

Sovereignty and International Engagement: Could China Intervene?

Nicusor-Sever-Cosmin Florea

Abstract The current article attempts to identify the most relevant dimensions which shaped China's involvement with the international community and law. I contend that these dimensions should include the Chinese reading of "sovereignty" as a legal concept and China's increasing willingness to commensurate her dramatic economic development with an adequate position in the international system. Finally, I will analyze whether China is willing to read her mainstay of foreign policy, the Five Principles of Peaceful Co-existence, in a new key, that is to intervene in order to protect her growing interests abroad.

The first part of the article will review the historical developments as well as the main theoretical considerations regarding China's Five Principles. The second part sets to provide some insights into China's evolution from perhaps the most notable absentee of the international system to one of the most assertive ones. Finally, I will move on to analyze whether, in the light of China's evolution and guiding principles of international engagement, China could witness another major change in her relationship with the world. I will, in other words, assess whether China could, at some point in the foreseeable future, leave behind her sovereignty stance and intervene, if needed, in order to protect her interests overseas.

Keywords China - Five Principles of Peaceful Co-existence - Humanitarian intervention
International Law - non-intervention

JEL Classification F50

1. China's Five Principles of Peaceful Co-existence: From Foreign Policy to Principles of International Law

China has undergone dramatic changes in her international relations practices since the proclamation of People's Republic of China on October 1, 1949. Provided the economic reform and opening up, China came across a significant array of transformations, with a distinct turn since the end of the Cold War. Coming all the way from the periphery of the global stage, China is now a fully engaged actor in world affairs.

The Five Principles of Peaceful Coexistence ("Five Principles") represent not only a Chinese foreign policy guideline but one of the country's major contributions to the development of international law¹. According to some, the Five Principles are China's first mark on the

1 Tiyia WANG, *International Law in China: Historical and Contemporary Perspectives*, 221 Recueil Des Cours, The Hague Academy of International Law, Brill Nijhoff, 1990, p. 263

Nicusor-Sever-Cosmin Florea (✉)

School of International Relations, University of International Business and Economics, Beijing, PRC
e-mail: florea@uibe.edu.cn

international law and order² though others see them as a reiteration of the Westphalian norm of sovereignty and non-intervention³. Finally, some have attributed them the legal status of *jus cogens*⁴. During his key-speech at the Central Conference on Work Related to Foreign Affairs of the Central Committee of the Communist Party of China, in November 2014, President Xi iterated a comprehensive plan for China's new diplomacy while stressing the importance of the Five Principles:

“...*Chinese diplomacy must insist on the democratization of international relations. We adhere to peaceful co-existence, the sovereign equality of all States. (...) We oppose hegemonism and power politics...*”⁵

Initially declared in the Preamble of the Agreement between the People's Republic of China and the Republic of India on the Trade and Intercourse between the Tibet Region of China and India of April 29, 1954, the Five Principles stated that both countries agree to adhere to the following principles while conducting their bilateral relations:

- a. mutual respect for each other's territorial integrity and sovereignty;
- b. mutual non-aggression;
- c. mutual non-interference in each other's internal affairs;
- d. equality and mutual benefit;
- e. peaceful coexistence.⁶

Two months later, on June 28, 1954, the Prime Ministers of China and India agreed that the Five Principles “should be applied in their relations with countries in Asia, as well as in the other parts of the world (...) in international relations generally.”⁷

The following day, in the joint statement signed by the Prime Ministers of People's Republic of China and the then Union of Burma, the two countries agreed that “if these principles could be observed by all countries, then the peaceful existence of countries of different social systems could be assured.”⁸ The Five Principles thus made the first step towards international recognition. Given the Chinese history of Western semi-colonialism and the iteration of the Five Principles, in a slightly different shape, at the very Proclamation of People's Republic of China, it becomes clear that we are looking at the ultimate denouncement of infringement upon a country's sovereignty and, at the same time, at a stern declaration that such an infringement will never be performed by China⁹.

Not only did China foster the Five Principles internally or bilaterally, but it also sought to proclaim

2 Shishi LI (李适时), President of Chinese Society of International Law, Enrich the Connotation of the Five Principles of Peaceful Co-existence in the New Era, remarks at the International Colloquium on the Five Principles of Peaceful Co-existence and the Development of International Law, Beijing, May 27, 2014

3 Amitai ETZIONI, G. John IKENBERRY, *Point of Order: Is China More Westphalian Than the West?*, Foreign Affairs, Vol. 90, No. 6, 2011, pp. 172-176

4 Edward McWHINNEY, *The Renewed Vitality of the International Law Principles of Peaceful Co-existence in the Post-Iraq Invasion Era: The 50th Anniversary of the China/India Panchsheel Agreement of 1954*, Chinese Journal of International Law, No. 3, 2004, pp. 379, 382

5 It should be noted that the Central Conference on Work Related to Foreign Affairs was the second such conference since the establishment of People's Republic of China. Orig. in Chinese, my transl., 中国外交必须具有自己的特色——论贯彻落实中央外事工作会议精神 (*Chinese Diplomacy Must Have its Own Characteristics: Comments on How to Reflect the Spirits of Central Conference on Work Related to Foreign Affairs*), article available at http://news.xinhuanet.com/world/2014-11/30/c_1113462155.htm, accessed on October 8, 2015

6 For the full text of this agreement (which entered into force on 3 June 1954, following exchange of notes), see *UN Treaty Series*, vol. 299, UN, pp. 57-81, available at <http://treaties.un.org/doc/publication/units/volume%20299/v299.pdf>, accessed on October 8, 2015

7 Ibid.

8 *Treaty Series of the PRC (Treaty Series)*, Vol. 3, 1954, p. 13, quoted in WANG, *op. cit.*, p. 263

9 For an excellently documented approach of the role semi-colonialism played in shaping China's national narrative, The Five Principles included, see WANG, *op. cit.*, pp. 205-263

them internationally. In the first treaty concluded by People's Republic of China, namely the Sino-Soviet Treaty of Friendship, Alliance and Mutual Assistance of February 14, 1950, it was stipulated that the relations between the two countries are to be conducted

“... in accordance with the principles of equality, mutual benefit, mutual respect for national sovereignty and territorial integrity and non-intervention in the internal affairs of the other party”¹⁰.

