* note 96, at 591, 594-595 (acknowledging the subjectivism of horizontal relationship and the objectivism of binding norms imposed upon states as two "antagonistic" logics in international law).

100. *See id.* (considering that *jus cogens* introduced hierarchy despite "inter-state features").

101. Weiler & Paulus, *supra* note 96, at 559.

102. *See id.* (finding that assertion of hierarchies in international law challenges foundation of positivist international law).

103. *See* Dinah Shelton, *Normative Hierarchy in International Law*, 100 AM. J. INT'L L. 291, 297, 299, 302 (2006).

concerning the premise of an international legal system that considers norms on the grounds of states' agreements as a formal source of international law, shows the significance of *jus cogens* norms in surmounting the problems arising out of this system.[104]

Thus, in Euro-American international law studies, opinions that approve of *jus cogens* are based on an international legal system built by *jus dispositivum.* These opinions result from having international law stand on the basis of state sovereignty and imposing a limit on *jus dispositivum* by introducing *jus cogens* norms. The opinions adopt a schema where the hierarchical structure of norms that position *jus cogens* norms more highly is established.[105]

As noted, *jus cogens* norms make treaties or customary international law void when they run counter to it, limiting the freedom of making consensual and mutual *jus dispositivum*, as well as pursuing more stringent measures and greater responsibility for actions contravening it. Here, *jus cogens* norms are situated as a higher norm in the hierarchical structure of international law. However, the specific norms or legal principles that are defined as *jus cogens* norms cannot rest on common ground. The prohibition of aggression, genocide, and torture and the right of self-determination are often enumerated as examples of *jus cogens* norms; [106] however, many deny this.

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104. *See id.* at 291, 297, 299, 302 (arguing that *jus cogens* reflects principles embodied in multilateral treaties and allows for the enforcement of those principles on all states, even those not party to the treaties solidifying said principles); *see also* Shelton, *supra* note 96, at 106–07 (arguing that this understanding of *jus cogens* can help solve problems that arise from any dissenting state in the international community).

105. It is noteworthy that Tunkin (Moscow State University, Russia), a leading scholar of Soviet international law, has a strong sense for an international law system based on voluntarism and viewpoint of reciprocity as with Euro-American international law studies. *See* Matsuda, *supra* note 72, at 141–42; *see also* Schwarzenberger, *supra* note 88, at 459–60, 476 (stressing the principle of consent as containing the freedom to conclude a treaty by an international legal personality, pointing out that *jus cogens* can be formed by states' consent and its legal effects are limited to the parties who give such consent, and maintaining that the freedom of contract merely submits to common sense limitations). The significance of *jus cogens* is sought within a paradigm or system of international law that primarily focuses on *jus dispositivum*, based on traditional principles of agreement. Based on the consensual *jus dispositivum* system, the legal position of *jus cogens* is considered in comparison to *jus disvositivum*; this skepticism presupposes the same international law system as positive views about *jus cogens*.

106. *See* Human Rights, Terrorism and Counter-terrorism: Fact Sheet No. 32, Off.

B. HIERARCHICAL STRUCTURE OF CHINESE INTERNATIONAL LAW BASED ON THE INTRODUCTION OF FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

In Chinese international law studies, a hierarchical structure of norms is adopted where the fundamental principles of international law are placed higher up on the structure. The fundamental principles are universally recognized. They are basic elements of all specific international laws. And they are *jus cogens* norms. Due to this nature, the fundamental principles are considered to be positioned as higher norms than treaties or customary international law.

First, based on this universally recognized nature, the acceptance of the fundamental principles by all states is required. Therefore, it is reasonable to directly consider these principles as general international law with a binding force covering all states. In comparison, customary international law achieves universal applicability through fictitious implicit agreements. It should be stressed that the fundamental principles are important norms for the reason that all states can accept them (i.e., their universally recognized nature). Second, based on their basic elemental nature, the fundamental principles can be considered as basic norms for every area of international law, and they are positioned as cores for all treaties and customary international law.[107]

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of the U.N. High Comm'r for Hum. Rts. 4 (2008), https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf (declaring that the prohibitions on torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms that have special status as norms of *jus cogens*).

107. The fundamental principles in Chinese international law appear not to be prohibitive rules but rather imperative rules. Chinese international law textbooks show that the fundamental principles have a leading function. *See* Li Guangmin (李广民) & Ou Bin (欧斌), *supra* note 76, at 23; *see also* Wang Lihua (王丽华), *supra* note 22, at 3 (arguing that the rules of international law are binding on all states and form universal international law); *see also* Shao Shaping (邵沙平), *supra* note 62, at 58 (arguing that "the fundamental principles of international law are those legal principles recognized by the international community as being of universal significance, applicable in all fields of international law and forming the basis of international law."); *see also* Wang Tieya (王铁崖), *supra* note 33, at 48 (arguing that "fundamental principles of international law are not those that are specific in each area but are legal principles that are recognized by all states, have universal significance, are applied to all operative ranges of international law, and serve as a basis for international law."); *see also* Cheng Xiaoxia (程晓霞) & Yu Mincai (余民才), *supra* note 66, at 18 (arguing that "[u]niversal international law is not only applicable in the sense that it applies to the international community of all States,

For this reason, the fundamental principles can be characterized as higher norms, in that they are the source of the rightfulness of treaty provisions and customary international law contents. Third, based on the nature of *jus cogens* norms, treaties and customary international laws that are incompatible with the fundamental principles become null and void, and actions in violation of the principles can receive rigorous treatment or assignation of responsibility.[108] Therefore, with respect to legal effects, the fundamental principles are considered higher than treaties and customary international law in the hierarchy.

