

From Coexistence to Cooperation:

China Multilateral Legal Approach to the UN and the Shanghai Cooperation Organisation

The current paper analyses China's dynamic legal approach to multilateralism with regard to an international organisation (United Nations - UN) and a regional organisation (Shanghai Cooperation Organisation - SCO), showcasing how international normative crystallization influenced China's views on multilateralism and determined her evolution from a reluctant actor to an active supporter of multilateralism and a facilitator between regional (SCO) and international organisations (UN).

China's engagement with the United Nations has been the country's perhaps most distinguishing feature regarding her approach of the international normative order. After discussing whether and to what degree of extent China could be considered a contributor to the "International Rule of Law", the article moves on to identify how China solved the inherent conflict between her Westphalian views on sovereignty and her role in the UN Security Council (UNSC). While providing multiple examples on China's practice in the UNSC, the study finds out that, despite having crossed various stages in her approach to the UNSC, China's respect for sovereignty continues to remain constant in her international legal practice. Finally, China's role as a facilitator between the SCO and UNSC is analysed to showcase how, despite attaching paramount importance to national sovereignty, China became a catalyst for multilateral cooperation.

In the light of China's legal practice, the study concludes that a new stage in China's relation with International Law could be envisaged and such an evolution would not weaken, but consolidate, both the UN and SCO.

Introduction

From an isolated country in the international normative order in 1949, China came a long way and metamorphosed not only into a permanent member of the UN Security Council (following the 1971 restoration) but into a pertinent actor in the international normative order, with a consistent contribution and confirmed legitimacy. In the light of multilateralism, China not only participated as a disciplined actor in the international normative order but similarly defended her position with clarity and reason, persuading others by a sound jurisprudence.

With regard to the practice of international law in general, it has to be mentioned that the past decades played a crucial role in its dynamics, scope and, eventually, the *status quo*. As a science mirrored by practice, international law is naturally subjected to change as a result of the interaction among its subjects and, at the same time, objects. Friedmann's affirmation that *"many profound changes (...) have affected contemporary international law to such an extent that it is today something very different even from what it was a generation ago"*¹ is as valid today as it was five decades ago.

In this context, China's evolution from the doctrine of *"Peaceful coexistence"* to multilateralism and cooperation is highly relevant, as it reflects a general trend in the international society, i.e. of migrating toward a communitarian approach whose normative order is constituted of commonly accepted and shared values².

The current article is – hopefully – a pertinent analysis in the discussion of China's most unique feature in her engagement with the public international law, namely her Westphalian understanding of sovereignty in what could be arguably considered a post-Westphalian setting³.

This part will hopefully contribute to the discussion whether and to what degree of extent does China adhere to the international rule of law. In this regard, it should be mentioned that the concept of *"international rule of law"* is abstract enough so that to provide a range of interpretations. At an academic level, international rule of law has been characterised as being at a nascent level or, by some, even as a goal to be yet achieved⁴. The usage of the term hence does not reflect a clear understanding and acknowledgment.

Clarifying in this regard may be the view of the UN, which set its own agency to tackle the issues related to the rule of law. The scope, vision, and mission of the Rule of Law Unit is, however, still a contentious issue since the very concept of the *"rule of law"* is not addressed by the UN Charter. On an institutional level, the agency is known as the Rule of Law Coordination and Resource Group and is presided by the UN Deputy Secretary General. Its institutional layer comprises the Department of Political Affairs, the Department of Peacekeeping Operations, the Office of High Commissioner for Human Rights, the Office of Legal Affairs, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Entity for Gender Equality and the Empowerment of Women and the United Nations Office on Drugs and Crime. Its role is listed as *"to ensure coherence and minimize fragmentation across all thematic rule of law areas, including justice, security, prison and penal reform, legal reform, constitution-making, and transitional justice."*⁵

On an academic level, Simon Chesterman identified three possible views in this respect: *"First, the 'international rule of law' may be understood as the application of rule of law principles to relations between States and other subjects of international law. Secondly, the 'rule of international law' could privilege international law over national law, establishing, for example, the primacy of human rights covenants over*

*domestic legal arrangements. Thirdly, a 'global rule of law' might denote the emergence of a normative regime that touches individuals directly without formal mediation through existing national institutions."*⁶

The current analysis of China's practice of international law could hopefully clarify to what degree of extent does China socialize with the *sui generis* entities of international law on an institutional level and in which stances is China more prone to accept international law, i.e. the normative regime thereof, without appealing to mediation or diplomatic negotiations, yet at the expense of her national sovereign rights.

It seeks a selective analysis of China's modern practice in international law by exploring the country's engagement with the international normative order within the UN framework: globally, at the level of the UNSC, as a permanent member, and regionally, at the level of SCO, as a facilitator of cooperation between regional organisations and the UN. China's participation in the UNSC, as a permanent member, has been one of the country's most distinguishing features in her engagement with international law, particularly in the field of peace and security. The country's involvement with the UN can be further declined into two pillars, namely security, where China stressed on the absolute understanding of sovereignty and non-interference, and non-traditional security, where China pushed the agenda toward issues such as terrorism and organised crime.

