

Table of Contents

Topic 1: China's Historical Engagement with International Law

1.1 Ancient China and the Question of International Law

- The Spring and Autumn & Warring States Periods
- William A.P. Martin's analysis
- Arguments against the existence of international law in ancient China

1.2 The Traditional Chinese World Order

- Sino-centric worldview
- The Tributary System
- The Macartney Embassy (1793)

1.3 Early Encounters with Western International Law

- Treaty of Nerchinsk (1689)
- Lin Zexu and Vattel (1839)

1.4 The Advent of Modern International Law

- W.A.P. Martin's translation of Wheaton (1864)
- The Prussian-Danish War Incident
- Unequal Treaties and extraterritoriality

1.5 The Struggle for Sovereignty

- Abolition of unequal treaties (1943)

Topic 2: Nature and Sources of International Law

2.1 Fundamental Principles of International Law

- UN Charter principles
- Friendly Relations Declaration
- *Jus cogens*

2.2 The Five Principles of Peaceful Coexistence

- Content and origin
- Conspicuous omissions

- Constitutional status

2.3 The 2016 Sino-Russian Declaration

- Key principles affirmed

2.4 The Doctrine of Sovereignty

- Historical foundations
- Sovereignty vs. self-determination
- Kosovo and Palestine statements
- Djibouti military base
- Ukraine crisis position

2.5 Sources of International Law

- Treaty priority
- Conservative approach to custom
- "Fundamental norms governing international relations"
- Foreign Relations Law 2023

Topic 3: Treaty in Domestic Law

3.1 Treaty-Making Procedure

- Constitutional framework (Arts. 67, 81)
- Treaty-Making Procedure Law (1990)
- Categories requiring ratification
- 2022 Measures on Treaty Conclusion

3.2 WTO Accession as a Case Study

3.3 Domestic Invalidation and VCLT Article 46

3.4 Effect of Treaties in Domestic Law

- Foreign Relations Law 2023 (Arts. 30-31)
- Civil and commercial treaties: direct application
- WTO law: deliberate exclusion of direct effect
- Consistent interpretation rule

3.5 Sectoral Approaches

- Maritime Law, Civil Procedure Code
- SPC Interpretation (2023)

Topic 1: China's historical engagement with international law

1. The Threshold Question: Was There "International Law" in Ancient China?

The topic begins with a foundational debate: can the system of rules that governed interactions between states in ancient China be classified as "international law"? This is not merely a semantic question; it goes to the heart of whether international law is a uniquely Western invention or a universal phenomenon.

- The Case for "Yes" (Oppenheim & Martin):
 - Oppenheim's Premise: The mere existence of "frequent and constant contact" between different political entities naturally gives rise to "fairly consistent rules and usages." This suggests international law is a functional necessity of inter-polity relations, wherever they occur.
 - The Spring and Autumn & Warring States Periods (722-221 BCE): This era is identified as the *only* period in Chinese history where a system akin to international law was possible. The key condition was the *disintegration* of the hierarchical relationship between the Zhou King and vassal states. When a central authority weakens, a system of *co-equal* (or at least, competing) sovereign-like entities emerges, creating the very condition that necessitates rules of engagement.
 - William A.P. Martin's Analysis (1881): Martin, a key figure who later translated Western international law into Chinese, argued that a "system of usages" existed during this period. He pointed to:
 - Inter-state intercourse: Formal diplomatic interactions and negotiations.
 - Treaties with oath provisions: The existence of binding agreements, sanctified by ritual or religious oath, which served a similar function to modern treaty law.
- The Case Against "No":
 - No Independent, Sovereign States: The argument here is that the political entities in ancient China were not "sovereign" in the Westphalian sense. They were part of a shared cultural and political cosmos, where ultimate authority was theoretically vested in the Emperor (the "Son of Heaven").
 - Lack of Systematisation: The usages and rules that existed were not codified, systematic, or the subject of a dedicated scholarly body of work comparable to the European *jus gentium*.
 - No Lineage to Modern International Law: Perhaps the most important point from a modern legal perspective. Even if rules existed, they represent a distinct, extinct system. Modern international law, which China engages with today, is the direct descendant of the European system that emerged after the Peace of Westphalia (1648). The ancient Chinese system is a historical antecedent, not a precursor.

2. The Traditional Chinese World Order: A Structural Antithesis to International Law

To understand China's difficult historical engagement with international law, one must first grasp the structure of its own traditional world order. It was not merely a different set of rules; it was a fundamentally different *conception* of the universe of political entities.

- Taiwan treated as equivalent to a **foreign state for legal purposes**

(b) Recognition Effects in Courts

Japanese Supreme Court (Kokuryo case):

- ROC lost authority to represent China after 1972

Shows:

- Courts follow **recognition of governments**, not abstract sovereignty claims

6. Key Exam Insights (Very Important)

1. Core Legal Problem

Taiwan is a “**hard case**” of **international law** because:

- No clear treaty transfer of sovereignty
- Conflicting state practice
- Political recognition dominates legal reasoning

2. Structure for Problem Questions

Always analyse:

1. **Historical title (treaties)**
2. **Post-war instruments**
3. **State practice & recognition**
4. **Effectiveness (control)**
5. **Self-determination / secession**
6. **Use of force implications**

Topic 5: Territorial disputes

1. The South China Sea: A Complex Maritime Dispute

The South China Sea dispute is arguably the most significant and complex territorial dispute involving China. It involves multiple claimants, competing historical narratives, and fundamental questions about the interpretation of the United Nations Convention on the Law of the Sea (UNCLOS).