Conclusions can be drawn that the fundamental principles of international law are situated as higher norms in the hierarchical structure of international law due to their binding force covering all states (universal recognition), source of the rightfulness of other international law (basic element), and superiority with respect to legal effect on other international law (*jus cogens* norms).[109]

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but also in the sense that some rules of international law are applicable to all States."); *see also* Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 92 (arguing that "the fundamental principles of international law are the constitutional principles of the international community, embodying the basic values of the international legal order, representing the basic and most important legal standards of international interaction, and constituting not only the legal foundation of the international legal system, but also the backbone of the entire edifice of international law").

108. Vienna Convention, *supra* note 81, art. 53. (stating that "[A] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law."); *see also* G.A. Res. 56/83, *supra* note 85, art. 41 ("1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.").

109. Incidentally, Cassese considers the fundamental principles governing international relations to be constitutional norms but states that international law is split into two groups—*jus dispositivum* and *jus cogens*—and not all the fundamental principles can be considered *jus cogens*. Moreover, he states that sovereign equality does not produce the effect of *jus cogens*. Even such fundamental principles seem to be surmounted by particular international law. The respect to constitutional norms must have some reservations. Cassese notes that the principle of respect for human rights belongs in *jus cogens*. It does not appear that such fundamental principles have leading functions in specific areas of international law. *See* Cassese, *supra* note 5, at 131, 149, 150.

C. COMPARATIVE ANALYSIS: SPECIAL CHARACTERISTICS OF HIERARCHICAL STRUCTURE OF NORMS IN CHINESE INTERNATIONAL LAW

Relative to norms based on *jus cogens* in the context of Euro-American international law studies, the hierarchical structure in Chinese international law, whose higher norms are the fundamental principles of international law, has the following characteristics: universal recognition, basic elements, and concrete terms.

First, the universal recognition by all states of the fundamental principles is a more stringent criterion than that the majority of states consent (*see* Article 53 of the Vienna Convention on the Law of Treaties: "accepted and recognized by the international community of States as a whole"), which is required for forming *jus cogens* norms.[110] This means that, as noted, this nature strengthens the grounds for the binding force of the fundamental principles and accentuates their importance of them, guaranteeing their status of higher norms.

Second, *jus cogens* norms do not explicitly have the basic elemental nature, which pertains to the fundamental principles as they are the core of all international law and the source of the rightfulness of all international law.[111] It is widely recognized that *jus cogens* norms revoke the validity of treaties or customary international law that infringe upon them.[112] However, the idea that *jus cogens* norms could be the core of all international law or the source of the rightfulness of all international law is not generally accepted.[113]

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110. Vienna Convention, *supra* note 81, art 53 (stating that "[f]or the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character").

111. *See* Li Guangmin (李广民) & Ou Bin (欧斌), *supra* note 76, at 23–24 (arguing that the difference between the fundamental principles of international law and international *jus cogens* is "that the fundamental principles of international law have the nature of *jus cogens* and belong to international *jus cogens*, while international *jus cogens* is not necessarily the fundamental principles of international law . . .").

112. *See* Alexander Orakhelashvili, *Peremptory Norms in International Law*, 133 (2006) (stating that "Article 53 of the Vienna Convention, which voids treaties conflicting with *jus cogens*, is based on the general principles of law that the agreements conflicting with international public order have illegal object and are void").

113. *See* Guojifa (国际法) [International Law] 7 (Bai Guimei (白桂梅) et al. eds.,

Third, the fundamental principles have a high degree of concreteness relative to the *jus cogens* norms and enumerate the following principles: sovereign equality; territorial inviolability; peaceful settlement of international disputes; nonintervention in internal affairs; fulfillment of international obligations in good faith; international cooperation; and right of self-determination.[114] A majority of these principles are generally regarded as being formative of customary international law; therefore, it is thought that it is permitted to make an amendment or restriction of such law through the creation of a new treaty.[115] However, due to the nature of *jus cogens* norms, the fundamental principles cannot be altered by creating a treaty. Rather, due to its nature as a basic element, only norms that are in accordance with the fundamental principles can be allowed to be formed.

Chinese international law and Euro-American international law have much in common when it comes to presenting the hierarchical structure of contemporary international law, but they are strikingly different in the nature and content of the higher norms of international law, that is, the fundamental principles of international law and *jus cogens* norms. Chinese international law studies hold that the fundamental principles that are recognized by all states form the universal framework of norms,[116] and every state is merely permitted to make *jus dispositivum*, such as treaties, within the bounds of the framework. Meanwhile, studies of Euro-American international law

1988) [hereinafter Bai Guimei (白桂梅)] (arguing that the core of international law is the "sum total of the principles, rules and regulations that regulate the international relations of predominantly States"); *see also* Li Guangmin (李广民) & Ou Bin (欧斌), *supra* note 76, at 23–24 (arguing that jus cogens is not considered the basis of international law, but is rather the sum of principles and norms).

