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# Contradictions and Post-colonial Dualities in the Chinese Approach to International Law: A Missed Dialogue with Third World Critiques

## Contradictions et dualités postcoloniales dans l'approche chinoise du droit international : un dialogue manqué avec les approches critiques émanant du tiers-monde

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**Abstract:** In recent years, Chinese international law scholars have increasingly articulated the idea of a *sui generis* Chinese approach to international law (CAIL), one notable feature of which is a critique of Western dominance and Eurocentrism. These concerns closely echo those of Third World approaches to international law (TWAIL), thus raise the question of why CAIL has shown only limited engagement with the extensive TWAIL scholarship. Existing explanations for this lack of engagement have largely focused on shifts in China's material interests and geopolitical positioning. This article argues that such accounts are incomplete. CAIL's ambivalence is indeed linked to China's double positioning as a "developing country" and a "major country" at the same time, but this double positioning cannot be explained solely by rational or material considerations. It is rather underpinned by deeper socio-psychological dynamics, notably a dual identity of victimhood and triumphalism, inferiority and superiority. It is these enduring identitarian and psychological tensions that lie beneath CAIL's limited engagement with TWAIL.

**Keywords:** China; Chinese approaches to international law (CAIL); developing country; double identity; major power; Third World Approaches to International Law (TWAIL).

**Résumé :** Ces dernières années, les spécialistes chinois du droit international ont de plus en plus revendiqué une approche chinoise *sui generis* du droit international dont l'une des caractéristiques notables est une critique de la

domination occidentale et de l'eurocentrisme. Ces préoccupations font écho à celles émanant des pays du tiers-monde, ce qui soulève la question suivante : pourquoi l'approche chinoise ne s'est-elle pas davantage intéressée aux travaux universitaires produits dans les pays en développement ? Les explications qui ont cherché à comprendre ce désintérêt mettent l'accent sur les nouveaux besoins matériels de la Chine comme sur le changement de son positionnement géopolitique. Le présent article soutient que celles-ci sont insuffisantes. L'ambivalence de l'approche chinoise est certes liée au double positionnement de la Chine comme « pays en développement » et comme « grande puissance », mais ce double positionnement ne peut s'expliquer uniquement par des considérations d'ordre rationnel et matériel. Il repose plutôt sur des dynamiques socio-psychologiques plus profondes, notamment une double identité pétrie à la fois de victimisation et de triomphalisme, d'infériorité et de supériorité. Ce sont ces tensions identitaires et psychologiques persistantes qui expliquent l'engagement limité de l'approche chinoise envers celles émanant des pays du tiers-monde.

**Mots-clés :** approche chinoise du droit international ; approches tiers-mondistes du droit international ; Chine ; double identité ; grande puissance ; pays en développement.

In recent years, there has been a growing discourse among Chinese international law scholars about a *sui generis* Chinese approach to international law (CAIL). He Zhipeng (何志鹏), one of the leading advocates for CAIL, explicitly called for the emergence of a systematic “Chinese school of international law”.<sup>1</sup> Setting aside the question of whether an independent, particular “Chinese school” of international law could be said to exist, there are some common features and claims shared by mainstream Chinese international law scholars. These include a notable stance against the Western domination in international order, as well as an ambition to challenge the Euro-centrism in international law studies.<sup>2</sup> They argue that the existing international system is unequal and unjust, and see the emergence of new great powers and the various global crises as a social context in which a reform of the existing system could and should take place, of which China should be a leading force.<sup>3</sup>

One very notable common feature is that Chinese scholarly stances most often echo the official position, and are practically oriented with the aim of serving state interests.<sup>4</sup> Therefore, the term CAIL is also loosely used, often referring to scholarly as well as official tendencies and positions. This article mainly focuses on scholarly discussions, but I will thus refer to official statements and practices as examples. On the other hand, it should be stressed that the term CAIL by no means encompasses all voices and tendencies among Chinese international law

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<sup>1</sup> He, 2022.

<sup>2</sup> Deng, 2022, 37, 40-42.

<sup>3</sup> Jiang, 2024.

