

Top silk

Far from threatening international law or shirking its responsibility, China's compliance at least outstrips that of the United States and Australia. **Ann Kent**



It's been said that emerging powers such as the People's Republic of China have a tendency to bypass international law and order. Former United States deputy secretary of state Robert Zoellick, for instance, publicly declared that China should use its new status more responsibly, implying it was not yet doing so.

This is a fallacy. Not only has China become more compliant with international law as a result of its increasing participation in multilateral affairs, but it has already assumed a leadership role in defending many principles of international law at a time when they are under severe challenge. All the more extraordinary when you consider that in the mid-1960s China had become so disillusioned with the United Nations that it was suggesting the need for it to be replaced, and questioning the ambit of international law.

Two events in the 1970s would lead to an about-turn in policy: the beginning of China's opening up and economic modernisation, and its superseding of the Republic of China (Taiwan) as the official representative of China in the UN General Assembly. From then on, China began to acknowledge the universal applicability of generally recognised international law, emphasising the principles of international law (in particular, state sovereignty), sovereign equality, non-interference, peaceful dispute resolution, racial equality and non-discrimination, and supporting the principle of *pacta sunt servanda* (treaties are to be obeyed).

By the beginning of the 21st century, China had moved into a yet

more flexible, confident and mature phase of multilateral involvement in which it sought to boost its role as a key international player. By this time it had become a party to 273 multilateral international treaties, of which 239 had become applicable to China only after 1979.

It finally began to conceive international law not merely as an instrument of power but as a set of universal rules providing the foundation of international order for the global community.

This qualitative change in China's attitude occurred partly because of the tendency of the Bush administration, as professor of international law and practice Richard Falk has put it, to view international law as mandatory for other states but optional for itself.

China, already alarmed by US circumvention of the UN to conduct Kosovo military operations through NATO in 1999, was concerned by the readiness of the US to discard or bypass international treaties, and by the coalition of the willing's attack on Iraq without Security Council authority. The profound tension between the US and other states has since enlivened the efforts of the latter, particularly China, to maintain the power, authority and universality of international law.

Impelled by the forces of globalisation, international law has also consciously been used by Chinese elites to modify elements of domestic culture. For instance, membership of the World Trade Organisation, the World Bank and the International Monetary Fund has affected economic governance within China and brought changes



Chinese peacekeepers prepare to depart for their United Nations mission to Sudan. AP

to its institutions and laws in areas its leaders wish to modernise.

Thus, before and after accession to the WTO, China amended, changed or repealed nearly 3000 domestic laws and regulations. The Administrative Procedure Law of 1989, the State Compensation Law of 1995 and the Administrative Licensing Law of 2004 have also harnessed international norms to the long-term project of assisting governance within China.

AN UNLIKELY ADVOCATE

Through its position as a member of the Permanent Five in the UN Security Council, as well as through its membership of 46 intergovernmental organisations, China exercises its leadership and influence on major global issues. While it continues to emphasise sovereignty-related principles, particularly because of its claims to Taiwan and Tibet, it has defended the role of international law and multilateral institutions.

In the international security regime, China has assumed an important role in the negotiation of international instruments, such as the Comprehensive Test Ban Treaty and the Chemical Weapons Convention. It has also taken a leading role in the Non-Proliferation Treaty Review and Extension Conferences.

China's specific contributions to debate have included its insistence on the need for the US and the Soviet Union/Russia to make progress

in disarmament and nuclear non-proliferation before other nuclear-weapon states, or NWS, are obliged to follow suit.

Its "no first use" policy and position on the "complete prohibition and destruction of nuclear weapons" have been other specifically Chinese inputs. Its strong declaratory support for the norms and rules of the regime has also arguably strengthened it.

In particular, China's open opposition to the abrogation of the ABM Treaty in 2002 expressed worldwide concerns. It has also taken exception to the US policy of pre-emptive strikes, opposing any view that Article 51 of the UN Charter relating to the right of self-defence should be expanded or reinterpreted. Less positively, it has not supported the principle of humanitarian intervention, although it has supported, and participated in, UN peacekeeping.

Alarmed by the weakening of US support for disarmament, China has even recently begun an internal policy debate on its own "no first use" policy. Its policy of "asymmetrical transparency" – that is, its belief that because it is a weaker nuclear state it has less of an obligation to be transparent than more powerful nuclear states – has also had a negative influence on the Non-Aligned Movement states.

Finally, its position that "sanctions should be applied with prudence on the precondition that all peaceful means have been exhausted" means that it is reluctant in practice to accept any initiative either by the Security Council or the International Atomic Energy Agency (IAEA) that could lead to the use of force, a position it has reiterated

in Security Council debates on both Iran and North Korea. While this cautious approach opens China to the charge of undermining the UN's ultimate authority to enforce its rules, many would argue that it is one that best respects and protects the principles and purposes of the UN Charter.