114. *See* Huang Jin (黄进), *supra* note 41 (stating that the fundamental principles of international law have evolved to include the principles of sovereign equality, territorial inviolability, peaceful settlement of international disputes, nonintervention, good-faith fulfilment of international obligations, international cooperation, and the right to self-determination).

115. *See* Li Guangmin (李广民) & Ou Bin (欧斌), *supra* note 76, at 23 (arguing that formative customary international law can be altered through the creation of new treaties and agreements).

116. *See* Wang Lihua (王丽华), *supra* note 22, at 3 (stating that "[m]ost Chinese scholars are of the opinion that there are fundamental principles of international law," and that fundamental principles "refer to those universally binding legal principles which are recognized and accepted by States, which are applicable in all fields of international law and which form the basis of international law").

consider that, in principle, every state has a wide range of freedom to form *jus dispositivum* based on state consent, but *jus cogens* norms limits this freedom and invalidates the *jus dispositivum* that conflicts with *jus cogens* norms.[117] Hence, the overall picture of Chinese international law studies is extremely different from that of Euro-American studies when comparing the extent of the discretion left to states in making norms.

V. INTERNATIONAL COMMUNITY AS COMPETITIVE SPACE FOR VARIOUS PERSONALITIES AND THE SIGNIFICANCE OF FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

A number of international law textbooks in China explicitly show that particular or regional international law cannot run counter to the fundamental principles of international law.[118] This means that the

117. *See* Verdross, *supra* note 88, at 55 (pointing out that "the question is whether all norms of general international law may be repealed by treaty provisions in relations among the contracting parties, or whether there are norms of general international law restricting the freedom of states to conclude treaties."); Verdross, *supra* note 97, at 571 (summarizing the issue and stating that "Our staring-point is the uncontested rule that, as a matter of principle, states are free to conclude treaties on any subject whatsoever. All we have to investigate, therefore, is whether this rule does or does not admit certain exceptions. The answer to this question depends on the preliminary question, whether general international law contains rules which have the character of *jus cogens*."); Salcedo, *supra* note 96, at 595 (considering *jus cogens* as having "limited the relativism of classical international law and contributed to the progressive affirmation of a development of international law including binding rules from which states cannot exempt themselves as long as they claim to be members of the international community."); Shelton, *supra* note 103, at 297 (emphasizing that "The notion of *jus cogens* originated solely as a limitation on international freedom of contract."). In this regard, *see also* Koji Teraya, *Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights*, 12 EUR. J. INT'L L. 917, 938 (2001) (stating that "*jus cogens* in the original sense functions within the realm of validity. Relevant considerations such as *pacta sunt servanda* and freedom of contract are limited to this domain."); Shelton, *supra* note 96, at 1. *Cf.* Курс международного права: Основные принципы современного международного права [Course of International Law: Fundamental Principles of Modern International Law], *supra* note 2, at 13 (providing the Euro-American viewpoint that fundamental principles of international law cannot be overruled by any special rules).

118. *E.g.*, Xiandai Guojifa Xue (现代国际法学) [Contemporary International Law Studies] 3 (李斌主编 [Li Bin ed.], 2004) (stating, "[b]oth regional and

fundamental principles take on a different character from that of *jus cogens* norms, which simply annul other international law that is incompatible with them.

Although Chinese international law textbooks provide various justifications, they assume that international society consists of different states that feature different politics, societies, economic systems, and cultures.[119] Visions of international society in Chinese

particular international law may provide for certain special rules based on certain special circumstances and relations, but these special rules cannot limit the principles, rules and institutions of general international law, negate general international law and its universal applicability, and should not violate the fundamental principles of general international law"); *see also* Guojifa (国际法) [International Law] 3 (Ma Chengyuan [馬呈元主编] ed., 5th ed. 2019) (China) (stating that "although certain special rules may arise in a particular region because of the special nature of the relations between the States of that region, regional international law does not in fact form a unique system that is essentially different from general international law," and those special rules "cannot constitute an exclusion or restriction of the rules of general international law . . ."); *see also* Wang Lihua (王丽华), *supra* note 22, at 22 (stating that "[r]egional international law is a set of special principles and rules formed as a result of certain specific circumstances and relations, but they must not contravene the fundamental principles of general international law . . .").