Obviously, an important part in this respect is played by the more general context of China's foreign policy, which undoubtedly affects the country's approach to international law. In this regard, China's position as a permanent member of the UNSC becomes fundamental for both conveying her foreign policy, as well as her views on the international normative order. The discussions initiated by China in the UNSC worth being attached great importance in analysing the country's practice and deliberative discourse, both in the light of anticipating the future trends, as well as in relating them to the behaviour of other member states. Such an analysis will hopefully help in determining not only China's understanding of international law but, similarly, the diversity in the "*understanding of the law, and thus (...) the identity, objective, and principles of the community*"⁷. Ultimately, China's voting behaviour and legal discourse at the UNSC level are essential not only in assessing the country's stance but similarly the scope of the international law development.

Conversely, regarding Shanghai Cooperation Organisation (SCO), as a pillar of cooperation for peace and security between UN and regional organisations, China has formally requested the regional organisation to be granted the observer status at the level of the UN General Assembly since 2004⁸. One year later, SCO has been granted the observer status based on the recommendation of the Sixth Committee⁹. Hence, replicating the normative role played by the regional organisations at the UN level, SCO is anticipated to increase its regional dimension while acquiring a global impact.

The United Nations and International Law: Between Westphalian Sovereignty and Security Council

Established in the aftermath of the Second World War, the United Nations was successful in deterring another major armed outbreak. Through the UN Charter, the UN vests the UNSC with a set of responsibilities in the ambit of international peace and security¹⁰. The responsibility to maintain the international peace and security is a primary prerogative of the UNSC, yet, in the light of the *“Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”* case, it is not exclusive.¹¹ However, in the light of Article 39 of the UN Charter it is only the UNSC that has the prerogative to *“determine the existence of any threat to the peace, breach of peace, or act of aggression (...) make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”*¹² Equally relevant with regard to the legal prerogatives of the UNSC is the opinion of Judge Lauterpacht in the *“Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)”* case, who held that *“there can be no less doubt that [the UN Charter] does not embrace any right of the Court to substitute its discretion for that of the Security Council...”*¹³

The functioning of the United Nations General Assembly (UNGA) is deeply related to the UNSC, as no UNGA recommendation can be issued without seizing the UNSC¹⁴. In accordance with the UN Charter, the Security Council has a representative role not only for its permanent and temporary member states but equally for all the member states of the UN¹⁵. The UNSC, however, is neither a *“world legislature”*¹⁶ nor an international government, despite the overwhelming importance attached to the UN and UN Charter.

In the light of the institution’s capital importance at the level of international peace and security, Chesterman maintains that *“a distinction must be made between the discretion formally provided for in the constituent document of the organization and the arbitrary exercise of the powers that it grants.”*¹⁷ The scholar ascertains, in other words, the inequalities which lie in the UNSC institutional setting, particularly between its temporary members, on one hand, and its permanent members, on the other, with the veto right being most poignant. In the light of increasing the legitimacy of global governance institutions, members of UNSC must argue their action by a *“principled, informed, collective deliberation”*¹⁸, in the light of the international normative prerequisites. In this regard, the role of international law becomes fundamental in the sense that it ensures the legal certainty necessary to maintain the international peace and security through legitimate actions.

It was in this regard that the ICJ advisory opinion on *“Conditions of Admission of a State to Membership in the United Nations (Art. 4 of the Charter)”* held that *“the political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers of criteria for its judgment.”*¹⁹

It was in this spirit that China proposed during the negotiations at Dumbarton Oaks that *“the settlement of*

*international disputes should be on the basis of the principles of justice and international law.”*²⁰ China’s proposition was materialised in the first article of the UN Charter, which provides that the aim of the institution is *“to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”*²¹ For Higgins, this provision emphasizes the political character of the UNSC, firstly, and the fact that its legal prerogatives only arise from the threats to peace. The violations of international law in times of peace therefore rest with the ICJ²². The analysis of China’s legal practice in the UNSC becomes crucial not only in assessing the Chinese perspectives of public international law, but, similarly, the legitimacy of the institution *per se*. In this regard, Caron argued that the UNSC promise of guarding the international peace and security²³, has been deceived by the unprecedented prerogatives granted to the permanent members, based on which they can greatly affect the decision-making process within the institution by imposing a *“hegemonic international law”*²⁴.

China and the United Nations Security Council: Legal Practice

China’s restoration of her legitimate rights in the UNSC had a historical importance both for China as well as for the UN. For China, her restoration and active participation symbolised her will to adhere to the international normative order and readiness for an alternative reading of her stance on absolute sovereignty. As Kent notes, the country’s role in the UNSC is strongly linked with *“China’s preparedness to renegotiate its sovereignty in response to organizational and treaty pressures; and the degree to which China shows a readiness to shoulder the costs, as well as enjoy the benefits, of organizational participation.”*²⁵ China’s membership in UNSC further contributed to the institution’s legitimacy in the sense of adding both ideological diversity as well geographical diversity to the Council. As Kim noted *“the Security Council’s political effectiveness has also been enhanced to the extent that the presence of China has contributed to bridging the gap between authority claims and power capabilities of the Council.”*²⁶

China’s presence in the UNSC contributes to a deeper understanding within the international normative order and reflects, to a large degree of extent, the former incremental appeasement between the Capitalist vs. Socialist bloc and, currently, between North and South. China’s record of compliance with international law further contributed to its increased trustworthiness in the international arena. Concerning international relations, China’s continued interactions and dialogue with the international organizations and their respective member states reduces uncertainty and lack of credibility among the actors of the international arena.²⁷

