

**THE ROLE OF CHINA IN CONTEMPORARY INTERNATIONAL LAW
РОЛЬ КИТАЮ В СУЧАСНОМУ МІЖНАРОДНОМУ ПРАВІ**

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***Abstract.** In this article, China's practices in international trade, human rights, territorial disputes, and information technologies, are analyzed. The author emphasizes that China is ready to challenge international law when it conflicts with its interests. The article also highlights that China does not recognize the obligation to implement decisions of international courts and its national institutions refrain from engaging in human rights protection. The following methods were employed in the course of this research: systemic, comparative legal, historical and legal, structural and functional, and generalization. The author researches China's interest in the stability of rules of international law and its ability to interpret them freely, including in relation to the Russian-Ukrainian war. It was found that China is interested in applying existing international law rather than creating specific new norms, which aligns with its stance on sovereignty and non-interference. Special attention is paid to China's strategic approach to international law, balancing between adherence and reinterpretation to align with national interests.*

***Key words:** international law China, human rights China, russian war China.*

***Анотація.** У цій статті аналізується міжнародно-правова практика Китаю в сферах міжнародної торгівлі, прав людини, територіальних суперечок та інформаційних технологій. Автор наголошує, що Китай готовий кинути виклик міжнародному праву, коли воно суперечить його інтересам. У статті також наголошується, що Китай не визнає зобов'язання виконувати рішення міжнародних судів, а його національні органи утримуються від захисту прав людини. У ході дослідження використовувалися такі методи: системний, порівняльно-правовий, історико-правовий, структурно-функціональний та узагальнення. Автор досліджує зацікавленість Китаю у сталості норм міжнародного права, як і у своїй можливості вільного їх тлумачення, у тому числі і стосовно російсько-української війни. Було виявлено, що Китай зацікавлений у застосуванні чинних норм міжнародного права, а не в*

створенні конкретних нових норм, що узгоджується з його позицією щодо суверенітету та принципу невторчання. Особливу увагу приділено стратегічному підходу Китаю до міжнародного права, що балансує між дотриманням і власним тлумаченням норм для узгодження з національними інтересами.

Ключові слова: міжнародне право Китай, права людини Китай, російська війна Китай

Introduction. The beginning of the 21st century for China is interesting in terms of hopes placed on such a big and powerful country: "China will play a more active role, namely upholding the sound rules and order under the current system, reform the unsound ones, and advocate and participate in the formulation of new rules and orders" (Jisi, 2008). As it was a period when the international financial crisis China strengthened the importance of China for the world economy and raised the question whether China will replace the United States as a world leader. Even the Uyghur genocide wouldn't change the preceding experts' evaluations that the country "gradually adapts to the existing international political and economic order" (Jisi, 2008).

As a global leader in the high-technologies, China radically transformed world trade, making many countries, including the developed ones, economically dependent on it. Not so long ago the EU leaders anxiously called for the need to restore local production, as supply chains from China were suspended during the pandemic. China is currently the largest creditor to African countries, with 60% of loans secured by collateral that, in some cases, has already been foreclosed (Subacci, 2021).

However, hopes for China are presently undermined by the following questions (Williams, 2020):

- will China be able to solve the problems of economic growth, which have already led to high levels of unemployment and uncertainty in the real estate market and promise to worsen in light of deteriorating relations with the United States;
- what role will China play in international development as its "Belt and Road initiative", with a target completion date of 2049, appears to have come to an end?;
- will China comply the principles of international law, or will it solely considering its own interests, with, for example, using proxy powers such as Russia and Iran?

These questions can be answered with the doctrinally within the concept of China being able to challenge international law "when it infringes upon its interests" (Allison, 2016). The relevant question is that a researcher or politician in Ukraine correctly understands and interprets China's interests in relation to our country. Otherwise we would live in an unknown world for a long time: "We do not understand why China would help Russia" (Danilov, 2023), while Chinese satellites would supply Russia with more ammunition than our allies supply to us.