119. *See* Zhou Gengsheng (周鲠生), Guojifa (国际法) [International Law] 284 (1976) (China) (stating that "the sphere of international law overstepped Europe a long time ago and subsumed countries all over the world with a wide variety of political systems, cultures, races, and different forms of mind, such that international law itself has jumped through the frame of the modern European body of thought and has become universally recognized by all states . . . "); *see also* Li Guangmin (李广民) & Ou Bin (欧斌), *supra* note 76, at 23 (arguing that fundamental principles of international law have emerged through changes in international society and the cultures and policies of different countries); *see also* Wang Lihua (王丽华), *supra* note 22, at 34 (stating, "[w]ith the development of international law and the emergence of newly independent States, the international community included all countries of the world with different civilizations"); *see also* Wang Tieya (王铁崖), *supra* note 33, at 451 (stating "[u]nder different socio-historical conditions, the specific causes and main root causes of international disputes are diverse"); *see also* Cheng Xiaoxia (程晓霞) & Yu Mincai (余民才), *supra* note 66, at 4 (arguing that "there is a limit to the number of rules that can be universally applied," because "of the wide geographical, economic and cultural differences between States, as well as the increasing number of international personalities and the expanding scope of the objects of international law"); *see also* Liang Shuying (梁淑英), *supra* note 68, at 153–54 ("With regard to the concept and content of human rights, the Chinese Government is of the view that, owing to the vast differences in the historical backgrounds, social systems, cultural traditions and economic development of various countries, their perceptions of human rights are often inconsistent, and that the concept of human rights and its connotations are constantly evolving as history

international law tend to presuppose a field of struggle or competition among states, due to the influence of the Marxist view on the class struggle.[120]

Chinese international law thus builds a vision of an international society that is a competitive space for various personalities.[121] One textbook, advancing a formulation of international environment law based on the principle of international cooperation, which is among the fundamental principles, states:

> The principle of international cooperation is one of the fundamental principles of international law. . . . As regards a project on international environmental protection, international cooperation has extremely important implications. Because of the characteristics of international environmental problem and the composition of international society consisting of various states largely different in politics, economics, scientific technology, culture, or history, the basic fact that cooperation between states is required is elicited. International cooperation is indispensable prerequisite for enacting and enforcing international environment law. Only through international cooperation can each individual state overcome conflict of interest, and the rules of international environment law as the expression of accommodative will of states can be enacted.[122]

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progresses.").

120. *E.g.*, Wang Huhua (王虎华), *supra* note 21, at 6 (arguing, "[t]he formation of international law is a process of cooperation and struggle between States and a process of coordination between States and other States in order to manifest their national will . . .").

121. *Id.* at 67 (stating, "[i]n today's world, disputes and controversies inevitably arise among countries because of differences in historical traditions, political views and national interests."); Li Baodong, then Permanent Representative of the People's Republic of China to the United Nations, stated at the United Nations Security Council, "[o]n the question of justice and the rule of law, I should like to emphasize the following points . . . diversity has become the predominant fundamental reality in today's world. Conflicts are inevitable when countries with different historical and cultural backgrounds, different political, economic and social regimes and varied levels of development endeavour to achieve their aspirations. The rule of law has therefore become a requirement in the achievement of peaceful settlements. Chapter VI of the Charter provides a number of modalities for the peaceful settlement of conflicts, and we support the legitimate right of countries to seek such a peaceful settlement." U.N. SCOR, 67th Sess., 6705th mtg. at 14, U.N. Doc. S/PV.6705 (Jan. 19, 2012).

122. *See* Shao Shaping (邵沙平), *supra* note 62, at 392–93 ("国际合作原则是国际法的一项基本原则。 . . . 对于国际环境保护事业而言,国际合作具有特别重要的意义。国际环境问题的特点，国际社会由在政治、经济、科技、文化、

Thus, Chinese studies of international law suppose that international legal rules are established through coordination and cooperation in international society, which forms a competitive space for various personalities. Although norms are established, the ultimate solution for confrontation among states itself appears to be difficult.[123] International law, in its original sense, is explicated as international norms that are applicable without any regard to the individual characteristics of the different states in the international system.[124] One textbook grounds the existence of international law in the following way:

> In complex international relations, contradiction or confrontation among states constantly exists. Although societal institutions are diverse, depending on the country, and there are differing opinions regarding international affairs, it should not be allowed to accept the idea that "the husband claims that he has his reason, the wife claims that she has her reason" (it means that each entity insists on its being right and so it is impossible to tell what is right [translator's note]). In addition, no one should accept that might is right. In inferring right and wrong with respect to an international event, there are fixed criteria, of course, and such criteria are the fundamental principle of international law universally recognized by all states and a variety of rules and institutions of international law.[125]

Regarding the source of validity of international law, the Public International Law Studies Writing Team, presenting their perspective in the framework of the intent harmonization theory, indicate the following:

历史等方面存在巨大差的不同国家所组成。这一基本事实决定了各国必须合作国际环境立法和国际环境法的实施要求各国进行合作。国际合作是国际环境立法和国际环境法的实施的必要条件。唯有通过合作，各国才能克服利益冲突，制定表现为各国之间的协调意志的国际环境法规则。").

123. *See* Bai Guimei (白桂梅), *supra* note 113, at 19. Explanations in Chinese international law textbooks commonly rely on the phrase 求同存异 (seeking common ground while reserving differences). It is necessary to strictly and precisely examine the meaning and purpose of this expression.

124. *See* Mu Yaping (慕亚平) & Mu Ziyi (慕子怡), Guojifa Yuanli (国际法原理) [Principles of International Law] 15 (revised ed. 2019) (noting that particular international law, in comparison, refers to laws that only apply to specific international relations or are legally binding on a small number of nations).