<sup>4</sup> He, 2022, 170; Zhang, 2022, 7-8.

scholars. Alternative voices do exist, although in the highly censored environment in China, voices that diverge too much from official positions or oppose them are hard to be heard.<sup>5</sup> The main question this article is concerned with, however, is not the contours and substantive claims of the Chinese approach, but its engagement, or lack thereof, with an already well-established movement of international law, namely Third World approaches to international law (TWAIL). It is difficult to give a clear-cut definition of TWAIL because it does not have a coherent pattern nor presents a holistic critique.<sup>6</sup> It groups scholars that share some basic understandings and stances, yet who might use different methodological and disciplinary approaches, and might disagree with each other on specific issues.<sup>7</sup> Nevertheless, the shared central themes of TWAILers include exposing and opposing the colonial legacy and continued Western dominance in the international system.<sup>8</sup> They also share concerns about the inequalities in knowledge production and in international law scholarship.<sup>9</sup> These themes and general orientations, as well as some of the more specific TWAIL arguments and agendas, such as TWAIL critiques about the West-dominated human rights narratives and movement,<sup>10</sup> seem to resonate strongly with those of the Chinese approach. It is thus curious why CAIL has not seriously engaged with the rich TWAIL scholarship.<sup>11</sup> When references to TWAIL are occasionally made, they typically appear only in passing, often limited to a single sentence noting its existence.<sup>12</sup> Very recently in 2024, in an article entitled “China, International Law and Developing Countries” aimed at advocating the construction of a “developing country international law”, He Zhipeng called for “paying close attention” to TWAIL.<sup>13</sup> Even so, the article only summarised some general themes of the TWAIL scholarship in one page and quickly moved to arguing that China should “absorb” but also “surpass” TWAIL to build its own approaches to international law, as this is “the responsibility of China as a major country, and the mission of China as a pioneering developer of the theories and practices of Third World international law”.<sup>14</sup> This quote shows an unmistakable self-identification as part of the Third World – although there is simultaneously also a self-identification as a “major country”, a point we will revisit in the second part. But in any case, given the self-identification as part of the Third World and the shared stance of anti-West/Euro-centrism, the lack of serious engagement of contemporary Chinese international law scholars with TWAIL warrants explanation.

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<sup>5</sup> Mainstream and leading scholars also at time criticise the convergence between scholarly and official positions, and the instrumentality of Chinese international law research, see, e.g., Xu (2006, 35).

<sup>6</sup> Mickelson, 1998, 353; Chimni, 2006, 4.

<sup>7</sup> Mickelson, 1998, 416.

<sup>8</sup> Chimni, 2006, 3; Gathii, 2011, 38-39.

<sup>9</sup> Mickelson, 2008, 357.

<sup>10</sup> Mutua, 2001.

<sup>11</sup> Using “Third World International Law” as a search term in CNKI, the largest academic database in China, and applying no additional filters, yields only eight results. Among these, only three articles can be regarded as substantive discussions of TWAIL, two of which are general introductory pieces written by the same author. Even when the search is expanded to the full-text level rather than being limited to the subject/theme field, the number of results increases only to forty-four.

<sup>12</sup> Li, 2020, 802; Zhang, 2024, 21.

<sup>13</sup> He, 2024, 54. Throughout the article, translations from the Chinese are mine.

<sup>14</sup> *Ibid.*, 60.

Previously, scholars have explained this lack of engagement mostly from the perspective of material interests.<sup>15</sup> This article, however, proposes that apart from shifts in China's political and economic positioning and thus changes in its perceived national interest, there are also more profound, underlying psychological reasons that pertain to the self-identification of China and the Chinese. It is the double-positioning of China as both a "major country" (*daguo*, 大国) and a "developing country", both on a material and psychological level, that results in the contradictions and ambivalence in CAIL's attitudes towards international law and towards TWAIL.