In the advent of the official proclamation “The Five Principles of Peaceful Coexistence” were embodied in bilateral and multilateral treaties and agreements, declarations of governments, resolutions of international bodies and official speeches¹¹. Another major international development of the Five Principles was achieved during the Bandung Conference of 1955, when the Ten Principles of Bandung embodied the Five Principles, extending them to 29 Asian and African participant countries. McWhinney notes that “The Five Principles of Peaceful Coexistence has an obvious imprint upon the 1955 Asian-African Conference at Bandung and Its Ten Principles.”¹² Perhaps the crux of the international affirmation of the Five Principles was achieved in 1970, when the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation between States in Accordance with the Charter of the United Nations (UN)” was adopted by acclamation in the 20th Session of the General Assembly¹³. Initially proposed by 12 Asian, African and Eastern European countries during the 16th Session of the General Assembly in 1961, the item “Consideration of Principles of International Law concerning Peaceful Coexistence among States” has met objection on behalf of several Western countries, given the use of “peaceful coexistence among States.” The phrase was later changed to “friendly relations and co-operation among States in accordance with the Charter of the UN” and a special committee was set up to codify the guiding principles in 1963. Following seven years of deliberations, the Principles were eventually adopted in 1970¹⁴.

The importance attached by the Chinese government to the Five Principles cannot be stressed more. Inspired by the torment of the Chinese people during the “century of humiliation” and proclaimed since the very foundation of the People's Republic of China, they have made their way into international law in less than two decades. It should also be noted that the Five Principles also served as a doctrinarian must for China, since, as a non-member of the UN until 1972¹⁵, it did not formally adhere to the UN Charter and consequently needed a programme to conduct its foreign policy¹⁶. The long international saga of the Five Principles continues to this

10 Art. 5 of the *Sino-Soviet Treaty of Friendship, Alliance and Mutual Assistance*, signed on February 14, 1950, Treaty Series, Vol. 1, 1949-1951, p. 2, quoted in WANG, op. cit., p. 264

11 According to an early inventory in 1963, various instruments of affirming the Five Principles were signed by Afghanistan, Burma, Cambodia, Ceylon (Sri Lanka), People's Republic of China, India, Indonesia, People's Republic of Korea, Laos, Mongolia, Nepal, Saudi Arabia, Thailand, United Arab Republic and Vietnam (in Asia), Dahomey, Egypt, Ethiopia, Ghana, Guinea, Liberia and Sudan (in Africa), Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Finland, France, German Democratic Republic, Hungary, Poland, Romania, USSR and Yugoslavia (in Europe) and the United States of America (in North America). See Ian BROWNLIE, *International Law and the Use of Force*, London, 1963, Part. I, Chapter VI, Appendix I, Instruments affirming the Five Principles of Peaceful Coexistence, pp. 123-126

12 Edward McWHINNEY, *The “New” Countries and “New” International Law*, American Journal of International Law, Vol. 60, 1966, p. 2

13 *Resolution 2625*, adopted without vote, UN Yearbook, 1970, pp. 784-788

14 See the *United Nations Yearbook*, 1962, pp. 487-488 and the *United Nations Yearbook*, 1963, Resolution 1963, p. 518

15 See *Note 30*

16 This argument was stressed in a personal discussion with Prof. Li Juqian, to whom I remain grateful for the pertinent remark and kind supervision.

day when the Principles are still appealed to¹⁷ with a frequency that recommends them as the mainstay of Chinese foreign policy. It is in this context that Xue Hanqin notes:

“...political wisdom of the Five Principles and the Bandung spirit has stood the test of State practice and the change of times.”¹⁸

Behind their rhetorical aspects, the Five Principles have known a sinuous dynamic as Chinese foreign policy practice, if not international law principles. Though constantly reaffirmed on a political level, their interpretation, as reflected by China’s conduct in the international arena, leaves room for discussion. Whether the Five Principles deterred or catalyzed China’s integration in the international community in the advent of its membership in the UN will be elaborated in the following chapter.

2. Towards a Liberal Foreign Policy: From Absence to Major Power

The Chinese foreign policy dynamics have been ascertained both by Chinese¹⁹ and Western²⁰ authors. China’s spectacular rise generated a multitude of international reactions academically, arguing for containment, the so called “China Threat Theory”²¹. The current chapter, argues, however, that China is moving towards a more participative approach of international relations, even if such an approach may come at some costs for China’s heavily promoted sovereignty approach. Given the existent rhetoric of Beijing, namely the sovereignty approach, in the shape of the Five Principles, it is expected that China will not dismiss it in the foreseeable future. The rise of China, however, corroborated with the reaffirmation of the sovereignty theory, should be interpreted as an emerging Asian-centric international system.

