Settling International Disputes
China's Experiences and Practices

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I. Introduction

Similar to ancient Greece and India, there was a long period of time in ancient China when number of states coexisted. Stories of resolving inter-state conflicts written in history books show that the Chinese were adept in resolving disputes peacefully and that they actually detested the use of force.

Under the influence of Confucianism, Chinese people value harmony and tend to seek the balance of the overall interests between the two parties of disputes instead of being entangled with details. Therefore, the "best solution" is to achieve harmony among parties concerned and sometimes the whole society as well.

With this dispute-resolving philosophy, China lived In peace with the rest of the world for nearly 2000 years. Nevertheless, from mid-19th Century, with the expansion of Western civilization and forces to the Far East, China started its difficult transition to become a modern nation. This "pain of growing up" caused fundamental changes in China's relation with the world, which lead to an enormous impact on Chinese dispute-resolving philosophy and its practices.

II. In late Qing Dynasty (1840 to 1911)

The notion of "Chinese learning for fundamental principles and Western learning for practical application"

After the First Opium War (1840), the defeated Qing government was forced to open its gate to Western countries.

Military failures made the imperial court to ponder on the reason behind. Being disappointed in its military forces, Qing government and intel-

lectuals choose to believe in the superiority of Chinese culture and political system. It was generally regarded that Western civilization was only more advanced in its military technologies and diplomatic techniques, rather than in cultural values and political systems. Therefore, to rejuvenate China should take Chinese learning for fundamental principles and Western learning for practical application.

It was with this intention, officials of Qing Dynasty started to learn and practice the regulations of Western international law:

In 1863 Wheaton's *Elements of International Law* was translated and introduced to China by an American missionary: *William Martin.*

In 1864, by invoking the concept of "territorial sea" defined by Wheaton, China successfully forced Prussia to release the three Danish merchant vessels within Chinese territorial sea.

Although international law was regarded as an useful "tool" in resolving disputes, China still found it extremely difficult to have strong faith in international law system, since this set of legal thinking and regulations was not in conformity with China's feudal system at a fundamental level.

The defeat of China in the First Sino-Japanese War made Chinese elites start to question the notion of "Chinese learning as fundamental principles and Western learning for practical application".

Many Chinese intellectuals, such as *Kang Youwei, Liang Qichao,* strongly suggested, a reformation in social awareness and State's political system by learning from Western civilization was necessary to complete the transition of China to become a modern nation.

III. The Republic of China (1911 to 1949)

The idea of "Western learning for fundamental principles"

After the Revolution of 1911, Western value system of democracy and science is not only the basis of domestic social reform, but also the entering ticket for China to stand on the international arena along with other nations.

J.K.Fairbank once said that one could actually see the profound influence of Western culture to Chinese way of living during the time of the Republic of China by comparing the differences of Qing Dynasty and People's Republic of China.

The idea of "Western learning for fundamental principles" was indeed the most striking feature of the Republic's diplomacy and dispute-resolving

strategy, though there was still the clear and deep imprint of Chinese traditional philosophy of settling conflicts.

The aversion of war was still a basic position of China when facing international disputes. The first reaction of China to settle conflicts was always negotiation or reconciliation.

As to arbitrational and judicial solutions of international disputes, the government of the Republic held a complex state of mind:

On the one hand, the Republic realized that it was Western's strong believe to respect juridical methods to settle disputes, and it was good for China to build up its image as a civilized country complying with international law by accepting the jurisdiction of the PCIJ. On the other hand, lawsuits were not quite in line with China's traditional philosophy in resolving disputes. In addition, China believed that no internatioal tribunal, even the PCIJ, could escape from the shadow of power politis and be absolute impartial.

For reasons mentioned above, the government of the Republic of China signed and approved the Status of the PCIJ in 1920, declaring its acceptance of "the Optional Terms" of the Court's mandatory jurisdiction. Nevertheless, when Belgium filed a lawsuit to PCIJ against China regarding modifications of their bilateral treaties in 1926, Chinese government showed its hesitancy and jumped back to reconciliation.

IV. The People's Republic of China (1949 till now)

Become a marginalized State inside the international system from an outsider

The new era of China's diplomacy began with the foundation of People's Republic of China in 1949.

During the era of Mao, from 1949 to 1979, communist China appeared to the world mainly as a challenger and a critic. Unlike the former government, the new China regarded itself as a nation outside of the Westphalian system, harboring deep dissatisfaction and suspicion about the so-called "current international society" and traditional international law as well.