For O’Neill, China’s influence in the UNSC offsets that of the other four permanent members, given the positions it holds differ, oftentimes, from the pooled positions of France, the United Kingdom, and the United States and, occasionally, Russia, in spite of the diplomatic pressures applied.²⁸ China has rarely vetoed UN

resolutions, exercising her veto only 8 times (including the pre-1971 period), compared to the USSR/ Russia, which vetoed 127 resolutions, the United States, which vetoed 83 resolutions, the United Kingdom, vetoing 32 times, or France, which opposed 18 times. Such a practice could be explained by China's bitter experience with hegemony and imperialism, as, during the *"100 years of humiliation"*, China was often left at the hand of the hegemons. Despite vetoing being a legal prerogative substantiated in China's membership in the permanent UNSC, China refused to be a hegemon at the expense of others' violation of sovereignty.

Morphet argued that the country's voting behavior in the UNSC is not linear and can be divided into four stages.²⁹ A first stage extends from 1971 to 1981, a period in which China adjusted her position with respect to the international arena. China opposed Bangladesh's membership in the UN following its secession from Pakistan, holding that *"pending the true implementation of the General Assembly and Security Council resolutions and a reasonable settlement of the issues between India and Pakistan and between Pakistan and 'Bangladesh', the Security Council should not consider the application."*³⁰ China only accepted Bangladesh's membership only after Pakistan recognized the new state. China's second veto in this period was pooled with the Soviet Union in rejecting an amendment to a resolution with regard to the Israel and Syria and Lebanon conflict, maintaining that *"the history of the Middle East since the Second World War is one of incessant aggression and expansion by Israeli Zionism"*³¹

The second stage in China's engagement with the UNSC occurred between 1982-1985 when China opted for general appeasement and did not veto any resolution.

Following 1986 and until 1990, China similarly did not veto any draft resolution and further continued her policy of appeasement with the other Permanent Members. In the aftermath of 1990, China attempted to offset the United States' practice of authorizing *"all necessary means"* based on humanitarian intervention and vetoed two draft resolutions. It should be noted that the vetoed draft resolutions concerned Guatemala (extending the United Nations Verification Mission, vetoed on January 10, 1997³²) and Macedonia (extending the United Nations Preventive Deployment Force, vetoed on February 25, 1999³³), which, at the time, did not adhere to the *"One China Principle"*.

A more common practice of China in the UNSC is that of abstention. It should be noted that China abstained on 38 draft resolutions on Chapter VII and 18 draft resolutions on matters outside the scope of Chapter VII³⁴ since 1990, compared to only one such abstention before 1989³⁵. Two illustrative cases in this regard concern the application of Nauru and Tuvalu for UN membership, on which China abstained³⁶. It should be noted that neither states adhere to the *"One China Principle"*. The implications on China's abstention practice are far-reaching in international law as they ascertain a non-recognition of a piece of legislation that may eventually take the value of *stare decisis* (precedent). By abstaining, China indicates her reservation towards

the crystallization of such a norm into international law and secures her potential position as “*persistent objector*”.

China’s practice in the UNSC is far from being linear and the complexity of her voting behavior and legal argumentation require further scrutiny on a case by case basis.

An illustrative example in this regard is the UNSC Resolution 660/ 1990, demanding Iraq’s withdrawal from Kuwait, which China supported³⁷. China abstained from UNSC Resolutions 678/ 1990 and 688/ 1991 which fell under the incidence of Chapter VII of the UN Charter. China motivated her stance given the threat such a resolution might represent for the international peace and security³⁸. It should also be noted that China manifested concern for Iraq’s sovereignty in the advent such a Resolution was adopted³⁹.

China’s position differed concerning UNSC Resolution 794/ 1992 concerning the situation in Somalia, where she authorized the use of force without Somalia’s consent. It should be noted, however, that Somalia lacked a legitimate and functioning government at the time, thus representing an exceptional case⁴⁰. Indeed, the case of the UNSC Resolution 929/ 1994 confirmed the extraordinary character of Resolution 794, in the sense that China abstained from voting and supported the expansion of the peacekeeping force in the region. As in the case of Resolutions 678 and 688, China maintained that resorting to force would be detrimental to peace⁴¹.

Regarding the conflict in Bosnia and Herzegovina (1992-1995), China supported Resolution 743/ 1992, however opposing Resolution 770/ 1992 which fell under the incidence of Chapter VII and regarded humanitarian intervention. As in the previous stances, China maintained that the use of force will “*complicate the situation, sharpen differences, intensify hatreds and make it more difficult to solve the problem.*”⁴² China supported UNSC Resolutions 807/ 1993 and 824/ 1993, in the light of the worsening situation, yet maintaining the exceptional character of the situation and holding that such a case does not “*constitute a precedent for future United Nations peace-keeping operations*”⁴³. In 1999, China opposed the NATO intervention in Kosovo and one of the country’s official mouthpieces assumed that such a response was committed based on the view that human rights prevail in front of national sovereign rights⁴⁴. China abstained on Resolution 1160/ 1998, maintaining the internal character of the conflict, which was regarded, “*in its essence, an internal matter of the Federal Republic [to be resolved] through negotiations between both parties concerned on the basis of respect for the sovereignty and territorial integrity.*”⁴⁵ China decried the NATO intervention for being conducted “*unilaterally, without consulting the Security Council or seeking its authorization.*” The intervention “*violated the purposes, principles and relevant provisions of the United Nations Charter, as well as international law and widely acknowledged norms governing relations between states.*”⁴⁶ In the advent of the bombing, China accused NATO of “*a blatant violation of the United Nations Charter and of the accepted norms of international*

law”, while continuing to decry the “*use or threat of use of force in international affairs and to power politics whereby the strong bully the weak.*”⁴⁷ The bombing of China’s Embassy in Belgrade further complicated the situation and escalated China’s already critical attitude.⁴⁸

