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Contemporary International Law and China's Peaceful Development

Lingliang Zeng

Singapore: Springer Nature (2021). 623 pp. ISBN 978-981-15-8655-2 (Hardcover) 978-981-15-8657-6 (eBook). €106.99

To the few rich powerful nations, the idea(l) that international law fosters development is a truism, but for the rest of the world, it might only be a promising vision or worse, an empty promise. Some critical studies argue that international (economic) law has historically further enriched the wealthy States and/or created the underdevelopment of a greater majority, especially former colonies in the Global South. Presently, by legal fiction, the principle of sovereign equality—all States are equal in their authority as makers of international law—has arguably enabled countries, the small island of Nauru and expansive Canada alike, to create the rules that govern their economic relations. Still, very few international lawyers would disagree that economic and political strength does continue to matter in States' participation in the international lawmaking process, particularly when development prospects are at stake. *Contemporary International Law and China's Peaceful Development*—the first book in the publisher's "Modern China and International Economic Law" series—grapples with these paradoxes and attempts to address them, through a curated collection of papers by the late Professor Lingliang Zeng on various international law topics that concern China. Two recurring questions that this monograph raises and attempts to answer involve (i) China's relationship with international law and (ii) how that relationship has been evolving due to its remarkably increased economic and political power.

The volume consists of 34 chapters divided into 6 parts. The first part introduces the core concepts of "contemporary international law" and "harmonious world," which are linked to China's peaceful development. It includes the key chapter (*Harmonious World and Development of International Law*) that expounds the role of contemporary international law in constructing a "harmonious world," which signifies Beijing's "new approaches to diplomacy" and is one of the two foundations of its peaceful development strategy (p. 49). According to Zeng, China's vision of a harmonious world requires international law to not only address peace, security, and human rights issues but to also recognize and respect the sovereignty of States in all their diversities. One can thus interpret harmonious world as the normative standard set by China for the reform of international law. The relationship is not as straightforward, however, since Zeng likewise posits that, in both domestic and international spheres, it is law that creates "opportunities to discuss social harmony" (p. 60). Moreover, the "speed and sustainability" of constructing a harmonious world depend on "[t]he values, structures, implementation, and supervision of contemporary international law" (p. 49). In a quite circuitous fashion, this chapter concludes that the envisioned harmonious world is "consistent with the principles of contemporary international law" (p. 63)—a statement that

seems to reverse the roles of international law and harmonious world, with the former now serving as the normative standard for the latter. Chapter 14 (*Contemporary Construction of Chinese International Law Discourse*) generously details the fundamental dimensions of this discourse, the practical reforms it triggered in the Chinese domestic legal system, and its importance to Beijing's international image and status. It partly clarifies the confusion surrounding the international law-harmonious world relationship by explaining that contemporary international law is "both the foundation and guarantee of the harmonious world," but to effectively serve those functions, it "should take security, development, human rights, democracy, rule of law, good governance and diversity of civilization as its core values and missions to be pursued, maintained and promoted" (pp. 254–255).

Remarkably absent in this discourse, and the book's treatment thereof, is a definition of "development." Zeng neither advanced a particular conception nor specifically clarified Beijing's construction of the concept. One can glean, however, that multiple references to "peaceful development"—for example, "foreign investment is one of the important measures ... of China's peaceful development strategy" (p. 243)—primarily means the economic growth of China, as a State. In some usages within the book, it also seems to include the preservation of culture and its diversity. This understanding only partially aligns with international instruments, which focus on people's holistic well-being and participation, such as the UN Declaration on the Right to Development (which might soon become a treaty), describing the development as "a comprehensive economic, social, cultural and political process" whose aim is to constantly improve "the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits" that result from such process. Zeng nonetheless appears to subscribe to the concept of sustainable development, which has economic, social, and environmental dimensions that are embodied in the UN 2030 Agenda and the Sustainable Development Goals, when he prescribes that China "must [now] pay a greater attention to environmental issues than in the past [when it was promoting] its economic growth," should enhance human rights protection, and "put its stress on harmonization of its economic growth and social development" (p. 243).

The second part seems disjointed from the other parts and, indeed, from the book's theme, as it comprises commentaries on too broad a range of topics, such as the establishment of the International Criminal Court, nuclear testing, secession, and reforms in implementing the core human rights treaties. On balance, I surmise that this part is intended to define, through examples, what Zeng deemed the scope of contemporary international law. The difficulty, however, is that a mere compilation of articles on a wide array of subject-matter tends to divert the readers' attention toward the specific substantive points of those various debates and away from appreciating how the book's theme binds them together. This difficulty could have been addressed by adding another chapter that synthesizes and expressly justifies why these topics are deemed "frontier issues of contemporary international law." Understandably, since it appears that Zeng did not write such a piece, such additional chapter would have deviated from the general format of the book. To some extent, the Foreword by Shouping Li and Weidong Chen served this purpose: It provided the necessary contextualization and synthesis by tracing Zeng's academic and professional trajectory, which includes key segments—postgraduate studies and visiting professorships—taking place in Western (American and European) institutions. Such background equipped Professor Zeng with "extensive knowledge in Chinese and Western learning" (p. xviii) and put him in a position to advocate for the

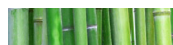


construction of international law from a Chinese perspective by pushing Beijing to “not only strengthen rule of law in the country but also embody its ideas in the progress of international rule of law and innovation of concepts and principles of international law” (p. xxi).