The article starts with a representation of the main overlaps and divergences between CAIL and TWAIL. This first part points out that despite the apparent overlap of a shared anti-Western domination stance, a major divergence between CAIL and TWAIL is that TWAIL is a more radical, people-centred approach. While TWAIL criticises the very foundations of the unequal structure of the international system, CAIL is characterised by a marked ambivalence towards the existing system. One manifestation of this ambivalence is China's double positioning as a "developing country" and a "major country" at the same time. The second part analyses this double positioning. The argument is that this self-positioning is not dictated solely by China's material strength, as it already self-identifies as exceptional among the "developing countries" even before the so-called "China's rise", and continues to self-identify as part of the Global South despite its emergence as a world power. The third part takes the discussion a step further and claims that this double positioning has its deep-seated socio-psychological roots, namely a double identity of victimhood and triumphalism, of inferiority and superiority. The article concludes that CAIL's ambivalence towards the existing international system and its distance from the TWAIL are thus less a result of rational, material calculations, but has deep-seated identitarian and psychological underpinnings.

#### OVERLAPS AND DIVERGENCES BETWEEN THE CHINESE AND THIRD WORLD APPROACHES TO INTERNATIONAL LAW

There are some obvious overlaps between the two approaches. Both criticise the present international legal system and its functioning as unequal and dominated by Western countries. The first generation of Chinese international lawyers unequivocally self-identified as part of the Third World and criticised the historical dominance of the West, especially the use of international law as a tool during Western colonisation, which echoes many of the TWAIL critiques of international law. Cotemporary Chinese scholars continue some of these critiques. However, this section will show that as TWAIL also develops, there are some divergences between contemporary Chinese approaches and TWAIL, especially the people-centred, more radical approach of contemporary TWAILers.

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<sup>15</sup> Wang, 2022.

*Overlaps between CAIL & TWAIL*

In terms of the first generation of Chinese international lawyers, the eminent Chinese international lawyer Wang Tieya (王铁崖), legal advisor to the People's Republic of China (PRC) delegation to the United Nations (UN) in 1950 and later a judge of the International Criminal Tribunal for the Former Yugoslavia, published an article entitled "The Third World and International Law" in 1983.<sup>16</sup> The article was published in a collection of papers that gathered prominent scholars of international law of that time, including R.P. Anand, later recognised as a significant actor in the intellectual genealogy of TWAIL. Yet Wang was the only scholar that chose the subject of the Third World. This serves as an example of the self-identification of Chinese international lawyers as part of and as the voice of the Third World.

In terms of substantive arguments, first generation Chinese international law scholars focused particularly on the issue of "unequal treaties", seen as the epitome of international law serving as a tool of Western colonialism in China. In his lecture at the Hague Academy of International Law in 1990, Wang Tieya recounted a history of "the introduction of international law into China" by highlighting "the imposition of unequal treaties" "[...] extensively used for political oppression and economic exploitation".<sup>17</sup> Today, the story of "unequal treaties" is still the starting point of the Chinese historiography of modern international law, as reflected in Chinese international law textbooks and in scholarly writings.<sup>18</sup>

Another point that has been consistently criticised by Chinese international law scholars is the civilisational hierarchy prevalent in international law in the 19<sup>th</sup> century. Another earlier Chinese international law Scholar, Chen Tiqiang (陈体强), cited Oppenheim's five classes of states and James Lorimer's classification of humanities, and called such hierarchies "absurd".<sup>19</sup> Contemporary Chinese international law scholars continue to criticise the structure of international law as unequally favouring Western countries. In his recent article advocating for a "Chinese school of international law", He Zhipeng advised that one should look beyond the "appearance of equality and justice" of international law, so as not to ignore the "inequality, injustice and non-democracy inherent in international law".<sup>20</sup> Deng Lie (邓烈) argues that the post-colonisation reforms after the Second World War only touched the surface of international law, while Western-centrism has been hidden into the "profound inner structure of international law".<sup>21</sup>

Third World approaches share all these critiques. TWAIL scholarship has consistently uncovered the power relations of dominance and subjugation in the structure of international law and its functioning. TWAILers have uncovered the central role of colonialism in the constitution of international law and the ways in which these colonial origins continually repeat themselves to this day.<sup>22</sup> They have pointed out how a seemingly universal set of rules applicable to all ignores the reality of uneven global development and thus operates to the disadvantage

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<sup>16</sup> Wang, 1983.