China also started assaulting traditional Confucianism by applying Mao Zedong's Theory of Class Conflict. As a result, China had not shown due respect to or practiced international law, nor had it followed the traditional Chinese idea of upholding harmony. Proletarian striving philosophy was the dominant ideology for China to settle international disputes:

China rejected any suggestion to settle disputes through international arbitration and juridical measures, since it had a deep suspicious of interna-

tional law. As soon as the new government of P.R.China started to exercise its rights as a member State of the ICJ in 1972, China withdrew its acceptation of "the Optional Terms" of mandatory jurisdiction which declared by the former government in 1946, and thus suspended all its activities in the ICJ.

International investigation and reconciliation means to get a third party involved in the dispute, which was too sensitive and not in conformity with China's great power consciousness. As to the method of mediation, China's attitude was rather ambiguous.

Direct negotiation was the most acceptable method for China. It was weak in legal nature and very political, which freed China from some unnecessary legal confusions. China's international negotiation policy during this period was rather hardline than its once harmony-first historical practices. In particular, departments of foreign affairs were officially regarded as the "diplomatic war front", and international negotiations as "diplomatic crossfire".

This situation did not change until the era of Mao Zedong ended. China began its "Reform and Opening up policy" in 1979, when the main track of the nation transferred from ideological politics to economy. China was no longer an outsider and a rebel who believed theories of Class Conflict and Worldwide Revolution and successfully transferred to a member of the international society. The transformation was slow but progressive: starting with practical economical areas, to more sensitive political areas; from domestic matters to diplomatic affairs.

The transformation of non-ideology was first of all reflected in the acceptance of international law and the current international system. As to practices in resolving disputes, China was no longer rejecting or denying legitimacy of international law. Even though China's mistrust towards international law still did not go away, it grew weaker as the deepening of the Reform and Opening up policy.

Secondly, the transformation of non-ideology made China go back to the old philosophy of upholding harmony.

China still prefers to settle specific disputes through direct negotiation, especially when it comes to sensitive political issues, such as sovereignty and security matters. Unlike Mao Zedong's era, the method of negotiation is no longer regarded as the "diplomatic crossfire". Instead, seeking cooperation and achieving win-win situation have become the two main rational objectives of China's diplomacy.

Unlike its former alertness, China is now more open to mediation, good offices and investigation.

When it comes to arbitration and jurisdiction, China shows characteristics of being a marginalized State within the international system. As to low-cost, low-risk trading disputes, China is able to mildly adjust its position to accept the method of arbitration and international jurisdiction; as to high-cost, high-risk political or territorial disputes, China's firm position of rejecting arbitration and jurisdiction is still not changed.

V. Conclusion

Marching to the center of the stage as a responsible Power

Today China is standing up front of the revolving door of history. Where should China future move forward?

In my opinion, it is a rational choice for China to step on the international stage as a responsible power and a central member State of the international system. It is also the inevitable choice of peaceful rising and development.

To achieve this goal, China needs to abandon its instrumental idea towards international law, and fully accept it on the fundamental level.

Zooming in on practices of settling international disputes, I am of the opinion that the following three points are necessary: more international law, more multilateral mechanism, and more practices of international judicature.

"More international law" means that China should try harder to stand on moral high-grounds of international law when dealing with troublesome issues. China should not only concern about practical benefits when solving disputes and also give more thoughts about settlements from the legal angle.

"More multilateral mechanism" suggests that China should balance the bilateral mechanism and multilateral mechanisms. In China's recent dispute-solving practices, bilateral mechanism is more preferred, especially when settling sensitive political issues. In my opinion, emphasizing the use of multilateral mechanism would not spoil the use of negotiation, and instead, it could give China more credits for upholding international law.

"More practices of international judicature" requires that China's participation in the practices of international judicature (including arbitration) should be substantially enhanced. China's faith in international judicature, to some extent, is a mirror of China's attitude towards the current interna-

tional system. Full recognition of judicial practices and more active participation mean that China is getting closer to the center of the stage.

In 2005, the U.S. Deputy Secretary of State Robert Zoellick delivered a speech regarding China's future policy. In the speech he presented the idea of "China being a stakeholder", which indicated that China had integrated into the world. As China is growing stronger gradually, its role carries more and more significance in the world. While Western countries expect China to be a peace-maker and a positive force to support the current international system, China also has the intention to step into the spotlight. Nevertheless, the premise is that China needs to make up its mind to shake off the marginalized State's mentality, and to adjust its way of making influence, including changes in methods of settling international disputes.