125. *See* Bai Guimei (白桂梅), *supra* note 113, at 19 ("在错综复杂的国际关系中国家之间发生矛盾、冲突常有的事。尽管各国的社会制度不同，对于国际发生的事有不同的评论。但是，绝不是"公说公有理，婆说婆有理"，更不能承认强权就是公理。资量国际上大事大非仍然存在着一定的标准，这个标推就是各国公认的国际法基本原则和国际法各种规章，制度。").

> Since Zhou Gengsheng, international law scholars in our nation of China have been affected by Soviet thinking on international law and has generally regarded the grounds for the validity of international law as the harmonization of State intention. This intent harmonization theory is a scientific theory that provides the basis for the force of international law, reflecting the essential characteristics and universal practices of international law. Thus, the international society consists of states, which are different in terms of their politics, social systems, levels of economic development, religions, and cultures, such that irreconcilability, dissidence, and conflict on the sets of values, political desires, and choices of interest cannot be avoided. In the complicated international society, it is difficult for international law to emerge from the common intention of states. However, through negotiations and consultations among states, it is possible to resolve contradictions, reconcile differences, and avoid conflict. International law (*inter alia* treaties) is gradually formed simply through negotiation and harmonization of states' intents.[126]

Here, international law is considered to be established by the cooperation of states that cannot escape irreconcilability, dissidence, and conflict due to differences in politics, social systems, economic development, religions, and cultures. In Soviet international law studies, the intent harmonization theory is used to clarify how it is possible to arrive at an agreement based on compromise between socialist countries, which have higher-level systems of politics, society, and economics, and capitalistic countries, which are moving toward those systems.[127] However, in one textbook, the intent harmonization theory provides the logic that the basis for the existence of international law relies upon agreements in international society as the competitive space for various personalities.[128] It is exceptionally interesting to observe that the textbook clearly specifies rules that are

126. *See* Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 36 ("我国的国际法学者从周鲠生开始，受苏联国际法思想的影响，一般都认为国际法的效力依据是'各国意志的协调'。应该说，'意志协调说'是一种科学的国际法效力依据的理论，它反映了国际法的本质特征和普遍实践，因为国际社会是由不同的政治与社会制度和经济发展水平以及宗教文化差异的各国组成的，在价值取向，政治意愿和利益取舍等方面难免会发生矛盾，分歧和冲突。在纷繁复杂的国际社会里，国际法很难产生于各国的共同意志。但是国家之间通过谈判，协商，矛盾是可以化解的，分歧是可以协调的，冲突能避免。国际法(尤其条约)正通过谈判和协调各国的意志，逐步形成的。").

127. *See* Matsuda, *supra* note 72, at 131, 138–39 (explaining that general international law is "neither capitalistic nor socialist," but instead has an overall democratic character).

128. Guojigongfa Xue Bianxiezu (国际公法学编写组), *supra* note 23, at 28.

only in effect in Europe and America as regional international law.[129]

First, in the Western world, regardless of the age of *jus publicum Europaeum* or after that time, it has been widely recognized that international law evolved from norms shared by civilized nations i.e., sovereign states. This means that international law is a set of norms among nations with a unitary civilization or sharing specific elements of civilization. This is true even though there are changes in the geographical coverage and contents of international law over a long period of history and international society has subsumed countries that have a variety of cultures. However, in the acceptance of international law for China, its universality is highly regarded and asserted from the beginning in a context where regions showing different civilizations and cultures voluntarily acquiesce in and adhere to international law.[130] This is because China, as a non-Western nation, has had

129. *See id.*

130. *See, e.g.*, Lin Xuezhong (林学忠), Cong Wanguo Gongfa Dao Gongfa Waijiao — WanQing Guojifa De Chuanru, Quanshi Yu Yingyong (从万国公法到公法外交—晚清国際法的传入、诠释与应用) [From the Elements of International Law to Diplomacy Based on International Law: The Reception, Interpretation, and Application of International Law in the Late Qing] 106 (2009) (explaining that from the beginning, international law was regarded as "a universal norm" that every nation adhered to); Wu Guanzheng (吴官政) & Wang Chuanli (王传丽), *Lun Guojifa Zai Zhongguo de Chuanbo Ji Fazhan—Cong "Gongfa" Yici Zhankai* (*论国际法在中国的传播及发展—从"公法"译词展开) [A Study of the Dissemination and Development of International Law in China: From the Translation of "Public Law"]*, 2021-6 Guojifa Yanjiu (国际法研究) [Int'l L. Rsch.] 22, 31–32 (2021) (detailing how the Chinese people widely accepted the meaning of "public" as being similar to the meaning of "common," and how the "principle of universality and the significance of justice and fairness" smoothly integrated into the Chinese understanding of general international law); Lai Junnan (赖骏楠), Guojifa Yu WanQing Zhongguo—Wenben, Shijian Yu Zhengzhi (国际法与晚清中国—文本、事件与政治) [International Law and Late Qing China: Texts, Events and Politics] 120–21 (2015). The full-swing acceptance of international law by China takes off after the Chinese translation and publication of Elements of International Law written by Henry Wheaton, which is translated by William Martin (the book title in Chinese: "万国公法 [International Law]"). The book title: "万国公法" when directly translated means "Law shared by all States." Since the publication of "万国公法," in some studies, Chinese intellectuals have made arrangements and emphasized that international law should be recognized and shared not only by the Western world but by all countries. This is because the grounds for accepting international law originally developed in Euro-American countries are relied on for universality. *See* Nobuyoshi Fujinami, *Hasan Fehmi Pasha to Osuman Kokusaiho no Keisei [Hasan Fehmi Pasha and the Birth of Ottoman International Legal Studies]*, 74 Toyoshi Kenkyu [J. Oriental Researches] 178(1), 159(20). (2015).