Several months later, China agreed to send a peacekeeping mission to East Timor under Chapter VII, however only after obtaining the consent of the Indonesian government⁴⁹. China similarly agreed to contribute to the UNTAET peacekeeping mission in East Timor at a later date, yet, again, only with Indonesia’s consent⁵⁰.

With regard to the Darfur crisis, China abstained on the UNSC Resolution 1556/ 2004, also under Chapter VII of the UN Charter, maintaining that the internal issues ultimately fall under the incidence of the national government of Sudan, and calling for the contribution of the African Union to resolve the crisis⁵¹. As in the previous cases, China conditioned her support by the support of the government of Sudan⁵² and called for dialogue and peaceful conflict resolution, while refusing to refer the case to the ICC⁵³. It should be noted that China contributed in the mediation of the conflict by persuading the Sudanese government to accept an UN-African Union force and sent a Chinese envoy to monitor the situation⁵⁴. Only after obtaining Sudan’s consent in this regard, China supported UNSC Resolution 1769/ 2007, hence authorizing the UN to deploy force⁵⁵.

China used her veto rights to block sanctions against Myanmar in 2007, yet ultimately agreeing to support a statement condemning the violence against civilian population in the country, while calling for national reconciliation efforts⁵⁶.

With regard to Libya, it should be noted that China abstained from UNSC Resolution 1973⁵⁷, only after consulting and obtaining the consent of the Arab countries and African Union with regard to the case. China similarly emphasized on the national sovereignty and territorial integrity of the country and showed concern for the actions which reportedly exceeded the scope of the Resolution⁵⁸.

In the case of Syria, China’s attitude became more unequivocal and straightforwardly vetoed a resolution supported by the West along with the Arab League⁵⁹. China motivated her action by the character of the resolution which would have resulted in a change of regime, deemed detrimental to the country’s sovereignty⁶⁰ and offered to mediate the conflict by sending envoys in the region⁶¹.

Despite China’s position on peace-keeping missions having been softened, China’s stance on sovereignty remained firm, perhaps except for Libya, a case which China regarded as “*special circumstances*”⁶². China can be regarded as an arduous and continuous supporter of absolute sovereignty, reluctant to deploy forces under Chapter VII (except with the consent of the respective state or other “special circumstances”) and calling for mediation rather than deployment of force.

China as Facilitator between United Nations and Regional Organisations: The Shanghai Cooperation Organisation

In her UN statements, China has consistently stressed over the importance it attaches to the UN cooperation with the regional international organizations. Such cooperation has occurred in the context of several recurring themes, consistently present on China's agenda: China's position on absolute sovereignty, the importance attached to dialogue in the peaceful conflict and settlement resolution, non-intervention and non-interference, the consent of the national state in receiving UN peacekeeping forces and cautiousness in the application of strong sanctions. On the other hand, China does not deny the existence of transnational issues; in this regard, China calls for multilateral solutions, with a particular emphasis over the conflict prevention mechanisms of the UNSC and other regional fora. In 2014, the importance of multilateral solutions and conflict prevention measures has been elevated to a *"Security Concept for Asia"* during the Conference on Interaction and Confidence Building Measures in Asia (CICA), where China's President Xi Jinping pledged to *"advance the process of common development and regional integration (...) and promote sustainable security through sustainable development."*⁶³

It becomes obvious that a case of particular importance on China's agenda has been the maintenance of the international peace and security, while respecting the national sovereignty of each states, within the ambit of the UN – regional organizations cooperation on security matters. It should be noted that such priorities predate China's Global Counter-Terrorism Strategy of 2006⁶⁴. The importance China attaches to national security as a mark of sovereignty similarly made the object of multiple regional fora, be them in a wider UN-related context or individually. China's *"New Security Concept"*, for instance, has been submitted to the ASEAN institutions in 2002, stressing on dialogue and mutual trust to promote regional security⁶⁵. The core of the *"New Security Concept"* successfully mirrored China's Five Principles, maintaining that equality and coordination, mutual trust and mutual benefit should be *"flexible and diversified in form and model"*, expressing once more China's openness for either multilateral mechanisms of bilateral negotiations⁶⁶.

In order to approximate the possible role played by the SCO in maintaining the international peace and security in the Asian continent, a look into the organisation's framework becomes mandated.