Part III contains most of the important chapters specifically tackling different aspects of China's evolving engagement with international law. Chapter 13 carefully (but still rather vaguely) explains how the “harmonious world” serves as the external *social* basis for China's peaceful development, while international law is the external *legal* basis for such development. This explanation is crucial to the conclusion that China's peaceful development relies on international law providing “consultative platforms, conductive norms ... and dispute settlement methods for international cooperation” (p. 241). Such seemingly uncontroversial statement, however, also bears the critique—familiar to those working with Third World Approaches to International Law (TWAAIL), although Zeng himself did not appear to identify as a “TWAILER”—that international law has been falling short of the expectation for it to establish and maintain a fair and just international order, given how it continues to sanction “unilateralism in international political and economic orders” (p. 239) and ignore the Global South's development rights. This flaw notwithstanding, I share Zeng's guarded optimism about international law's essential role in facilitating cooperation, which is necessary for development. I find it less convincing, though, that “China's peaceful rising will make great contributions to the progressive development of international law” (p. 251), given how its recent behavior—for example, noncompliance with the United Nations Convention on the Law of the Sea (UNCLOS) obligations; resistance to third-party or multilateral dispute settlement mechanisms; display of force toward certain Association of Southeast Asian Nations members—shows China itself acting as a hegemon or benefiting from the existing hegemonic order that it purports to criticize. Moreover, despite the burgeoning narrative of its transformation from a rule-taker to a rule-maker, it is questionable whether the “alternative” international (economic) legal rules that China is presenting to challenge “Western” international law would be fairer and beneficial to the Global South, particularly in Asia, where it is steadily manifesting its self-serving regional ambitions.

The last three parts (*China and World Trade Organization [WTO] Rule of Law; China and Tendency of Regional Trade Agreements; Legal Issues in China-EU Relations*) showcase the breadth of Zeng's teaching and research. Many of these chapters cover issues of contemporary relevance. Hence, commentators—both those sympathetic to China and those taking a censorious approach—on matters, such as the continued relevance and needed reforms of the multilateral trading system and the UN human rights treaty bodies, would find it beneficial to study and engage with Zeng's insights, some of which are singular in that they critique, albeit without being critical, Beijing's position and/or actions on some highly-charged topics of international (economic) law. For the remainder of this review, I will pursue such engagement and briefly examine his opinions about the WTO and the Belt and Road Initiative (BRI).

In Chapter 20 (*Dilemma and Outlet of Doha Development Agenda After Cancún Ministerial Conference*), Zeng rightly ascribes the failure of the Doha negotiating round to the inadequate action toward fulfilling the mandate to concretize and implement the special and differential treatment (SDT) principle. The problem, as properly identified in the 2001 Ministerial Declaration, is that many SDT provisions in WTO treaties need to be made “more precise, effective and operational.” A crucial issue in the ongoing review process is the very definition of a “developing country.” Under international trade law, this classification is self-judging,




thereby allowing economically (emerging?) powerful States like China to continue claiming such status. Obstacles to SDT reform negotiations, especially regarding agriculture and fisheries subsidies, include China's arguably principled refusal to forego its developing-country classification, which the United States, the European Union (EU), and other WTO members strongly object to. This deadlock will likely be resolved through a political process rather than a legal dispute. It bears asking whether Beijing's obstinate position—about self-designation and not making further differentiation among developing countries—is consistent with its advocated harmonious world. If the latter's premise is the recognition of States' diversity to achieve cooperation, a position more consistent with such view, and with equity considerations, would be one that permits distinctions based on States' varying development, financial, and trade needs and on their different capacities to comply with international legal obligations. This chapter would have been more balanced had Zeng also tackled these issues.

While Chapter 17 is now slightly outdated, having been written when the BRI has only just broken ground, Zeng's treatment is worth reflecting on, as it contributes to current debates an assessment of the Initiative using China's conception of "Community of Common Destiny." As Zeng claims, the concept "takes the view of global governance" (p. 324) and "embodies the interdependence of international power, common interests, [and] sustainable development" (p. 322). The latter point was neither adequately nor persuasively established. Nevertheless, he managed to identify the changes in management of world affairs implied by global governance and implemented by the BRI, as "the hallmark of this vision of community of common destiny," namely: (i) restructuring international power distribution to enable a greater number of States (through the G20 or the G77) and non-State actors to participate in decision making and (ii) reforming international mechanisms, so that not only States but also international and regional organizations are involved in implementing and monitoring international norms. On paper, the initiative undoubtedly supports these reforms. It remains to be seen, however, whether the power redistribution it supposedly promotes would foster genuine broader participation or simply replace the identities of the elite power wielders. This question becomes even more pressing given the EU's recent counterproposal, the Global Gateway, which could also advance the G7's Build Back Better World. These plans and undertakings present an additional, fairly new aspect of the East-West competition, that is, concerning transnational infrastructure projects that implicate crucial issues concerning multilateralism and sustainable development. Notably, Zeng distinguishes the BRI from (i) traditional regional economic integration, since the Initiative's cooperation priorities extend beyond the economic sphere and (ii) a (strategic) partnership, because although the BRI aspires to establish common values, common interests, and mutual understanding—in the way partnerships do—it also has more ambitious and far-reaching goals, which Beijing has been incrementally expounding in documents like the "2021 White Paper on China's International Development Cooperation in the New Era." One wonders whether and how Zeng would have modified his preliminary assessment, considering the alleged environmental and social harms recently caused by some BRI projects.

Space considerations preclude further discussion of other interesting chapters. Suffice to say in conclusion that this book is a rich yet accessible work that could easily meet its goal to "enhance the influence of discourse with Chinese characteristics in international law forums" (p. vii) given Professor Zeng's painstaking and admirable effort to speak to scholars from various geographies and with different standpoints. What would draw readers in is the book's sincere attempt to define and clarify, but not unquestioningly defend, China's perspective on



global affairs. More works such as this is certainly needed to enable dialogue—among academics and policymakers alike—and ensure that contemporary international law corrects the injustices of the past and fulfills its promise of development for all.

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