<sup>17</sup> Wang, 1990, 248.

<sup>18</sup> See, e.g., Zeng, 2018; Yang and Meng, 2013.

<sup>19</sup> Chen, 1984, 7-9.

<sup>20</sup> He, 2022, 180.

<sup>21</sup> Deng, 2022, 37.

<sup>22</sup> Anghie, 2004.

of Third World countries and peoples.<sup>23</sup> They have criticised the Euro-centrism and racial connotations hidden under the cover of universality in international human rights regimes and practices.<sup>24</sup>

### *Divergences between CAIL and TWAIL*

Despite their shared stance against Western domination and their sensitivities to the colonial legacy of international law, there are also some major divergences between CAIL and TWAIL. TWAIL, especially in its contemporary development, is more people-centred and more radical than CAIL. In uncovering the “deep structures of global capitalism and the character of the post-colonial state as reasons preventing the development of the Third World”,<sup>25</sup> their critiques touch the very structure of the global capitalist economy and the role of international law in legitimising and sustaining it. In this vein, they also criticise the participation of the post-colonial states themselves in this structure. The “struggles inside third world countries” are considered essential for progress towards equality on the international level.<sup>26</sup> This is thus a people-centred approach that take the needs and interests of marginalised groups and individuals, instead of the “states” of the Third World, as their ultimate consideration.

Unlike the more people-centred approach of contemporary TWAIL critiques, the Chinese approach is determinatively state-centred and sovereignty-based.<sup>27</sup> Chinese international law research itself is state-driven. Scholars rely heavily on state funding and research agendas are set by the state, and research aims at serving the state’s policy needs.<sup>28</sup> If research funding serves as encouragement and guidance for scholarly work, strict censorship further ensures that scholars do not touch upon topics that the authorities deem off-limits.<sup>29</sup>

The advocacy for a unique Chinese approach is itself, at least partially, a response to official policies. These scholarly discussions are a direct response to official encouragement for developing “autonomous” (*zizhu*, 自主) theories in all humanities and social sciences. President Xi Jinping has stated that “accelerating the development of a philosophy and social science with Chinese characteristics is ultimately about constructing an independent Chinese knowledge system”.<sup>30</sup> In essence, it is an official stance of resisting Western epistemological and academic dominance.

Moreover, Third World Approaches criticise the very structure of the international system, the global capitalist and neoliberal economy and its institutional arrangements, including the

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<sup>23</sup> Chimni, 2006, 14.

<sup>24</sup> Mutua, 2001.

<sup>25</sup> Chimni, 2010, 43.

<sup>26</sup> Chimni, 2006, 7.

<sup>27</sup> He, 2022, 188.

<sup>28</sup> *Ibid.*, 170; Roberts, 2017, 52, 229; Erie, 2021, 64.

<sup>29</sup> This is not to say that there are no critical voices in China, yet it is extremely difficult for critical scholars to voice their opinions. For examples of critical voices, see Seppänen, 2016, 105; Wang, 2012, 385.

<sup>30</sup> “During his inspection of Renmin University of China, Xi Jinping emphasised: Uphold the Party’s leadership, inherit the red gene, be rooted in China, and carve out a new path for building world-class universities with Chinese characteristics”, *Xinhua*, 25 April 2022, URL: [https://www.gov.cn/xinwen/2022-04/25/content\\_5687105.htm](https://www.gov.cn/xinwen/2022-04/25/content_5687105.htm), accessed 17 February 2025.

hegemonic agenda of international norms and institutions.<sup>31</sup> The Chinese approach, while sharing the critiques of the inequalities within the international system, seems to maintain such critiques only on its face value. In essence, its attitudes towards the international system is characterised by a persistent ambivalence.