Upon its foundation in 2001, the SCO adopted the *"Shanghai Convention on Combating Terrorism, Separatism and Extremism"*⁶⁷. The preamble of the convention acknowledges that *"terrorism, separatism and extremism constitute a threat to international peace and security, the promotion of friendly relations among States as well as to the enjoyment of fundamental human rights and freedoms"*⁶⁸. Saul has pointed towards the legislators' failure to clearly distinguish among terrorism, separatism, and extremism, as they may not necessarily appeal to similar methods⁶⁹. The scholar similarly notes that the Convention comprises common

elements with the “1999 Terrorist Financing Convention” and the “2002 EU Framework Decision on Combating Terrorism”, while adding the concept of “violations of public security”, deemed vague by the author⁷⁰.

An important role within the framework of SCO has been attached to the Regional Anti-Terrorist Structure (RATS), set as a standing body of the organization within the ambit of Article 10 of the SCO Charter to “combat terrorism, separatism and extremism”⁷¹. A Joint Statement of the Foreign Ministers of the member states recalled for regional stability and reiterated the fight against the “three evils” of terrorism, separatism and extremism, while similarly acknowledging that terrorism is not to be associated with neither religion, freedom of belief or ethnicity. The 2002 meeting urged for a comprehensive international convention on international terrorism⁷².

In this regard, China’s support for the SCO to be granted observer status at the UNGA level could be offered a double-folded interpretation: firstly, China manifestly adhered to the strengthening of the UN relations with regional organizations, and secondly, China affirmed her sovereignty-based position concerning the international counterterrorism efforts.

In this regard, it should be mentioned that China recorded increasing participation in the international counterterrorism efforts since the 1970s. China became a party to most of the universal legal instruments to counter terrorist acts with reservations concerning only the standard dispute settlement, i.e. arbitration or ICJ jurisdiction, most likely in the light of her sovereignty-based views⁷³.

China is not a party of the “Convention on the Marking of Plastic Explosives for the Purpose of Detection” of 1991, although the convention is still applicable in Hong Kong Special Administrative Region, after the return to the sovereignty of the Motherland⁷⁴. A table of the major international legal instruments to prevent terrorism, of which China is a party thereof, has been listed below.

<p style="text-align: center;">China and International Instruments of Counterterrorism</p> <p style="text-align: center;">(Chronological order)</p>			
<i>Legal instrument</i>	<i>Date of Signature by China</i>	<i>Date of Ratification by China</i>	<i>Reservations</i>
<i>Convention on Offences and Certain Other Acts Committed On Board Aircraft, Tokyo, September 14, 1963</i> ⁷⁵	November 14, 1978	February 12, 1979	Art. 24, par. 1
<i>Convention for the Suppression of Unlawful Seizure of Aircraft, Hague, December 16, 1970</i> ⁷⁶		September 10, 1980	Art. 12, par. 1

<i>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, September 23, 1971</i> 77		September 10, 1980	Art. 14, par. 1
<i>Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, February 24, 1988</i> 78	February 24, 1998	March 5, 1999	
<i>Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, December 14, 1973</i> 79		August 05, 1987	Art. 13, par. 1
<i>International Convention Against the Taking of Hostages, New York, December 17, 1979</i> 80		January 26, 1993	
<i>Convention on the Physical Protection of Nuclear Material, Vienna, March 3, 1980, amended in 2016</i> 81		January 10, 1989	Art. 17, par. 2
<i>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, March 10, 1988</i> 82	March 10, 1988	August 20, 1991	Art. 16, par. 1
<i>Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, March 10, 1988</i> 83	March 10, 1988	August 20, 1991	
<i>International Convention for the Suppression of Terrorist Bombings, New York, December 15, 1997</i> 84		November 13, 2001	Art. 20, par. 1
<i>International Convention for the Suppression of the Financing of Terrorism, New York, December 9, 1999</i> 85	November 13, 2001	April 19, 2006	Art. 24, par. 1
<i>International Convention for the Suppression of Acts of Nuclear Terrorism, New York, April 13, 2005</i> 86	September 14, 2005	November 8, 2010	Art. 23, par. 1

Hence, China's role in facilitating the UN relations with SCO, as a regional organisation, should be interpreted in the key of China's extensive participation in the ambit of counter-terrorism in the aftermath of September 11, 2001, a trend fully mirrored at the UNSC level⁸⁷. By facilitating a UN-SCO institutional dialogue, China did not only manifest another proof of her extensive international engagement since the 1970s, but similarly a counter-terrorism framework compatible with the country's sovereign-based perspectives of international law.

Conclusions

China's legal practice within the UNSC allowed her to assert an ever-increasing role in the maintenance of international peace and security as expressions of international law. The country's voting behavior has undoubtedly witnessed a major evolution from learning to engagement and, finally, with regard to facilitating SCO's observer status, pioneering in her UNSC-related practice.

The crisis of Libya and Syria may provide the foundation for a new stage of development in China's relation with international law, namely an approach based on sovereignty, yet with more room for flexibility. Concerning the Libyan humanitarian crisis, the UNSC passed seven draft resolutions⁸⁸ concerning establishing a no-fly zone over the country and setting up a United Nations Support Mission in Libya, whose mandate has been later extended.

A notable proof of China's growing flexibility is the country's vote in favor of the UNSC Draft Resolution 1970/ 2011, which sought the referral of the situation to the ICC. China's abstention from the UNSC Draft Resolution 1973/ 2011 is similarly important as it creates a precedent in which the *"Security Council has authorized the use of military force for human protection purposes against the wishes of a functioning state"*⁸⁹.