considerable difficulty in clarifying the binding force of international law as it developed in Europe on China itself, for the reason that certain rules and principles could not be regarded as customary or judicial precedents for China, and a number of norms that are provided especially in treaties have been given without Chinese consent.[131] Subsequently, this tendency has been increasingly strengthened under the influence of former Soviet international law studies. The former Soviet Union positioned general international law as the norm for peaceful coexistence of a bipolar order, where capitalist (imperialist)

These phenomena are not just for China. In the Ottoman Empire around the same time, Hasan Fehmi Pasha, basing the universal establishment of international law on universal share by humankind of natural law, explained that current international law had already become predominant in non-Western countries, albeit originated in Western Europe, because it is derived from natural law, and refers to the publication of "万国公法" ("Public Law of Nations") in the Qing dynasty.; *see* Zhu Keijing (朱克敬), Gongfa Shiyipian·Yuanshi·Mingyong (公法十一篇·原始·明用) [International Law in 11 Chapters: Origin & ascertaining Application] 1, 12 (1880) (China). This source was published in 1880 and was written by a Confucian scholar, who stated, "[i]nternational law studies start from Hugo Grotius, a Dutch international lawyer, and the law is termed as 'the law of war and peace (*jure belli ac pacis*)' and repeatedly discussed by jurists from various countries . . . Since international law is established, all those who have writing systems acquire a virtue, observe the law . . . Not only states belonging to regions such as Europe, America, and Asia but even Turkey, Persia, Egypt, and Barbary (Maghreb) practice international law." The original text reads: "公法之说，创于荷兰儒者虎哥，初名「平战条规」，各国公师互相辩论。. . . 公法既立，凡有文字通声教者，莫不遵行。. . . 若欧罗巴·亚美利加·亚细亚等洲所属及土耳其·波斯·埃及·巴巴里诸国，亦无不行。" *See* Zhou Wei (周炜), Xin Guojigongfa (新国际公法) [New Public International Law] 16 (1930) (China). Furthermore, Zhou Wei, a professor of international law at Nanjing University and a member of the permanent mission of China to the League of Nations, wrote: "International law is the law for over 60 countries of 5 races in 5 continents. Since nations fulfill their obligations together, what should be avoided are to conceive prejudice, even if only slightly, to confine application to only one region, to rely solely on a custom in one nation or one continent, not to obey majority view, and to venerate international rules as they originally existed. Otherwise, Europe will have European international law, America will have American international law, our Asia will have Asian international law, and above all China will have Chinese international law." In the original: "国际公法为世界五洲五色人种六十余国之公法。既有共守义务，即不容稍持偏见，限于一隅，专以本国或本洲习惯为根据，而不从多数着想，尊崇国际原有规例。否则欧洲自有欧洲国际公法，美洲自有美洲国际公法，吾亚洲亦将自有亚洲国际公法，甚至吾中国亦将有中国国际公法矣。"

131. *See* Wu Guanzheng (吴官政) & Wang Chuanli (王传丽), *supra* note 130, at 22, 31 (noting that China was fearful that by its adherence to international law, it would lose its national sovereignty).

nations are opposed to socialist ones in international society.[132] It appears that Chinese studies of international law have only amplified this Soviet view, assuming the vision of international society to be a competitive space for various personalities and the basis for the existence of international law. Accordingly, 公认 (recognition by all states) in Chinese international law must be considered not only as all states coming to a consensus but also as the image of agreements including states with diverse orders and cultures, forming a complicated confrontation. Even Zhou Gengsheng, who did not adopt the fundamental principles of international law in his 1976 textbook, considered international law as norms established with the common consent (note the Chinese expression 公认) of all the countries of the world, which have varying characteristics regarding political regimes, cultures, and tribes. [133]

Conversely, the disposition of the decentralized international society, the character of general international law as *jus dispositivum* and the legal maxim *lex specialis derogate legi generali*, have accelerated the unique development of international law within states with a single structure or a common culture. According to the perspective of studies of Chinese international law, it is possible that this situation entails impairment of the legitimacy, binding force, or grounds for validity of international law. For the situation compromises the universality of international law. International law in

132. *See* Курс международного права: Основные принципы современного международного права [Course of International Law: Fundamental Principles of Modern International Law], *supra* note 2, at 12 (showing that Soviet scholars believe that international law is not fully developed with established principles but instead a struggle is ensuing the make and have an impact on those established principles).