In addition to being one of the five permanent members of the U.N. Security Council, China has rapidly increased its political influence worldwide, downplaying views on diplomatic matters yet unwilling to force other countries to accept her position. A Chinese influence is obvious in Southeast Asia, South Asia, Central Asia, Middle East, Latin America, and, perhaps most notably, Africa²². Using data on bilateral trade between China, on one hand, and Africa and Latin America, on the other hand, two Cornell University scholars concluded that the more states trade with China, the more likely they are to converge with China on issues of foreign policy²³. Such an influence, however, shall not be associated with the penchant of Western powers to engage in military and political interventions beyond their borders, under justifications ranging from the “standard of civilization” (permitting “civilized” states to intervene against “uncivilized” nations) to the doctrine of humanitarian intervention, principles of human rights and, most recently, the responsibility to protect. The Chinese reemphasis of the Five Principles should be interpreted as a tendency to resist such interventionist tendencies and arguably a shift

¹⁷ See Note 7

¹⁸ Hanqin XUE, *Chinese Contemporary Perspectives on International Law*, 355 Recueil Des Cours, The Hague Academy of International Law, Brill Nijhoff, 2012, p. 69

¹⁹ See XUE, *op. cit.*, pp. 186-218

²⁰ Justin S. HEMPSON-JONES, *The Evolution of China’s Engagement with International Governmental Organizations: Toward a Liberal Foreign Policy?*, *Asian Survey*, Vol. 45, No. 5, 2005, pp. 702-721

²¹ See, inter alia, Joseph NYE, *The Challenge of China*, in Stephen Van EVERA (ed.), *How to Make America Safe: New Policies for National Security*, Cambridge Massachusetts, Tobin Project, 2006, Kenneth WALTZ, *Structural realism After the Cold War*, *International Security*, Vol. 25, No. 1, 2000, Zbigniew BRZEZINSKI, John MEARSHEIMER, *Clash of the Titans*, *Foreign Policy*, No. 46, 2006

²² Chang-fa LO, *Values to Be Added to an “Eastphalia Order” by the Emerging China*, *Indiana Journal of Global Legal Studies*, Vol. 17, No. 1, p. 15

²³ Gustavo A. FLORES-MACIAS, Sarah E. KREPS, *The Foreign Policy Consequences of Trade: China’s Commercial Relations with Africa and Latin America, 1992-2006*, *The Journal of Politics*, Vol. 75, No. 2, April 2013, pp. 357-371

of power and influence everywhere these principles have been mutually reaffirmed by China and its international partners. China's tenets, however, are not purist in their nature and allowed, at times, a partial cessation of the rights of sovereignty on behalf of some states, as we will discuss later.

Such tendencies are accurately described in Xue's three-phase analysis of China's multilateral relations²⁴. Between 1949-1971, China was largely absent from the international relations. Though China saw the UN in a very positive light, her attitude was dramatically reshaped by the standing of the United States in the Korean War, the deployment of US forces in the Taiwan Straits and the US decision to block People's Republic of China accession into the UN. Under these circumstances, China took the view that the UN has been instrumentalised as a US tool of imperialism. People's Daily, the mouthpiece of the Communist Party of China, best summarized this attitude in 1965, by asking rhetorically:

*"What kind of thing is the UN? It is the tool of US imperialism, number one overlord, and the Soviet revisionist ruling clique, number two overlord, to press ahead with neo-colonialism and big-nation power politics."*²⁵

China, however, conducted multiple activities with other socialist countries and took part in the World Democracy Alliance, International Students Union and International Women's League. It took part in the 1854 Geneva Conference on Indo-China and, as shown earlier²⁶, recorded a major success at the 1955 Bandung Asia-Africa Conference. During the 1971-1978 period, China maintained its attitude towards US which it perceived as controlled by the major powers. Following Chairman Mao's "three worlds" theory, China ardently called for the third world countries to closely work together and cooperate with second world countries in order to counterbalance the first world countries (largely seen as USA and USSR). China held strong reservations towards human rights, disarmament and international law and never took floor in the International Law Commission of the UN. Most importantly, China took a stern stance against foreign intervention in internal conflicts under Article 2 (7) of the UN Charter and refused to take part in the voting. Between 1971 and 1976, China was absent 46 times out of 156 voting sessions of the Security Council. The post 1978 stage saw a move from a selective approach to a full partnership with the international institutions. China's candidate, Ni Zhengyu, was elected to the International Law Commission in 1982 and, in 1988, China formally applied to join the United Nations Special Committee to Peace-keeping Operations. In 1990, China sent, for the first time, five military observers to the United Nations Truce Supervision Commission (UNTSC) and in 1992 it dispatched an engineering corps to the United Nations Transitional Authority in Cambodia (UNTAC). As of September 30, 2015, China is the 9th largest contributor to the UN peace-keeping missions and the largest contributor among the permanent members of the Security Council with 3040 Police, UN Military Experts on Mission and Troops deployed²⁷. China voted for the establishment of the UN Transitional Authority in Cambodia (UNTAC). Unlike the peace-keeping missions previously approved by Beijing, UNTAC ran a rudimentary national administration, supervised elections, returned refugees and demobilized the warring factions. The Chinese Ambassador to UN Li Zhaoxing praised UNTAC for its peaceful means of

²⁴ The current paragraph is based on Hanqin XUE, *op. cit.*, Chapter V: Multilateralism and Regional Co-operation, pp. 186-218