As mentioned above, the first generation of Chinese international law scholars decidedly self-identified as part of the Third World and criticised Western domination. In practice, the PRC was isolated from the international society at the first decades of its existence and was not at all deeply embedded in the international system as it is today. Yet, even for the first thirty years since 1949, Xue Hanqin (薛捍勤), Chinese Judge at the International Court of Justice and seasoned former diplomat, summarised China's approach towards international law with "two distinct features: critical rejection and positive construction".<sup>32</sup> According to Xue:

Politically China was critical of international law for its instrumental role for colonial expansion and imperialist domination in international affairs. In practice, however, in handling its foreign relations and international affairs, China would take account of international principles and norms that were generally accepted and practised by States.<sup>33</sup>

Contemporary Chinese scholars, while criticising the inequality in the international system, also stress that international law has its positive aspects, and the solution lies in making better use of them. According to Zhang Naigen (张乃根), there are two aspects of international law: the positive universal international law, and the negative Euro-centric international law. Although he acknowledges that the Euro-centric side of international law has brought about violence and destroyed other legal cultures, he perceives that this aspect has already been denounced by the decolonisation movement and will be dismantled. On the contrary, he stresses that international law also has a truly universal aspect, which should be acknowledged and upheld.<sup>34</sup> Zhang argues that for China to contribute to the development to international law, it has to focus not on TWAIL scholarship, nor on "Asian international law", but instead on the experiences of the United States (US).

The same ambivalence towards the international system can be observed in Chinese official rhetoric. On the one hand, it frequently refers to Western "double standards" and their ensuing injustice. In 2016, China and Russia jointly condemned "the practice of double standards".<sup>35</sup> Chinese Foreign Minister Wang Yi (王毅) declared that international law "must be written by all... there should be no room for exceptionalism or double standards."<sup>36</sup> On the other hand,

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<sup>31</sup> Anghie, 2023; Jain, 2023.

<sup>32</sup> Xue, 2012, 57.

<sup>33</sup> *Ibid.*, 62.

<sup>34</sup> Zhang, 2024, 12, 14.

<sup>35</sup> The Declaration of the People's Republic of China and the Russian Federation on the Promotion of International Law, 26 June 2016, URL: [https://www.fmprc.gov.cn/eng/wjdt\\_665385/2649\\_665393/201608/t20160801\\_679466.html](https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201608/t20160801_679466.html), accessed 26 June 2023.

<sup>36</sup> Remarks by State Councilor and Foreign Minister Wang Yi at the United Nations Security Council High-level Meeting on the Theme "Maintenance of International Peace and Security: Upholding Multilateralism and the United Nations-centered International System", Ministry of Foreign Affairs of the People's Republic of China, 8 May 2021, URL: [https://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/zyjh\\_665391/202105/t20210508\\_9170544.html](https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/202105/t20210508_9170544.html), accessed April 6, 2023.

the criticism is mostly directed against Western states and their alleged misuse, misinterpretation, or abuse of international law, but not against international law itself. Quite to the contrary, China depicts itself as “a staunch defender and builder of international rule of law”.<sup>37</sup> As stated by Xi Jinping on various occasions, and indeed written into his Report to the 20<sup>th</sup> National Congress of the Chinese Communist Party:

China is firm in safeguarding the international system with the United Nations at its core, the international order underpinned by international law, and the basic norms governing international relations based on the purposes and principles of the UN Charter. It opposes all forms of unilateralism and the forming of blocs and exclusive groups targeted against particular countries.<sup>38</sup>

Late prominent Chinese diplomat Wu Jianmin (吴建民) gave a well-formulated summary of the stance: as a beneficiary of the current world order, “China is both a reformer and promoter to the world order”, even though this “is the order erected by the Western powers” and thus “more favorable to the West”.<sup>39</sup>