China's current policy of employing both carrots and sticks with respect to Iran's uranium enrichment, and in particular its support for the recent UN resolution on Iran with its targeted but non-coercive sanctions, represents a subtle advance in its position, but one nevertheless aimed at reinforcing the role of the IAEA and avoiding the ultimate Chapter VII, Article 42 "stick".

In the international political economy regime, assessments in 1999 that the integration of China into the world trade, investment and financial arenas had occurred without significant disruption to the regime, still appear largely correct. Because these organisations were established well before it became a participant, the PRC has had less of an impact on their rules, and more on their policies and administration. Thus, following China's accession in 2001 to the WTO, the emergence for the first time of the "G-20 Plus" as a powerful negotiating bloc at Cancun was largely due to the leadership of Brazil, India and China, with Brazil taking the initiative. In the World Bank, China has played an important role in influencing the introduction of many positive initiatives, such as country ownership of projects.

In the international environmental regime, by contrast, China unambiguously supported the position of developing states, advocating a policy of "common but differentiated responsibilities".

For instance, in relation to the atmospheric environment, from the time of negotiations on the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol, it insisted that developed states assume initial responsibility for protecting the atmospheric environment and assist developing states attain a capacity to follow suit in due course. China was also influential in arguing for the Multilateral Fund established in the London Amendment to the Montreal Protocol.

On the other hand, China has lately redefined its own interests to accord more closely with the norms and goals of the atmospheric environment. Together with the G-77 and the EU, it sought to steer negotiations in the direction of bringing the Kyoto Protocol into force before the World Summit on Sustainable Development in 2002. Its ratification of Kyoto in August that year may have even influenced Canada's and Russia's ultimate decision to follow suit. At the same time, the ongoing tension between China's need to rapidly industrialise and its gradual recognition of the effects of environmental degradation will continue to shape its ambivalent attitude to atmospheric environmental protection.

CHIPPED CHINA

In the international human rights regime, China's record has been almost consistently negative. Although it has ratified most of the principal international human rights treaties, apart from the International Covenant on Civil and Political Rights, it contested the need to establish the International Labour Organisation charter of fundamental industrial rights, in particular resisting acceptance of the right to freedom of association.

It also sought to block any strengthening of UN Committee Against Torture powers and, together with Australia, voted against its Optional Protocol. China has for the most part spurned monitoring

visits by international human rights bodies, significant exceptions including the visit in late 2005 of the UN Special Rapporteur on Torture, Manfred Nowak.

Its behaviour in the UN Human Rights Commission following the suppression in 1989 of the democracy movement arguably helped undermine the legitimacy and credibility of that body. China even initially opposed the recent establishment of a new UN Human Rights Council in its place.

Nevertheless, unlike other states such as Venezuela, its power, status and regional influence ensured it a place in the new Council once it was constituted. Despite this new responsibility, on 12 January 2007, citing the principle of non-interference, it voted with Russia and South Africa against a US-sponsored resolution in the Security Council criticising Burma's human rights record.

Like the US, China has refused to submit to the International Court of Justice. It voted against the adoption of the Rome Statute and is not a member of the International Criminal Court. However, it has recently expressed support for the ICC and hinted it may change its position on that body.

The outlook for China's continuing role as a champion of international law is therefore a mixed one. Particularly in the last decade, its support for the authority of the UN and international law has helped defend both against new and powerful detractors.

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Its new role, particularly in the international security and international political economy regimes, is in marked contrast with its previously sceptical and highly instrumental approach. In other areas of international law, however, such as human rights and environmental standards, its record is more complex and variable.

In the meantime, two principal obstacles to China's ongoing role as defender of international law remain. The first is the general fragility of international law in the face of recent challenges from a number of quarters, including Australia. Second is the difficulty China has experienced since 1978 in strengthening the rule of law within its own society. As Nagendra Singh, the late president of the ICJ, observed: "The supremacy of law and the sanctity of treaties constitute the two basic principles which remain a *sine qua non* for the growth of law among states."

While China respects the principle of *pacta sunt servanda*, *lex* is not yet *rex* within its own society. This means, for all China's advances, it is always possible that a particular set of circumstances, such as an economic downturn, domestic instability, or foreign policy and security problems, could lead it to revert to past cultural attitudes, such as an extreme xenophobia stimulating nationalistic responses and privileging the principles of sovereignty and non-intervention.

China's growing sense of encirclement, as the US strengthens its strategic relations with Japan and India and develops a theatre missile defence system and a proliferation security initiative while enlarging its own nuclear options, is one of the possible tipping points.

For the time being, however, the international community should both recognise and celebrate China's emergence as a stabilising force and an important, if unlikely, defender of a world order that only four decades ago it had pledged to overthrow. ■

Ann Kent is a Visiting Fellow in the Centre for International and Public Law, ANU College of Law, and author of *Beyond Compliance: China, International Organisations and Global Security*.