²⁵ *Renmin Ribao (People's Daily)*, July 8, 1967

²⁶ See the paragraph on Bandung conference

²⁷ ***, *Contributors to the United Nations Peace-keeping operations*, as of September 30, 2015, table available at http://www.un.org/en/peacekeeping/contributors/2015/sep15_1.pdf, as accessed on October 15, 2015

resolving regional conflicts²⁸. In the same year, China supported the Resolution 751 setting up the UN Mission in Somalia (UNOSOM) and the Resolution 794 supporting the Unified Task Force (UNITAF), “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”²⁹. It should be noted that UNITAF interfered in Somalia’s internal affairs and violated the state’s sovereignty; the Chinese Ambassador to UN however claimed that such an intervention occurred on an exceptional basis “in view of the unique situation”³⁰. The trend continued with China’s support for the UN Mission in East Timor (UNAMET, tasked only with election monitoring), the International Force for East Timor (INTERFET) and the UN Transitional Authority (UNTAET). The last was mandated with a wide range of attributes ranging from issuing postage to signing international treaties³¹, yet it benefited from Beijing’s active support in the Security Council. It should be noted that, along with Russia, China did not attend the “Friends of Syria” conference organized by the Arab League in Tunisia which in turn generated the Kofi Annan Peace Plan for Syria, one of the objectives of UN Resolution 2043³². Similarly, People’s Republic of China vetoed any sanctions imposed upon Federal Republic of Yugoslavia (on Kosovo), Sudan (over Darfur crisis) and, more recently, Syria.

This indicates, behind an undeniable pragmatism which does not make the object of the current article, that Beijing followed an independent line, not necessarily positioning itself according to the objectives prioritized by Washington, as some suggested³³. China’s attitude toward the UN peacekeeping missions in Cambodia, Somalia and East Timor showcases a hardline defense of absolute sovereignty which has given way to a pragmatic stance which sanctions, to a certain degree of extent, a level of interference.

Interestingly, Carlson finds China’s dynamic foreign policy doubled, in real-time, by the academic argumentation of sovereignty. Not only that a softer stance on sovereignty was showcased in the Chinese academia but the number of articles dedicated to the issue of sovereignty increased³⁴. Foot suggests that such a change should be explained in a three-folded approach: firstly, many Chinese elites have come to accept the legitimacy of multilateral approach to resolve humanitarian interventions; secondly Beijing’s new Security Council voting precedents set during the 90s have created a new foreign policy standard; finally, given Beijing’s increasing military might, a response was necessary to reassure the international community that China should not be regarded as a threat³⁵.

The UN integrative involvement and the dynamics of economic interaction were also mirrored on the political level. In the early 1990s, in the advent of the Cold War, China normalized its relations with Indonesia, Vietnam, Singapore and Republic of Korea. It began the dialogue with the Association of Southeast Asian Nations (ASEAN) and joined the Asia-

28 M. TAYLOR FRAVEL, *China’s Attitude toward UN Peace-keeping Operations since 1989*, Asian Survey, Vol. 36, No. 11, 1996, p. 1110

29 *Resolution 794 (1992)*, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794(1992)), as accessed on October 8, 2015

30 Ambassador Li Zhaoxing quoted in FRAVEL, *op. cit.*, p. 1113

31 James TRAUD, *Inventing East Timor*, Foreign Affairs, Vol. 79, No. 4, 2000, p. 74

32 *Resolution 2043 (2012)*, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2043\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2043(2012)), as accessed on October 8th, 2015

33 Allen CARLSON, *Helping to Keep the Peace (Albeit Reluctantly): China’s Recent Stance on Sovereignty and Multilateral Intervention*, Pacific Affairs, Vol. 77, No. 1, p. 14

34 *Ibid.*, p. 18

35 Rosemary FOOT, *Chinese Power and the Idea of a Responsible State*, The China Journal, vol. 45, 2001, pp. 1-21

Pacific Economic Cooperation (APEC). It also founded the ASEAN Regional Forum and led to the formation of eight major regional mechanisms³⁶. After previously laying the grounds for the Shanghai Five, China founded in 2001, along with Russia, Kazakhstan, Kyrgyzstan and Tajikistan, the Shanghai Cooperation Organization with the Secretariat in Beijing. Mooted by President Xi on September 2013, the “One Belt One Road” initiative is expected to become a multi-continental platform for outward investments, economic exchanges, regional development and political stability. Adjacently, 2014 saw the announcements of several international financial institutions with China as a leading founding partner: the New Development Bank (NDB), the Asian Infrastructure Investment Bank (AIIB) and the Contingent Reserve Arrangement.

Be it on economic or political level or on participation in peace-keeping missions, it is a matter of common sense that cooperative interaction between states and other international political actors is more likely to occur in a liberal setting rather than a realist state-centered outlook. What is particularly noticeable here is China’s exponential growth within the international arena. As Kenneth Waltz predicted “China will emerge as a great power even without trying very hard so long as it remains politically united and competent.”³⁷ The evidence above suggests that China competency resided in moderating its realist paradigm approach and slowly moving towards a more liberal, yet little predictive, international engagement model. China’s use of international cooperation to garner acceptance and economical support partially discarded its absolute view on sovereignty and established new foreign policy practices. To which degree of extent these new practices are prone to further dynamics and where are they mostly likely to geographically occur will be answered in the following chapters.

3. Could China Intervene?

The purpose of this Chapter is to establish whether China could intervene in another state’s affairs, to what extent and to which political costs, given its previous stance on foreign policy as expressed by the Five Principles and, as shown above, even earlier since the very proclamation of People’s Republic of China. First, I will try to briefly define intervention, as distinct from interference in another state’s affairs³⁸, and showcase how it is sanctioned by the international law, taking into account both doctrine and substantive law. Secondly, I will attempt a brief historical review of intervention in the Chinese setting, however incomplete my account might be. Lastly, I will try to examine whether China could intervene, under which circumstances and to which political costs.