Therein lies **the purpose of this research** - answering the third of the aforementioned questions. To say the least, the answer to this question is one of the key factors for understanding the future form of world order, which exists according to the principles of international law, formed after the Second World War – the principles which continuously been ignored by Russia, the largest country in the world.

The role of China in the regulation of international trade. China is currently an active member in major international organizations: it is a permanent member of the UN Security Council, WTO, IMF, etc. China is a signatory to hundreds and thousands of multilateral and bilateral treaties on issues ranging from arms control to environmental protection. The Chinese authorities are making significant efforts to create an image of a country that follows the principles of international law.

The most prominent example in this aspect is international trade. China has been a member of the WTO since 2001, and since that time the government has made a wide range of commitments to liberalize the economy and bring it into line with the market economy and act as a "leading advocate of globalization and open trade." (Xi Jinping, 2017). However, most of the planned reforms are currently unfulfilled, and such leading members of the WTO as the USA, the EU and Japan believe that the Chinese practice of subsidizing some of its industries generally "distort trade" (Brunsden, 2020). At the same time, China is effectively using the Dispute Settlement Body (DSB) "to channel trade tensions" (Zeng, 2013), by simulating reforms and thereby circumventing WTO rules, or by delaying

hearings to such an extent that DSB decisions, which do not have a retroactive effect, will no longer be able to correct the "distortions caused by Chinese trade practices". (Wu, 2014). This mostly applies to such aspects of the WTO as access to the Chinese market by foreign companies, protection of intellectual property, industrial subsidies, regulatory transparency, enforcement of competition legislation and other non-tariff barriers.

Being interested in strengthening the role of the WTO in international trade, China supports to reform the organization whilst preserving the "core values of the multilateral trading system such as non-discrimination and openness, safeguards for the development interests of developing Members (China also recognizes itself as having this status), and decision-making by consensus". For China, it is important to have an effective dispute settlement mechanism as it is "critical for existing WTO agreements to remain meaningful, and for the negotiation of new agreements," considering confronting the United States. (Hoekman, 2022).

Therefore, China aims to preserve the existing order in international trade while protecting its rights and exploring possibilities of reforming them to support its own economic development. However, the success in this field largely depends on China's cooperation with the USA and the EU, which in turn has numerous problems.

Territorial disputes. China has ratified the UN Convention on the Law of the Sea (UNCLOS), which means, among other things, compliance with the existing mechanisms of dispute resolution. And China has enough disputes to start a "little victorious war" (Plevet, 1904), and more than one: with neighboring countries on sovereignty over various parts of the East China and South China Seas, as well as related disputes on rights and jurisdiction over surrounding waters, claims of sovereignty over Taiwan, etc. China's approach to resolving these disputes is found by some scholars to be a strategy of "using and abusing international law to achieve strategic goals." (Cronin, 2020), as examples serve territorial disputes with Vietnam and the Philippines, in which Chinese lawyers exploited loopholes in maritime law and challenged the jurisdiction of the courts.

China has offered its own interpretation of the law of the sea, suggesting giving coastal countries not only control over the "exclusive economic zone" (EEZ, up to 200 nautical miles of ocean resources and seabed), but also the right to regulate the activities of foreign warships in the waters surrounding the objects around islands. This would allow China to exclude foreign navies from the post-Soviet, which in turn contradicts the position of the US and the vast majority of other countries. (O'Rourke, 2013). At the same time, China insists that its fleet (which is being intensively developed) has the right to move freely in the EEZs of other countries that have not prohibited such military movements in their zones.

In general, China recognizes the decisive function of law in regulating international disputes and seeks to justify its actions with legal arguments, but it also promotes its own legal interpretations that differ from those of its neighbors, aiming, among other things, to militarize the region.

Human rights. China has acceded to a number of human rights conventions, including:

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Prevention and Punishment of the Crime of Genocide.

However, China does not recognize the obligation to implement the decisions of international courts on human rights violations, and any international supervision of the observance of human rights is limited to "periodic reviews" of treaty bodies. (Reinsberg, 2020). National institutions also do not engage in human rights protection, especially in areas that are politically sensitive for the Chinese state (Reinsberg, 2020): population control, illegal detention, forced labor, including child labor, violations of freedom of religion, media and Internet censorship.