Interestingly, Hehir notes that out of the ten states who voted for the UNSC Resolution 1973/ 2011, none appealed to the responsibility to protect in their argumentation⁹⁰. Welsh argues the decision not to appeal to the *"responsibility to protect"* is largely due to the fact that the concept *"was still contested by some members of the Security Council as an appropriate rationale for military action."*⁹¹

With regard to Syria, China continued her traditional line of promoting national sovereignty and non-interference in the internal affairs, thus voting against adopting the resolutions authorizing military intervention. It could be argued that China has become an active supporter and largest participant among the permanent members of the UNSC concerning peacekeeping operations, yet only with the consent of the host state.

China sought to strengthen the UN's prerogative of maintaining international peace and security by facilitating its relation with regional organizations, perhaps the best example, in this case, being SCO. In this regard, China became both a pioneer in counterterrorism, as well as a staunch defender of national sovereignty by initiating and supporting the provisions of the *"SCO Charter"* as well as the *"Shanghai Convention on Combating Terrorism, Separatism and Extremism"*.

Consequently, China can be regarded as an increasingly flexible, yet cautious applicant of international law. It should be mentioned that, being the only non-European country among the permanent members of the UNSC, China assumed her mandate with a responsibility to represent not only herself, but similarly all the other developing nations, for which the prohibition of the use of force of the UN Charter is quintessential for their very

survival as a state. In this regard, China's evolution from coexistence to cooperation could only benefit both the SCO, as an exponent of Asian regional cooperation, as well as the UNSC, as guardian of international peace and security.

Dr. Nicușor-Sever-Cosmin FLOREA

The current paper was prepared by Dr. FLOREA Nicușor-Sever-Cosmin in his personal capacity. The opinions expressed in this article are the author's own and do not reflect the official policy, position or view of the Romanian Institute for Europe-Asia Studies - IRSEA or any of its partners.

Reference Notes

1 Wolfgang FRIEDMANN, *The Changing Structure of International Law*, Stevens & Sons, London, 1964, p. xiii

2 Bruno SIMMA, *From Bilateralism to Community Interest in International Law*, Hague Academy of International Law, *Recueil des Cours*, Vol. 250, 1994, pp. 217-384. Professor Wang Tieya addressed the same issue at Tieya WANG, *International Law in China: Historical and Contemporary Perspectives*, 221 *Recueil Des Cours*, The Hague Academy of International Law, Brill Nijhoff, 1990, p. 355

3 Wim MULLER, *China's sovereignty in international Law: from historical grievance to pragmatic tool*, *China-EU Law Journal* Vol. 1 No. 3-4, 2013, pp. 35-59

4 Philip ALLOTT, *Towards the International Rule of Law: Essays in Integrated Constitutional Theory*, Cameron May, London, 2005

5 *UN Rule of Law Coordination and Resource Group*, available at <https://www.unodc.org/unodc/en/justice-and-prison-reform/interagency.html>, as retrieved on February 19, 2017

6 Simon CHESTERMAN, *An International Rule of Law?*, *American Journal of Comparative Law* Vol. 56, No. 2, 2008, pp. 331-362

7 Martti KOSKENNIEMI, *The Place of Law in Collective Security*, *Michigan Journal of International Law* (1995-1996), Vol. 17, No. 2, p. 480

8 *UN Doc A/59/141* of 2004

9 *UN Doc A/RES/59/48* of 2004

10 *UN Charter*, Art. 24, par. 1

11 See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, pp. 148-149

12 *UN Charter*, Art. 39

13 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Order of 13 September 1993, ICJ Reports 1993, p. 439

14 *UN Charter*, Art. 12, par. 1

15 *Ibid.*, Art. 25

16 Stefan TALMON, *The Security Council as World Legislature*, *American Journal of International Law*, Vol. 99, No. 1, 2005, p. 175

17 CHESTERMAN, *op. cit.*, p. 351

18 Allen BUCHANAN, Robert O. KEOHANE, *The Legitimacy of Global Governance Institutions*, *Ethics & International Affairs*, Vol. 20, No. 4, 2006, p. 434

19 *Conditions of Admission of a State to Membership in the United Nations (Art. 4 of the Charter)*, Advisory Opinion, ICJ Reports 1947-1948, p. 64