In a broad sense, intervention could be used to define an action of a person, organization or state aimed at another, person, organization or state. Sensibly, the current article deals with interventions as undertaken by foreign actors of international law, precisely states, in an organizational setting (such as an international organization or an ad-hoc “coalition of the willing”), aiming at another state. In this sense, James N. Rosenau defines intervention as “any

36 Namely ASEAN Community, ASEAN and China-Japan-Republic of Korea partnership, ASEAN with each of the three partners, East Asia Summit, ASEAN Regional Forum, Greater Mekong Sub-region Economic Cooperation and Asia-Pacific Economic Cooperation. For further information on China’s regional integration efforts see Yaqing QIN (ed.), *East Asian Cooperation: 2009*, Economic Science Press, 2010, pp. 27-141

37 Kenneth WALTZ, *Structural Realism After the Cold War*, International Security, Vol. 25, No. 1, 2000, p. 32

38 It is the author’s view that “interference” is too vague a concept to indicate whether and at which times it occurred, beyond the shadow of a doubt. I would leave that task to other scholars, more knowledgeable and academically wise than myself.

action whereby one state has an impact upon the affairs of another”³⁹. For Wolfgang Friedman, an intervention is “almost any act of interference by one state in the affairs of another”⁴⁰, even if, apparently, it generates little or no impact. Ramses Amer distinguishes between “behavioural” and “traditional” school in the academic debate on intervention. While behaviouralists would have a systematic take on interventionary behavior, traditionalists would rather provide discussion with a general perspective⁴¹. For the purpose of the current study, the author understands intervention as a military action of one or more states, within the confines of the respective state, which may or may not alter the internal affairs of the respective state and is performed at or against the will of the incumbent government of that respective state.

The international legal order, as we know it today, underlies two equally consistent foundations, though, as we will see later, subject to dynamics. Firstly, the principles of sovereignty and non-intervention, ideas that paved the way of the modern state system since the Treaty of Westphalia in 1648. Secondly, the obligation to refrain from the use of force in international relations, as established by the Article 2 (4) of the United Nations Charter. Under two exceptions, however, the use of force is allowed: firstly, under Article 51 of the Charter states are allowed to use force for self-defence, secondly, under Chapter VII of the Charter, the United Nations Security Council may authorize the use of force to restore or maintain the international peace. It should be noted that the Security Council has only authorized two⁴² such use of force in the past fifteen years.

It should be noted that the wording of the whole Charter was based on a series of compromises reached by the original member-states, seeking to accommodate each other’s views and, consequently, has sometimes been interpreted as “ambiguous” and “unclear”⁴³. Such is, inter alia, the wording of Article 2(4), which could be interpreted in a double folded manner: firstly, “force” could be restrictively interpreted as “armed force” being used against the territorial integrity of a state, secondly, “force” could be extensively interpreted as any action undertaken against the territorial or political integrity of a state. Similarly, a restrictive interpretation of Article 51 would argue that the use of force is only permitted when an “armed attack” occurs, while an extensive read of the same article would render a “pre-emptive” or even “preventive”⁴⁴ use of self-defence legal⁴⁵. The interventionary experiences of the past decades indicate a recurring

39 James N. ROSENAU, *Intervention as a Scientific Concept*, *Journal of Conflict Resolution*, Vol. 13, No. 2, 1969, p. 153

40 Wolfgang FRIEDMAN, *Intervention and International Law I*, in Louis G.N. JAQUET (ed.), *Intervention in International Politics*, Netherlands Institute of International Affairs, Martinus Nijhoff, Hague, 1971, p. 40

41 Ramses AMER, *The United Nations’ Reactions to Foreign Military Interventions*, *Journal of Peace Research*, Vol. 31, No. 4, p. 426

42 Resolution 678 (1990), Adopted by the Security Council at its 2963rd meeting, on 29 November 1990, also available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f16760>, and, more recently Resolution 1973 (2011), Adopted by the Security Council at its 6498th meeting, on March 17, 2011, also available at <http://www.un.org/News/Press/docs//2011/sc10200.doc.htm>, both accessed on October 10, 2015

43 See, among others, Ian BROWNLIE, *The Use of Force in Self-Defence*, *British Yearbook of International Law*, Vol. 37, 1962, pp. 223-233

44 For a discussion among the differences between the two terms, see Bob HOWARD, *Intervention and Prevention: How Dangerous?*, *AQ: Australian Quarterly*, Vol. 77, No. 4, 2005, p. 24 Of at least equal importance in assessing the right to self-defence is the “Caroline Test”, excellently detailed in Thomas M. NICHOLS, *The Coming Age of Preventive War*, University of Pennsylvania Law Press, Philadelphia, 2008, p. 2-4

45 AMER, *op. cit.*, p. 429

legal justification grounded on humanitarian principles⁴⁶ protection of nationals⁴⁷, pre-emptive force⁴⁸, treaty-based intervention⁴⁹ or the more recently-coined “responsibility to protect”⁵⁰. The current article, however, will only deal with intervention as justified by humanitarian principles and only marginally approach the issue of treaty-based intervention.

In a refined doctrinarian analysis, Bhikhu Parekh defines four attributes of intervention, as follows:

- The State that is the object of intervention must be widely acknowledged to be sovereign;
- It implies that the act is designed to influence the conduct of the internal affairs of a state, and not to annex or to take it over;
- If the country concerned is opposed to it. Otherwise, Parekh continues, it becomes a case to a willing support of a party. Under this point, the scholar seems to elaborate too little on who is qualified to ask for such a support in a difficult situation, such as, for instance, civil strife.
- Immigration, trade, fiscal, foreign and other policies could be easily and with profound effects influenced by other states. Bribing politicians or journalists, secretly funding political factions or infiltrating the ranks of dissidents does not constitute intervention for Parekh⁵¹.