Certainly, Third World Approaches’ vision of international law is not a black and white picture either. TWAILers also seek to constructively transform international law so that it can serve better the interests of the marginalized.<sup>40</sup> And within the TWAIL network there are also both “radical and reformist trends”.<sup>41</sup> However, contemporary TWAILers, while acknowledging the transformative or progressive aspects and potentials of the law, also unmistakably engage in a fundamental questioning of the very structure of the international system from the margins. And their attempts to “transform” the law is based on that very questioning. The target of CAIL’s critique, on the other hand, seems to be the functioning of the global structure and its end result, but not the structure itself. To put it more simply, what CAIL sees as a problem seems to be not the inequality of the distribution of power *per se*, but how that power is distributed. This can be further observed in China’s self-positioning as a “major country”, and in a whole corpus of policies and scholarship on the role of “major countries” in international law and international relations. The next section will take a closer look at how China’s double positioning as both a “major country” and a “developing country” influences its ambivalence towards the international system and the reluctance of CAIL to engage with TWAIL.

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<sup>37</sup> Ministry of Foreign Affairs, “Wang Yi: China, a Staunch Defender and Builder of International Rule of Law”, URL: 24 October 2014, URL: [https://www.fmprc.gov.cn/eng/wjb/wjbz/jh/202405/t20240527\\_11312100.html](https://www.fmprc.gov.cn/eng/wjb/wjbz/jh/202405/t20240527_11312100.html), accessed 6 February 2025.

<sup>38</sup> Report to the 20th National Congress of the Communist Party of China, Xinhua, 25 October 2022, official translation available at [https://english.www.gov.cn/news/topnews/202210/25/content\\_WS6357df20c6d0a757729e1bfc.html](https://english.www.gov.cn/news/topnews/202210/25/content_WS6357df20c6d0a757729e1bfc.html), accessed 17 February 2025.

<sup>39</sup> “Major-Country Diplomacy with Chinese Characteristics”, Interview with Wu Jianmin, 2015, URL: [https://shanghaiforum.fudan.edu.cn/\\_upload/article/files/72/fe/1513e0804184ba3fb47bcf9ce282/65c50337-d288-42ef-acf6-1a7b30c90510.pdf](https://shanghaiforum.fudan.edu.cn/_upload/article/files/72/fe/1513e0804184ba3fb47bcf9ce282/65c50337-d288-42ef-acf6-1a7b30c90510.pdf), accessed 24 February 2025.

<sup>40</sup> Anghie, 2004, 317-318; Gathii, 2011, 40.

<sup>41</sup> Mutua and Anghie, 2000, 32.

CHINA'S DOUBLE POSITIONING: A "MAJOR COUNTRY" AND A  
"DEVELOPING COUNTRY" AT THE SAME TIME

Existing explanations about China's ambivalence towards the international system tend to stress economic factors and rational choices based on material interests. For Wang Yilin, CAIL's distancing from TWAIL is directly linked to a shift in China's official position following its rapid economic growth in the Opening Up and Reform era. Wang argues that not only did the Chinese government abandon its policy of uniting with the Third World and turned towards Western countries, but that China's role, especially in the economic sector, also changed.<sup>42</sup> This line of argument certainly has its merits. One typical example is investment law. Around the year 2010, many Chinese scholars noted the need to balance interests between foreign investors and host countries, reflecting China's transition from a capital-importing country to one that is both a capital importer and exporter.<sup>43</sup>

Chimni goes one step further by arguing that "[t]he meaning of Third World today can... be more accurately expressed in the vocabulary of class", rather than that of geography or nation states.<sup>44</sup> Chimni perceives that the interests of the transnational capitalist classes of the Global South and the Global North converge regardless of their competition for political power. Thus, China's rise and its competition with the US does not mean that it belongs to the political alignment of opposition to capitalism. Rather, "leading Third World powers like BICS [sic] no longer speak of imperialism" because their "national capitalist classes [...] gain from the ongoing neoliberal globalization process".<sup>45</sup>

However, these considerations do not account for the whole picture and miss some of the more nuanced complexities in the Chinese stance. Indeed, China has benefited from, and actively engaged with, the global neoliberal economic order.<sup>46</sup> While the debate about whether China's economic policy is neoliberal or not has generated a whole literature, there seems to be little doubt that China has been integrated into global neoliberalism.<sup>47</sup> And there have certainly been adjustments and shifts in its self-positioning with regard to the Third World and to the dominant capitalist countries. Nevertheless, China today clearly still "speaks of imperialism" and actively portrays itself as part of the Third World – today called the "Global South" in China's diplomatic parlance. My argument is that CAIL's ambivalence towards the international system cannot be based on economic reasons alone but is linked to more deep-seated socio-psychological mechanisms of self-identification. The second part will look at the outer representation of these mechanisms, namely China's self-positioning in the world, and the third part will make the attempt to examine the underlying self-identities involved.