133. Zhou Gengsheng (周鲠生), *supra* note 119, at 284. Zhou Gengsheng wrote, "[a]lthough the modern European civilization standard, as it is called, is sufficient for Western capitalist countries, the sphere of international law overstepped Europe a long time ago and subsumed countries all over the world with a wide variety of political systems, cultures, races, and different forms of mind, such that international law itself has jumped through the frame of the modern European body of thought and has become universally recognized by all states; therefore it is clear that the conformation of legal systems of each nation to the standard of modern European civilization is impossible and should not be required." The original text is as follows: "所谓近代欧洲文明的标准,只是西方资本主义国家的标准,而国际法的领域久已超越欧洲的范围而包括世界上各种不同政制、不同文化、不同种族, 乃至不同意识形态的国家,它自身早已应该超出所谓近代欧洲的思想体系而成为世界各国公认的国际法,显然更不能,也不应该要求它们的法制都合于所谓近代欧洲文明标准的。"

this context is formed by universal recognition of international society and regarded as comprising agreements among countries that have various systems or cultures (or countries with complicated confrontation). A number of academic papers identify the risk of recasting general international law due to the creation of a particular international law by a few countries in accordance with *lex specialis derogate legi generali*.[134] With reference to regional international law, Cai Congyan maintains that

> When newly developing countries adamantly present or defend assertions about matters of international peace and security at the United Nations Security Council, there is a chance that some countries will increasingly prioritize the development or use of regional international law in the field of security. It is clear that the crucial prerequisite for exerting constructive function of regional international law relies upon the presence of a valid and universal international law imposing restrictions on the development of regional international laws. If not, regional international laws will damage the authority or universality of universal international law.[135]

With respect to regional international law as defined here, it should be obvious that Cai Congyan considers international law within the framework of the Euro-American developed countries.[136] It is

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134. *E.g.*, Cai Gaoqiang (蔡高强) & Chen Lu (陈露), Shi Lun Wai Ceng Kongjian Huoding Sunhai Peichang de Falu Jizhi (*试论外层空间活动损害赔偿的法律机制) [On Damage Compensation Legal Mechanism of Outer Space Activities],* 29(3) Beijing Hangkong Hangtian Daxue Xuebao (北京航空航天大学学报（社会科学版）) [J. Beijing U. Aeronautics & Astronautics (Soc. Scis. Ed.)] 36, 42 (2016) (China) (pointing out that states are actively protecting their interests in creating and applying their own law in the area of outer space law by completely disregarding the implementation of an executive body in the numerous outer space conventions and treaties); Wang Han (王瀚), *和谐世界构建与当代的国际法律秩序—我国外交实践中的若干国际法问题 [Building harmonious world and contemporary international law order: some problems related to international law in our country's diplomatic practice],* 108 Gansu Zhengfa Xueyuan Xuebao (甘肃政法学院学报) [J. Gansu Institute of Political Science and Law] 17, 18 (2010) (China).

135. *See* Cai Congyan (蔡从燕), *Lun "Yi Guojifa Wei Jichu de Guoji Zhixu*" (*论"以国际法为基础的国际秩序"*) [*On "International Law-Based International Order"*], 2023 Zhongguo Shehui Kexue (中国社会科学) [Social Sciences in China] 24, 40 (2023) (China). The original text notes, "随着新兴大国在联合国安理会中更加坚定地表达与捍卫在国际和平与安全问题上的主张，一些国家在安全领域可能更加侧重发展与利用区域国际法。显然，区域国际法发挥建设性作用的一个重要前提是，存在着有效的普遍国际法规制其发展，否则区域国际法就会损害普遍国际法的权威性或普遍性。"

136. *See also id.* at 40 (using the sparse text of Chapter VII of the Charter that

noteworthy that regional international law is thus set forth as having the will to impair the authority of universal international law.[137] Chinese international law studies exercise vigilance against the formulation of any particular and regional international laws and their preferential application over general international law. This is from the viewpoint of not only China's national interests but also the protection of the grounds for China's recognition and observation of international law's authority (along with the universality of international law).[138]

As a logical consequence of the intent harmonization theory adopted by Chinese international law studies, the alternation or exclusion of general international law by the formulation of a particular or regional international law in an uncontrolled manner causes international legal order to regress to a chaotic and competitive space for various personalities in the law of the jungle.[139]

The fundamental principles of international law constrain the risk

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details regional arrangements to show that regional international law has the power to destroy the authority of universal international law).

137. *See also id.*

138. *Cf* Tunkin, *supra* note 60, at 158. This stance in studies of Chinese international law is more marked than in studies of Soviet international law and adopts a similar theory of the fundamental principles of international law. Compare the views of Tunkin, a leading academic of Soviet international law, who states, "[a]ll norms of international law are binding upon the respective subjects of international law. Their violation entails international legal responsibility. But in the majority of cases, and therein is one of the distinctive features of international law, states may, concluding local agreements, establish that they will apply in their mutual relations norms other than the norms of general international law pertaining to this question."