- 20 Yuen-Li LIANG, *The Settlement of Disputes in the Security Council: The Yalta Voting Formula*, British Year Book of International Law, Vol. 24, 1947, pp. 332-333
- 21 UN Charter, Art. 1, par. 1
- 22 Rosalyn HIGGINS, *The Place of International Law in the Settlement of Disputes by the Security Council*, American Journal of International Law, Vol. 64, No. 1, 1970, p. 16
- 23 David D. CARON, *The Legitimacy of the Collective Authority of the Security Council*, American Journal of International Law, Vol. 87, No. 4, 1993, p. 560
- 24 Detlev F. VAGTS, *Hegemonic International Law*, American Journal of International Law, Vol. 95, No. 4, 2001, p. 843
- 25 Ann KENT, *China's International Socialization: The Role of International Organizations*, Global Governance, Vol. 8, No. 3, 2002, pp. 349-350
- 26 Samuel S. KIM, *China, the United Nations, and World Order*, Princeton University Press, Princeton, 1979, pp. 237-238
- 27 Alastair Iain JOHNSTON, *Treating International Institutions as Social Environments*, International Studies Quarterly, Vol. 45, No. 4, 2001, p. 490
- 28 Barry O'NEILL, *Power and Satisfaction in the United Nations Security Council*, Journal of Conflict Resolution, Vol. 40, No. 2, 1996, p. 233
- 29 Sally MORPHET, *China as a Permanent Member of the Security Council: October 1971-December 1999*, Security Dialogue, Vol. 31, No. 2, 2000, p. 151
- 30 UN Doc S/PV.1660 of August 25, 1972, p. 15
- 31 UN Doc S/PV.1662 of September 10, 1972, par. 193
- 32 UN Doc S/PV.3730 of January 10, 1997
- 33 UN Doc S/PV.3982 of 1999
- 34 UNSC Resolutions with regard to Chapter VII before 2012: 678 (1990), 686 (1991), 748 (1992), 757 (1992), 770 (1992), 778 (1992), 787 (1992), 816 (1993), 820 (1993), 883 (1993), 929 (1994), 940 (1994), 942 (1994), 955 (1994), 988 (1995), 998 (1995), 1054 (1996), 1070 (1996), 1101 (1997), 1114 (1997), 1134 (1997), 1160 (1998), 1199 (1998), 1203 (1998), 1207 (1998), 1244 (1999), 1280 (1999), 1284 (1999), 1333 (2000), 1556 (2004), 1564 (2004), 1591 (2005), 1593 (2005), 1672 (2006), 1680 (2006), 1945 (2010), 1973 (2011), and 2023 (2011). UNSC Resolutions concerning matters situated beyond the scope of Chapter VII
- 35 UNSC Resolution 502 of 1982 with regard to the immediate cessation and withdrawal of all Argentine forces from the Falkland Islands (Islas Malvinas).
- 36 UNSC Resolution 1249 of 1999 with regard to Nauru and UNSC Resolution 1290/ 2000 with regard to Tuvalu
- 37 UNSC Resolution 660 of 1990 with regard to Iraq – Kuwait
- 38 UNSC Resolution 688 of 1991 with regard to Iraq
- 39 Michael C. DAVIS, *The Reluctant Intervenor: The UN Security Council, China's Worldview, and Humanitarian Intervention* in Michael C. DAVIS, Wolfgang DIETRICH, Bettina SCHOLDAN and Dieter SEPP, *International Intervention in the Post-Cold War World: Moral Responsibility and Power Politics*, M.E. Sharpe, Armon, 2004, p. 230
- 40 Ibid., p. 231-232. UN Doc S/RES/794 of 1992. The resolution was adopted unanimously.
- 41 UN Doc S/RES/929 of 1994. China's attitude was shared by Brazil, New Zealand and Nigeria.
- 42 UN Doc S/RES/776 of 1992. China's attitude was shared by India and Zimbabwe.
- 43 UN Doc S/RES/836 of 1993. Venezuela and Pakistan abstained. UN Doc S/RES/958 of 1994. Adopted with unanimity.
- 44 Ming WAN, *Human Rights in Chinese Foreign Relations: Defining and Defending National Interests*, University of Pennsylvania Press, Philadelphia, 2001, p. 21
- 45 UN Doc S/PV.3868 of 1998
- 46 UN Doc S/PV.3937 of 1998
- 47 UN Doc S/PV.3988 of 1999
- 48 UN Doc S/PV.4000 of 1999
- 49 DAVIS, *op. cit.*, pp. 251-254. UN Doc S/RES/1264 of 1999 (adopted in unanimity)
- 50 UN Doc S/RES/1272 of 1999
- 51 UN Doc S/RES/1556 of 2004
- 52 UN Doc S/PV.5015 of 2004 (China and Pakistan abstained)
- 53 UN Doc S/RES/1593 of 2005. (Algeria, Brazil, China and the United States abstained.)
- 54 DAVIS, *op. cit.*, pp. 269-270
- 55 UN Doc S/RES/1769 of 2007
- 56 Rosemary FOOT, *The Responsibility to Protect (R2P) and its Evolution: Beijing's Influence on Norm Creation in Humanitarian Areas*, St Antony's International Review, Vol. 6, No. 2, 2011, pp. 56-57
- 57 UN Doc S/RES/1973 of 2011. Brazil, China India, Russia and Germany abstained.
- 58 Jiang YU (Foreign Ministry Spokesman), *Remarks on the Death of Gaddafi's Son and Others in NATO's Air Strikes*, May 2, 2011, China's Ministry of Foreign Affairs Website, available on <http://www.mfa.gov.cn/eng/xwfw/s2510/2535/t819910.htm>, as retrieved of September 17, 2018
- 59 UN Department of Public Information, *Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan*, UNSC, 6711th meeting, February 4, 2012, UN Doc SC/ 10536
- 60 Baodong LI, *Chinese Mission to the United Nations, Explanation of Vote by China's Ambassador to UN after Vote on Security*

Council Draft Resolution on Syria, February 5, 2012, available at <http://www.fmprc.gov.cn/eng/zxxx/t901714.htm>, as retrieved on October 23, 2018