Jack Donnelly⁵² suggests three models of normative status of sovereignty, each corresponding to a different degree of accepting humanitarian intervention, at the expense of sovereignty yet to the purportedly higher end of defending human rights. Firstly, statism⁵³ involves full responsibility of the perpetrating state and allows no right to intervene. The model is therefore deemed conservative and leads to impassivity in the humanitarian intervention debate. Internationalism⁵⁴ acknowledges the centrality of states and their respective sovereignty yet stresses on the international social practices that regulate interstate relations. Intervention is not unilaterally permissible, but only when it is sanctioned by the society of states. Donnelly argues that the statist model was valid before the World War II, while the internationalist model prevails nowadays. Lastly, cosmopolitanism⁵⁵ assumes that the international system consists of individuals rather than states. Sovereignty is totally dismissed and the real issue is centered upon meeting the needs of the world’s citizens. The burden of proof does not lie on the states initiating humanitarian

46 It is the author’s view that humanitarian intervention is of military action and involves maintaining or recreating peace and order with the aim of relieving suffering. Humanitarian aid distinctly seeks to relieve suffering, not necessarily creating peace and order. Political intervention seeks to impose a specific structure of civil authority, while refraining to use military intervention on behalf of another state.

47 Employed, inter alia, by the United Kingdom in the Suez intervention (1956), Israel in Entebbe (1976) and the United States of America in the Dominican Republic (1965), Grenada (1983) and Panama (1989).

48 Most recently employed by the United States of America in Iraq (2003) but rejected by the International Court of Justice since the 1986 *Nicaragua v The United States of America* case.

49 Used by Turkey during the 1975 invasion on Cyprus and justified through the 1960 Cyprus Treaty of Guarantee. For a comprehensive and authoritative view on the effect of consent to intervention and international treaties to settle internal conflict, see David WIPPMAN, *Treaty-Based Intervention: Who Can Say No?*, *The University of Chicago Law Review*, Vol. 62, No. 2, 1995, pp. 607-687

50 Most recently used in Libya (2011) and Central African Republic (2013).

51 Bhikhu PAREKH, *Rethinking Humanitarian Intervention*, *International Political Science Review*, Vol. 18, No. 1, 1997, pp. 53-54

52 Jack DONNELLY, *State Sovereignty and International Intervention: The Case of Human Rights*, in Gene M. LYONS, Michael MASTANDUNO (eds.), *John Hopkins University Press*, Baltimore, 1995

53 *Ibid.*, pp. 120-121

54 *Ibid.*, p. 121

55 *Ibid.*, p. 121

intervention but on the bystander-states. In a sublime rhetoric spin, Donnelly adds that the norm of sovereignty, that is as vested in the individuals, can be violated not only by outside powers but also by indigenous use of force. The brief doctrinarian views presented above saw not only a wide and largely debatable variety of views over what is “intervention” and what is “humanitarian”. It opens endless moral iterations of the necessity of preserving sovereignty or, on the contrary, of counter-balancing it for higher, human rights aims. It also allows one to ponder that, while humanitarian intervention has a strong element of ethical reasoning, the decision to eventually intervene in a particular situation can be easily hijacked into a political debate.

If the theoretical views appear to differ among each other to a large degree of extent, the legal practice, however, seems to leave little room for doubt. The use of human rights as grounds for humanitarian intervention has been fully dismissed by the International Court of Justice in the *Nicaragua v United States of America* case, as it follows:

*“With regard more specifically to alleged violations of human rights relied on by the United States, the Court considers that the use of force by the United States could not be the appropriate method to monitor or ensure respect for such rights, normally provided for in the applicable conventions.”*⁵⁶

It is for this reason that Rodley observes that the doctrine of humanitarian intervention has been no longer invoked, not even in the formal legal justifications, though, in certain cases, it would have been expected. Among such cases, the scholar invokes India in respect of Bangladesh, Vietnam in respect of Kampuchea, Tanzania in respect of Uganda and the United States in respect of Grenada⁵⁷.

The balance between state sovereignty and humanitarian demands has, however, evolved, if not in the case law of the International Court of Justice, in the opinion of the most highly qualified international lawyers. Under this regard, for instance, the former Secretary General of the United Nations, Javier Perez de Cuellar has mentioned:

*“We are witnessing what is probably an irreversible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents.”*⁵⁸

Regarding the Chinese interventionary practices it should be noted that, despite the Five Principles discourse, the early history of People’s Republic of China saw several instances in which the principles of sovereignty and non-intervention have been interpreted so they could fit the pursuit of either socialist-nurtured solidarity or national interest⁵⁹.

In 1955, for instance, immediately after iterating the Five Principles, China considered mandated to bring further clarifications to the principles in accordance to the proposition made by Stalin that intervention could occur militarily, economically or subversively. Chou Keng-Sheng therefore considered “indirect aggression” the refusal to interfere in the Spanish Civil War and consequently allowing the overthrow of the Republican Government. United Nations’ instrumentalisation of international law to suit imperialistic purposes became evident, for China, in the UN’s refusal to

⁵⁶ *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, paragraph 268, Judgment of June 27, 1986, summary of the judgment available at <http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5>, accessed on October 9, 2015

⁵⁷ Nigel S. RODLEY, *Human Rights and Humanitarian Intervention: The Case Law of the World Court*, *The International and Comparative Law Quarterly*, Vol. 38, No. 2, 1989, p. 332

⁵⁸ *Diplomatic World Bulletin*, Nol. 22, 1991 quoted in Christopher GREENWOOD, *Is There a Right of Humanitarian Intervention?*, *The World Today*, Vol. 49, No. 2, 1993, p. 35

⁵⁹ As shown earlier during the second part of my study, China has known a dynamic passage from a purely realist view to a more liberal-oriented foreign policy.

interfere in South Africa's treatment of its Indian population and in France's control of Algeria⁶⁰. The class character of humanitarian intervention was also sanctioned by the Chinese scholars:

*"Imperialism considers as "inhumane" those countries in which the proletariat has political power and establishes a dictatorship over the reactionary forces. It considers as "inhumane" the punishment and suppression imposed by the people of a country upon conspiratorial elements who engage in rebellion and subversive activities supported by imperialism."*⁶¹

Whether intervention at the request of a government is lawful or not, does not receive a consistent reply on behalf of the Chinese scholars of the time. Chen Tichang, one of China's most prominent legal scholars at the time, wrote that "Acts of intervention in a state with the consent of the government of that state cannot be considered [illegal] intervention."⁶² Two years later, however, in the context of the American intervention in Lebanon, at the request of the incumbent Chamoun government, the Chinese scholars held the view that USA has undertaken an "armed intervention in the Lebanon's internal affairs"⁶³. In line to the new international developments, Beijing reiterated its standards of intervention, shifting from the previous "consent of the government" to "the genuine desires of the people"⁶⁴. Such a discourse allowed China to decide on what is foreign intervention on the grounds of political expediency and to consequently and similarly condemn the aggression of the United States in Vietnam. It should be noted that China sought to reconcile the dictum of the Five Principles with the Marxist views on intervention⁶⁵ and noted that "the old international law jurists, who still adhere to the purely legalistic viewpoint", fail to recognize that international law is "simply a legal instrument in the service of a country, socialism and peace, to be used when useful but discarded when disadvantageous"⁶⁶.

With regard to the Soviet suppression of the Hungarian revolt and the invasion of Czechoslovakia, China deemed the former consistent "with the spirit of solidarity and cooperation between brother countries", yet condemned the second as "revisionist social-imperialist aggression"⁶⁷.

Concerning the Korean War, China held that the support granted was both humanitarian and self-defensive, as "action not only to assist a neighbor, but to protect our country."⁶⁸ During the Vietnamese War, China held the view that aggression against the Democratic Republic of Vietnam "means aggression against China" and sent up to 50,000 regular members of the People's Liberation Army to North Vietnam, where, with the consent of the government of the

60 Keng-sheng CHOU, *The Principle of Peaceful Coexistence From the Viewpoint of International Law*, Cheng-fa ten-chiu, Vol. 6, 1955, pp. 37-41 quoted in Jerome Alan COHEN, *China and Intervention: Theory and Practice*, University of Pennsylvania Law Review, Vol. 121, No. 3, 1973, p. 479

61 Hsin YI, *What Does Bourgeois International Law Explain About the Question of Intervention?*. Kuo-chi Wen-t'i yen-chiu, Vol. 4, 1960, pp. 47-49, quoted in COHEN, *op. cit.*, p. 480

62 T'i-ch'iang CH'EN, *The Hungarian Incident and the Principle of Non-Intervention*, Kuang-ming jih-pao, April 5, 1957, p. 1, quoted in COHEN, *op. cit.*, p. 482

63 ***, *The Chinese Government Demands Withdrawal of U.S. Forces From Lebanon, Withdrawal of British Forces from Jordan*, Peking Review, July 22, 1958, p. 7, quoted in COHEN, *op. cit.*, p. 482

64 ***, *Refuting the Loud Western Outcry Over the "Hungarian Issue"*, People's Daily, November 14, 1956, p. 1, quoted in COHEN, *op. cit.*, p. 483

65 See Note 101

66 Li-lu CHU, *Refute Ch'en T'i-ch'iang's Absurd Theory Concerning International Law*, People's Daily, September 18, 1957, p. 1, quoted in COHEN, *op. cit.*, p. 485

67 COHEN, *op. cit.*, p. 488

68 Hsiu-ch'uan's WU, *Speech Regarding the American Aggression on China*, December 16, 1950, Chung-hua jen-min kung-ho-kuo tui-wai kuan-his wen-chien chi 1949-1950, 1957, pp. 219-237, quoted in COHEN, *op. cit.*, p. 490

Democratic Republic of Vietnam engaged in construction work and manned anti-aircraft defenses until 1969⁶⁹. In line with the Five Principles' tenets, China mainly refrained from endorsing wars of national liberation in the Third World countries and did not export revolution nor terrorism⁷⁰. The low profile attitude within the international arena continued under Deng Xiaoping, both due to the non-interventionist, sovereign-holding tenets of the Five Principles and as part of the "taoguang yanghui"⁷¹ and "bu chu (sometimes dang) tou"⁷² principles for guiding China's foreign policy⁷³.

Taking into account both the Chinese foreign policy transition from a realist perspective to a more liberally-guided integrative foreign policy of international cooperation and China's economic interests vested abroad, as shown in the previous chapter, the debate over the principle of non-intervention and, implicitly, the resilience of the Five Principles in China's foreign policy has been reignited. Pang Zhongying, Professor of International Relations at Renmin University, notes the strain posed by the Five Principles to China's foreign policy, provided its increasing engagement with the outside world and indicates China's long-held tenets of foreign policy as perhaps one of the country's largest security dilemmas⁷⁴. In an earlier article, the Professor even argues that "*China should declare clearly that China intervenes globally, regionally, and multilaterally, but conditionally*", and that "*a global China . . . has to intervene*"⁷⁵. Other Chinese scholars do not ask for a complete overhaul of the Chinese foreign policy, instead proposing an alternative interpretation of the principle of non-intervention. Cui Hongjian, researcher at the China Institute of International Studies (CIIS), argues that the mechanism and actions prescribing the principle of non-interference need to be amended, as the current understanding does not provide sufficient security guarantees for China's current level of engagement with the world⁷⁶. It is expected that, given China's continuous economic growth and ever-increasing engagement with the inter-twined global economy, such voices claiming to revisit the Five Principles or, at least, to provide a different interpretation for some of them, would continue to raise.