139. Tang Jiaxuan, then foreign minister of the People's Republic of China, states at the United Nations General Assembly, "Any deviation from or violation of these principles would destroy the universally recognized norms governing international relations, and would lead to the rule of hegemonism" U.N. GAOR, 54th Sess., 8th plen. mtg. at 16, U.N. Doc. A/54/PV.8 (Sept. 22, 1999). In the original: "偏离或违背这些原则，公认的国际关系准则将不复存在，霸权主义就会横行" or, "if there is any deviation from or violation of these principles, the universally recognized norms governing international relations become non-existent, so that hegemonism is rampant." From the Chinese international law perspective, the alternation or exclusion of general international law by means of forming particular or regional international law is considered extremely irresponsible, provocative, and egoistic in the sense that it shows minority countries are prioritizing their specific interests and circumstances at the expense of fatal consequences for the international order.

of recasting general international law. First, the fundamental principles have a *jus cogens* nature and impose a considerable restraint on—and, in some instances, invalidate—the formation or application of particular or regional international laws. Second, the fundamental principles have leading functions in all fields of international law, such that the establishment or application of all international laws, including particular and regional international laws, are under the direction of the fundamental principles. International law, as treated in Chinese textbooks, has a structure whereby the fundamental principles can gain an edge over international laws formed among states with a unitary order or culture, place regulations over them, and provides direction to them.

VI. CONCLUSION

The fundamental principles of international law, in the context of Chinese international law studies, are defined as being universally recognized by all states (公认), are applied to a whole range of fields of international law due to their significance of universality, and provide the basic elements to configure specific aspects of international laws. The fundamental principles abolish other forms of international law, such as treaties or customary international law, that are incompatible in the same manner as *jus cogens* norms. Specifically, the fundamental principles are comprised of: the sovereign equality of states and a respect for their sovereignty; territorial inviolability; peaceful settlements of international disputes; nonintervention in internal affairs; fulfillment of international obligations in good faith; international cooperation; and the self-determination of people.

According to prevailing views in Euro-American international studies and the dispositions of decentralized international society, the character of general international law as *jus dispositivum*, and the maxim *lex specialis derogate legi generali* allow ample room to establish particular international laws in a manner that is different from general international law. This indicates that there is sufficient space for the unique development of specific international laws among states with a single political system, set of social institutions, or culture. This is also the case with the Soviet school of international law, which explains the development of higher-level international law in the Soviet bloc with respect to the points mentioned above.

However, Chinese international law, while accepting the fundamental principles of international law that are derived from the Soviet international law, has never adopted the view of configuring international law within communist countries. Hence, Chinese international law centers on a framework that asserts the superiority of an international law that is universally recognized by all nations (i.e., 公认) compared to international laws within separate blocs with similar political systems, social regimes, and cultures.

Under these circumstances, it is difficult for China to confine or disallow particular or regional international law through the fundamental principles of international law. However, based on the fundamental principles, China can deny particular or regional international law it deems conflicting and assert its own legitimacy in accordance with international law. Therefore, the fundamental principles are able to produce an effect that heightens China's sense of belonging to the international legal order. It seems probable that, due to the historical perception that China advocated for the Five Principles of Peaceful Coexistence, which forms a rationale for the fundamental principles, this sense of belonging can escalate to the point of a consciousness where China positions itself as the legitimate guardian of international law.

The considerations of this paper indicate that Chinese studies of international law relate to an underlying implicit acceptance that universal norms obtained through the recognition of all states in a competitive space for various personalities should be considered superior to norms rooted in individual characters or the circumstances of each state or region. Moving forward, it is necessary to conduct elaborate analyses of the fundamental principles of international law, as well as the relationships between general and particular international law in Chinese international law studies. This issue will be further examined in a future study.

Finally, professional studies of doctrines in Chinese international law are vital. Historically, China has competed with the theories of international law in Euro-American countries and the former Soviet sphere. However, doctrines in Chinese international law should not be regarded as merely tools for protecting China itself or as an antithesis to relieve negative sentiments from the viewpoint of non-Western nations. Despite the major upheaval of international relations around

China since Zhou Gengsheng's book, completed in 1964, doctrines concerning Chinese international law have been consistently developed.[140] In addition, due to its consistently negative or inhibitory assessments of regional international law within Latin American nations, despite sympathy toward their stances that are overly critical of European theories, Chinese doctrines appear to be hyperconscious of logical consistency and consecutive reasoning.[141] Thus, the doctrines of Chinese international law are not an accumulation of superficial or makeshift measures. In the future, as done here, examining Chinese doctrines and the factors that generate them, as well as formulating a comparative study with Euro-American viewpoints, will continue to be necessary.

140. *See* Bai Guimei (白桂梅), supra note 113, at 7. This textbook says, "[o]ur China has its own feature in the aspect of study and practice of international law doctrine and forms the system of thought with the characteristics of Chinese socialism, which is different from what the Western world and the Soviet world have." The original text: "我国在国际法的理论研究及实践方面都有自己的特点，形成了既不同于西方也不同于苏联的具有中国社会主义特色的思想体系。"

141. *See* Zhou Gengsheng (周鲠生), *supra* note 119, at 284 (noting that Latin American countries are pushing to supplement general international law with rules based on "the lessons learned from [their] negative experiences in their dealings with imperialist European countries and the United States of America"); Zhou Jiepu (周杰普), Guojifa Xue (国际法学) [International Law] 2 (2d ed. 2021) (China) (recognizing that the countries in North and South America have called for the creation of "inter-American international law," but noting that this type of regional international law still recognizes the legitimacy of general international law).

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