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<sup>42</sup> Wang, 2022, 9-11.

<sup>43</sup> See, e.g., Han, 2012; Wang, 2013; He, 2010.

<sup>44</sup> Chimni, 2017, 38.

<sup>45</sup> *Ibid.*, 47.

<sup>46</sup> Harvey, 2007.

<sup>47</sup> Weber, 2020.

*China as part of the Third World/developing countries/Global South*

China has a history of identifying itself as part of the Third World and trying to mobilise a broad united front of the *yafeila* (亚非拉, meaning Asia, Africa and Latin America) to oppose a world order dominated by superpowers.<sup>48</sup> In the early decades after the establishment of the PRC, China actively painted itself as part of the Third World and maintained a diplomatic stance and policies of affinity with the Third World. After the beginning of the Reform and Opening Up policy in 1978, China had indeed turned towards the West and Japan for much needed investment and technology.<sup>49</sup> However, it has always self-identified as part of the Third World, an identification that Peter Van Ness called “one of the most consistent themes in Beijing’s foreign policy statements”,<sup>50</sup> albeit the designation “Third World” was replaced by “developing countries” and has recently been changed into “Global South”.

In 2024, President Xi Jinping announced at the BRICS Plus dialogue that: “No matter how the international landscape evolves, we in China will always keep the Global South in our heart, and maintain our roots in the Global South.”<sup>51</sup> The use of the term “Global South” is new, as Chinese official statement still showed suspicion and resistance to the term as recent as 2023.<sup>52</sup> However, it was also in that same year that Chinese high-ranking officials, and finally President Xi himself, started to systematically and widely use the term. Thus far, it seems that the term has replaced “developing countries” (*fazhanzhong guojia*, 发展中国家) in Chinese diplomatic parlance. As explained by Foreign Ministry spokesperson Mao Ning (毛宁), the Global South, to China, means “the family of emerging markets and developing countries”.<sup>53</sup>

In terms of international law scholarship, on the whole, Chinese international law scholars unmistakably self-identify as “scholars of developing countries”, a position which, according to Zhang Hui (张辉), automatically makes them “subconsciously remain alert to the positions of international — especially Western — academia”.<sup>54</sup> As mentioned above, Zhang Naigen argues that China should look at the American experience as inspiration for China’s quest to playing a bigger role in the international system. But this does not stop him from asserting at the same time that Chinese international law theory should share the common concerns of developing countries and represent their rightful interests.<sup>55</sup>

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<sup>48</sup> Yu, 1977.

<sup>49</sup> Wang, 2003, 74.

<sup>50</sup> Van Ness, 1993, 194.

<sup>51</sup> Xi Jinping, “Combining the Great Strength of the Global South to Build Together a Community with a Shared Future for Mankind”, Ministry of Foreign Affairs People’s Republic of China, 24 October 2024, URL: [https://www.mfa.gov.cn/eng/xw/zyxw/202410/t20241024\\_11515589.html](https://www.mfa.gov.cn/eng/xw/zyxw/202410/t20241024_11515589.html), accessed 25 February 2025.

<sup>52</sup> Shin Kawashima, “How China Defines the ‘Global South’: Beijing Tries to Make the Term Its Own”, *The Diplomat*, 11 January 2024, URL: <https://thediplomat.com/2024/01/how-china-defines-the-global-south/>, accessed 25 February 2025.

<sup>53</sup> Foreign Ministry Spokesperson Mao Ning’s Regular Press Conference on July 26, 2023, URL: [http://us.china-embassy.gov.cn/eng/fyrth/202307/t20230726\\_11118191.htm](http://us.china-embassy.gov.cn/eng/fyrth/202307/t20230726_11118191.htm), accessed 25 February 2025.