The new National Security Law of People's Republic of China was passed on July 1, 2015, at the 15th meeting of the 12th National People's Congress⁷⁷, seems to echo the arguments above. Art. 33 of the Law reads: "The State takes necessary measures in accordance with law to protect

69 WHITING, *How We Almost Went at War with China*, Look, April 29, 1969, pp. 76-77, quoted in COHEN, *op. cit.*, p. 491

70 For very illustrative examples on China's non-interventionist conduct in this regard, see COHEN, *op. cit.*, pp. 494-497

71 Literally, hide brightness and nourish obscurity, meaning hide one's capacities and bide one's time.

72 Literally, don't raise one's head, meaning don't play a leadership role.

73 Quansheng ZHAO, *Interpreting Chinese Foreign Policy*, Oxford University Press, Oxford, 1996, pp. 53-54

74 Zhongying PANG, *China's diplomatic and economic influence is limited (orig. in Chinese, my transl.)*, Caogen,

August 25, 2013, article available at http://www.caogen.com/blog/infor_detail/52241.html/, accessed on October 10, 2015

75 Zhongying PANG, *Through Chinese eyes. Part 1*, Lowy Interpreter, December 22, 2011, article available at [http://www.lowyinterpreter.org/post/2011/12/22/Through-Chinese-eyes-Pang-Zhongying-\(part-1\).aspx](http://www.lowyinterpreter.org/post/2011/12/22/Through-Chinese-eyes-Pang-Zhongying-(part-1).aspx), accessed on October 10, 2015

76 Hongjian CUI, *It is time to update the security concept based on noninterference (orig. in Chinese, my transl.)*,

Huanqiu Shibao, July 28, 2012, article available at <http://opinion.huanqiu.com/1152/2012-07/2961005.html>, as accessed on October 10, 2015

77 For an unofficial English translation of the Law, see <http://chinalawtranslate.com/2015nsl/?lang=en>, as accessed on January 7, 2016

the security and legitimate rights and interests of overseas Chinese citizens, organizations and institutions; and ensures the nation's overseas interests are not threatened or encroached upon." Such a provision seems to legalize "necessary measures" to be performed by China, possibly abroad, in order to protect her "overseas interests", bringing into question an alternative reading of the Five Principles. It is yet to be established whether such "measures" would be conducted upon the agreement of the respective states or against their will.

The stance of non-intervention has met, as shown above, various forms of acceptance in the international relations. Though limitedly accepted by the International Law, humanitarian intervention, remains one of the most used vehicles for intervention. Varying according to national rhetoric and international circumstances, it has been successfully used and set precedents. However, a customary law on the matter is yet to be defined. China's stance, though largely compliant with the Five Principles, saw several episodes when their interpretation was finely tuned to correspond certain foreign policy interests. While such interests are currently evolving, it is expected for the Five Principles to be accommodated with China's current level of engagement with the world. Such a dynamic could discard the Five Principles completely, in the light of an overhauled foreign policy, or could see a reinterpretation of the principle of non-interference or even in the tenet of non-aggression. Provided China's complex dynamics and the past experience of incremental changes, the former scenario seems to be more likely.

Conclusions

The current study has multiple drawbacks. First of all, it lacks comprehensiveness; the wide variety of state-actors behavior in the international arena corroborated with the large spectrum of formal legal justifications for non-intervention, or, on the contrary, in favour of, is simply overwhelming. Secondly, it is, perhaps, less accurate than expected. A better analysis could have been iterated following more active debates with the local scholars and decision-makers. The primary source of research, has been, however the existing international and domestic literature, especially the English-language scholarly articles. Thirdly, it is narrow in scope. It offers chiefly a review of the international relations and legal literature and consequently a standpoint based exclusively on these disciplines. A multidisciplinary approach, recalling perhaps more aspects related to the Chinese economics or military affairs would be desirable. It is the author's view, however, that the above mentioned downsides do not render the study futile, though they may narrow its conclusions. Further research is therefore advised.

Far from claiming predictability, the study notes that the complexity of the Chinese foreign policy dynamics denotes a well-anchored pragmatism in the interest of the Chinese people as a nation, a pragmatism that will most likely continue to inspire Beijing's international conduct. Navigating the waters of international affairs and, implicitly, international recognition, has sometimes been a sinuous mission for China, yet it came a long way to be accepted not only as a full member of the international community and a permanent member of the UN Security Council, but as a credible partner for regional and global dialogues. Such a status owes largely to China's Five Principles.

In the light of upgrading its security and foreign policy interests in accordance to the ever-growing engagement in the world affairs, China may, at some point, feel strained by the principles of non-interference or, perhaps, non-aggression, and consequently offer an alternative reading in which the interventionary paradigm becomes justified. Shall such a change occur under the auspices of liberal foreign policy of international cooperation, i.e. in a multilateral format largely accepted by the international community, China will continue to advance on its long established road of peaceful development. If, on the other hand, a breach of the Five

Principles would occur in a unilateral setting or will be backed by little international support, China risks to lose its credibility and its status of persistent objector to interventionary practices and sovereign-violating power politics. One thing, however, becomes obvious: more than sixty years after the iteration of the Five Principles, China has come to the point where the Principles are no longer used to claim sovereignty and to reject external interference. It is the author's view that China has acquired, without the doubt, the military might needed to protect itself from foreign intervention without necessarily appealing to rhetoric. Whether China's attitude towards international law will avail of its current consolidated status in the international affairs to react to other states or, on the contrary, will continue to use the Five Principles, even if under an upgraded form, to take regional and global initiatives, it is yet to be seen.

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