1.1 The Geographic and Geopolitical Landscape

- The Sea Itself: The South China Sea covers approximately 3.5 million square kilometres. It is known by different names reflecting competing national narratives: the South China Sea (international), the East Sea (*Biển Đông*) in Vietnam, the West Philippine Sea in the Philippines, and the North Natuna Sea in Indonesia.
- The Maritime Features: The sea contains approximately 250 islands, islets, atolls, cays, shoals, reefs, and sandbars. These are grouped into four main island groups:
 - Pratas Islands (*Dongsha*): Claimed by both the PRC and the ROC (Taiwan). Currently controlled by the ROC.
 - Paracel Islands (*Xisha* in Chinese, *Hoang Sa* in Vietnamese): Claimed by the PRC, ROC, and Vietnam. China seized full control from Vietnam in 1974.
 - Macclesfield Bank (*Zhongsha*): A submerged feature claimed by the PRC, ROC, and the Philippines.
 - Scarborough Shoal (*Huangyan Dao*): A submerged feature (a low-tide elevation at high tide) claimed by China and the Philippines. China took effective control in 2012.
 - Spratly Islands (*Nansha* in Chinese, *Truong Sa* in Vietnamese): The most heavily contested group, claimed in whole or in part by the PRC, ROC, Vietnam, the Philippines, Malaysia, and Brunei.

1.2 The Legal Status of Maritime Features: UNCLOS and the 2016 Arbitration

The legal characterisation of maritime features is critical because it determines the maritime zones (territorial sea, exclusive economic zone, continental shelf) that a coastal state may claim.

- UNCLOS Article 13 – Low-Tide Elevations:
 - A low-tide elevation is "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide."
 - Critically, if a low-tide elevation is located beyond the breadth of the territorial sea from the mainland or an island, "it has no territorial sea of its own."
- The 2016 South China Sea Arbitration (Philippines v. China) – Award on Merits:

The Tribunal, constituted under Annex VII of UNCLOS, made several key determinations on the status of features, despite China's non-participation in the proceedings.

 - Low-Tide Elevations Not "Territory": The Tribunal held that low-tide elevations "do not form part of the land territory of a State in the legal sense." Rather, they form part of the submerged landmass and fall within the legal regimes for the territorial sea or continental shelf.
 - No Appropriation of Low-Tide Elevations: Citing the *Nicaragua v. Colombia* (2012) case, the Tribunal stated that "low-tide elevations cannot be appropriated, although a

- International Law Dimension: The Joint Declaration remains a treaty, but its practical effect after 1997 is limited. China's position is that the Joint Declaration's implementation was completed with the handover; the governance of Hong Kong is now a matter of Chinese domestic law. Other states, particularly the UK and the US, continue to invoke the Joint Declaration as a basis for monitoring and commenting on Hong Kong affairs, creating ongoing diplomatic tension.
- Domestic Legal Dimension: The Basic Law is the operative constitutional instrument. Its provisions must be read in light of China's constitutional structure, in which the NPC Standing Committee has the power to interpret and amend the Basic Law, and to legislate directly for Hong Kong on matters outside the limits of autonomy (including national security).
- The National Security Law as a Turning Point: The NSL represents a recalibration of the "one country, two systems" arrangement. It asserts the primacy of national security and central government authority over areas that were previously left to Hong Kong's autonomy. For many observers, it signals a shift towards a more centralised, less autonomous Hong Kong than was contemplated in 1984 or 1990.
- Extraterritorial Reach: The NSL's extraterritorial application reflects a broader pattern in China's legal practice (seen also in the Anti-Foreign Sanctions Law and the assertion of jurisdiction over overseas Chinese nationals). For Hong Kong, this means that the reach of Hong Kong law now extends beyond its territorial boundaries, with implications for Hong Kong residents overseas and for foreign actors engaged in Hong Kong-related activities.

Key Takeaways by Topic

Topic 1: China's Historical Engagement with International Law

| Key Takeaway | Explanation |
|---|---|
| Ancient China had inter-polity rules, but not "international law" as understood today | The Spring and Autumn period saw rules emerge between competing states, but these existed within a hierarchical, culturally-defined universe, not a system of equal sovereigns. |
| The traditional world order was structurally incompatible with international law | The Sino-centric tribute system was based on cultural ascendancy, not sovereign equality. There was no conceptual room for a law of equal states. |

| | |
|--|---|
| International law was initially received as a pragmatic tool, not a noble system | The Prussian-Danish War incident showed China using international law as a "weapon" in negotiations. It was adopted instrumentally, not ideologically. |
| Unequal treaties shaped China's deep-seated distrust of international law | The 19th-century experience of extraterritoriality and forced treaties created a lasting association between international law and foreign domination. |
| The struggle for sovereignty defines China's engagement | The 1943 abolition of unequal treaties was a milestone. Sovereignty protection remains the organising principle of China's approach to international law. |

Topic 2: Nature and Sources of International Law

| Key Takeaway | Explanation |
|--|--|
| The Five Principles of Peaceful Coexistence are China's signature contribution | These principles (sovereignty, non-aggression, non-interference, equality, peaceful coexistence) reflect China's state-centric, anti-interventionist vision. Their omissions (pacta sunt servanda, peaceful dispute resolution, human rights) are revealing. |
| Sovereignty is the organising principle | For China, sovereignty is not one principle among many; it is the filter through which all other international law is interpreted. It is "core national interest." |