61 Sonya SCEATS, Shaun BRESLIN, *China and the International Human Rights System*, Chatham House, October 2012, pp. 46-50

62 UN Doc S/PV.6498 of 2011

63 China's Xi Proposes Security Concept for Asia, China Today, May 22, 2014, available at http://www.chinatoday.com.cn/english/news/2014-05/22/content_620347.htm as retrieved on November 7, 2018

64 See UN Doc S/RES/1631 of 2005

65 See *Document Concerning China's Stand in Strengthening Cooperation in Non-Traditional Security Fields and Document Concerning China's Stand in Regard to the New Security Concept*. The documents have been submitted to the ASEAN Regional Forum (ARF) and the 9th ARF Foreign Minister's Conference. Qian HU, *Chinese Practice in Public International Law: 2002*, Chinese Journal of International Law, Vol. 2, No. 2, 2003, p. 678

66 China's Position Paper on the New Security Concept, Foreign Ministry of People's Republic of China, available at <http://www.fmprc.gov.cn/ce/ceun/eng/xw/t27742.htm>, as retrieved on November 8, 2018

67 Adopted June 15, 2001, entered into force 29 March 2003. The state parties are China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The unofficial translation of the Convention available at http://eurasiangroup.org/files/documents/conventions_eng/The_20Shanghai_20Convention.pdf, as retrieved on November 8, 2018

68 *Id.*

69 Ben SAUL, *Defining Terrorism in International Law*, Oxford University Press, Oxford, 2006, p. 160

70 *Ibid.*, p. 161-162

71 Human Rights in China, *Counter-Terrorism and Human Rights: the Impact of the Shanghai Cooperation Organization*, 2011, available at http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf, as retrieved on November 7, 2018

72 HU, *op. cit.*, 2003, p. 677. The translations occasionally vary from "three evils" to "three forces".

73 Stubbins BATES, *Terrorism and International Law: Accountability, Remedies, and Reform. A Report of the IBA Task Force on Terrorism*, Oxford University Press, Oxford, 2011, pp. 1-2

74 Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal, March 1, 1991, available at http://www.icao.int/secretariat/legal/List%20of%20Parties/MEX_EN.pdf, as retrieved on September 18, 2018

75 Convention on Offences and Certain Other Acts Committed On Board Aircraft, Tokyo, September 14, 1963, available at <https://treaties.un.org/doc/db/terrorism/conv1-english.pdf>, as retrieved on September 18, 2018

76 Convention for the Suppression of Unlawful Seizure of Aircraft, Hague, December 16, 1970, available at <https://treaties.un.org/doc/db/terrorism/conv2-english.pdf>, as retrieved on September 18, 2018

77 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, September 23, 1971, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-English.pdf>, as retrieved on September 17, 2018

78 Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, February 24, 1988, available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv7.pdf>, as retrieved on September 18, 2018

79 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, December 14, 1973, available at http://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf, as retrieved on November 7, 2018

80 International Convention Against the Taking of Hostages, New York, December 17, 1979, available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv5.pdf>, as retrieved on October 19, 2018

81 Convention on the Physical Protection of Nuclear Material, Vienna, March 3, 1980 (amended in 2016), available at <https://www.iaea.org/sites/default/files/infocirc274r1m1.pdf>, as retrieved on October 19, 2018

82 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, March 10, 1988, available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv8.pdf>, as retrieved on October 20, 2018

83 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, March 10, 1988, available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv9.pdf>, as retrieved on October 19, 2018

84 International Convention for the Suppression of Terrorist Bombings, New York, December 15, 1997, UN link malfunctioning, available at <https://cil.nus.edu.sg/rp/il/pdf/1997%20Intl%20Convention%20for%20the%20Suppression%20of%20Terrorist%20Bombings-pdf.pdf>, as retrieved on October 19, 2018

85 International Convention for the Suppression of the Financing of Terrorism, New York, December 9, 1999, available at <http://www.un.org/Law/cod/finterr.htm>, as retrieved on October 19, 2018

86 International Convention for the Suppression of Acts of Nuclear Terrorism, New York, April 13, 2005, available at <https://treaties.un.org/doc/db/terrorism/english-18-15.pdf>, as retrieved on October 20, 2018

87 UN Commission on Human Rights, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin SCHEININ, UN Doc E/ CN.4/2006/98, December 28, 2005, par. 28, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>, as retrieved on September 7, 2018

88 UN Doc S/RES/1970 of 2011 (unanimous); UN Doc S/RES/1973 of 2011 (China, Russia, Germany, Brazil and India

abstained); *UN Doc S/RES/2009 of 2011* (unanimous); *UN Doc S/RES/2016 of 2011* (unanimous); *UN Doc S/RES/2017 of 2011* (unanimous); *UN Doc S/RES/2022 of 2011* (unanimous); *UN Doc S/RES/2040 of 2012* (unanimous).

89 Alex J. BELLAMY, *Libya and the Responsibility to Protect: The Exception and the Norm*, *Ethics & International Affairs*, Vol. 25, No. 3, 2011, p. 263

90 Aidan HEHIR, *The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect*, *International Security*, Vol. 38, No. 1, 2013, p. 137

91 Jennifer WELSH, *Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP*, *Ethics International Affairs*, Vol. 25, No. 3, 2011, p. 255