The most egregious example of human rights violations in China are the crimes against Uyghurs and other Turkic Muslims, and for their mass and regularity they may fall under the definition of "genocide" (UN Human Rights Office report on Xinjiang, 2022):

- False imprisonment: creating internment camps where prisoners are tortured and abused;
- Forced labor: ethnic minorities are subjected to forced labor in labor camps under the guise of "fighting poverty";

- Sexual violence and sterilization: using coercive measures to drastically reduce the birth rate of Uyghurs.

The Chinese authorities strictly denied accusations of genocide of national minorities and reacted rather irritatedly to the report of the United Nations High Commissioner for Human Rights on human rights violations in the Chinese region of Xinjiang.

Other violations of human rights in China include:

- repression in Tibet (which, along with Taiwan, is a problem area for China)) and in other areas of China;

- restriction of free expression of freedom of thought, conscience and religion;
- persecution of dissidents and human rights defenders;
- violation of labor rights, etc.

In response to accusations from the international community about human rights violations, Beijing in public statements emphasizes special circumstances that are the basis for certain departures from international law, namely “the sovereign independence of each country; the differing economic circumstances, values, traditions, and priorities of different countries; and the relativity of various human rights, as though the PRC had not adhered to any binding multilateral arrangements calling for compliance with prescribed universal standards”. (Cohen, 2019) There are speculations that China is even "exporting" its human rights abusing practices to countries which receive Chinese investment, or through the Belt and Road infrastructure project. (Faiz, 2019).

As an example, although not entirely relevant, of such an "export" may serve the adoption in 2020 of the law on the protection of national security in the Hong Kong Special Administrative Region. Under this law, the Chinese authorities were given broad powers to fight political crimes, and of course they used them to pursue protesters and dissidents, including writers and actors. According to the Sino-British Treaty of 1997, Hong Kong was supposed to stay under the concept of "one country, two systems" and maintain its own system of administration, judiciary, economy (except for international relations and defense) for 50 years after the handover. China justified its actions with considerations of national security, thus justifying the non-compliance with international law; " Beijing's actions, however awful, can be self-servingly construed as lawful." (Williams, 2020)

Thus, despite the fact that China has adopted the norms of international human rights law into its national legislation, "these new domestic rules frequently prove difficult to enforce and are sometimes even illusory in practice". (Cohen, 2019)

Information Technology. While cyberspace is not sufficiently regulated by international law, China actively participates in discussions regarding the development of new norms or the use of existing ones:

- Group of Governmental Experts on Advancing Responsible State Behavior in Cyberspace in the Context of International Security (Cyber GGE);

- Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security (OEWG);

- Group of Governmental Experts on Lethal Autonomous Weapons Systems (LAWS GGE).

In general, China's position on the regulation of cyberspace can be described as follows: China proposes to conduct research on how the current norms of international law can be applied in information technology, but without creating specific norms in specific areas. Also, China has repeatedly stated the need to respect sovereignty and the policy of non-interference, which means the disinterest in existence of uniform norms in this field. (Group of Governmental Experts Report, 2013). This position correlates with China's reluctance to approve basic norms for the protection of intellectual property, and the control of state authorities over hacker groups in the country.

As for participation in the UN Group of Governmental Experts on Lethal Autonomous Weapons Systems, it means... drones, which are actively used by both sides in the Russian-Ukrainian war. And will be used in others...

Conclusions. China is interested in the stability of the norms of international law, as this contributes to the country's global expansion, the ultimate goal of which may be strategic dominance in

the world. Likewise, China is interested in its ability to freely interpret the norms of international law, as it helps to achieve tactical goals.

For Ukraine, this means that China will declare neutrality and commitment to peace, while at the same time trying to weaken the position of the US as a world leader, without entering into direct conflict with them. Therefore, covert military aid to Russia will continue, primarily with dual-use products and consumables (ammunition, medicine, food, spare parts).

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