<sup>54</sup> Zhang Hui, 2018, 96.

<sup>55</sup> Zhang 2024.

*China as a “major country” (daguo, 大国)*

Since Xi Jinping came into power, the concept of “Major Country Diplomacy with Chinese characteristics” (henceforth “Major Country Diplomacy”) has become a guiding “theory” for Chinese foreign policies and dominant discourse in official rhetoric. The concept was first used by Foreign Minister Wang Yi in 2013 in his speech at the World Peace Forum at Tsinghua University, and then formally endorsed by Xi at the Central Foreign Affairs Work Conference in November 2014.<sup>56</sup> The concept quickly spread into the academic and think tank world, and became well-referenced in the media. Stephen N. Smith’s review of academic publications and newspapers between 2011 and 2019 shows that the “Major Country Diplomacy” narrative has almost entirely replaced the previous narrative and diplomacy guideline of “hide your strength, bide your time” (韬光养晦, *taoguangyanghui*).<sup>57</sup> However, despite his conclusion that this change signifies a major policy shift that expanded the boundaries of China’s state action in the international arena, Smith also notes that “China’s consistent foreign policy objective has been to assume a great power status commensurate with its historic self-perception as a leading civilization”.<sup>58</sup> The political concept as such might be new, but the self-perception as a “major country” is not.

A leading Chinese scholar who has focused on the subject of “major country” from an international law perspective is Cai Congyan (蔡从燕). While Cai counts China as a “new great power”<sup>59</sup> and his work on the subject focuses precisely on how the emergence of new great powers may reshape international law, he considers China “in the position of a small and weak country” at the same time.<sup>60</sup> In his book, *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously*,<sup>61</sup> Cai notes that it is only in the early years of the 21<sup>st</sup> century that China started to shift towards the identity of a “rising great power”. However, he points out at the same time that, even way before its economic rise, “China substantially distinguishes itself from many other developing states in that it has been long recognized as having the *full potential* to rise or revive its status as a great power”.<sup>62</sup> Indeed, this “Chinese exceptionalism” is not something that arises solely from the economic development of China, but has always existed even when China saw itself as economically backward and militarily weak.

This idea of seeing China as exceptional, “as having the full potential to rise or revive its status as a great power” even when it was weak in reality, can be traced back to the turn of the 20<sup>th</sup> century, the forming era of the Chinese nation-state. Historian Yang Ruisong’s (杨瑞松)

<sup>56</sup> “中央外事工作会议在京举行，习近平发表重要讲话” (The Central Conference on Work Relating to Foreign Affairs Was Held in Beijing, Xi Jinping Gives an Important Speech), *People’s Daily*, 30 November 2014, URL: <https://cpc.people.com.cn/n/2014/1130/c64094-26119225.html>, accessed 30 December 2025.

<sup>57</sup> Smith, 2021, 6-7.

<sup>58</sup> *Ibid.*, 4.

<sup>59</sup> Note that both “great power” and “major country” correspond to the same Chinese term “*daguo*” (大国), literally “big country”. Cai uses the term “great powers” in his English publications. However, the official translation of “*daguo*” has deliberately used “major country”, instead of “great powers”, because the latter has commonly been translated to “*lieqiang*” (列强) in Chinese, a term with strong negative connotations and is commonly used to refer to the Western powers that colonised China in the 18<sup>th</sup> and 19<sup>th</sup> century, see Zhang Qingmin, 2018, 74.

<sup>60</sup> Cai, 2012, 188.

<sup>61</sup> Cai, 2019.

<sup>62</sup> *Ibid.*, 54, emphasis added.

examination of the commonly used national symbols of “yellow peril” and “sleeping lion” revealed how Chinese intellectuals in the early 20<sup>th</sup> century appropriated negative Western comments about China and turned them into symbols of China’s potential strength.<sup>63</sup> Both symbols thus became evidence that Westerners were afraid of China even though it was weak at that time, just as a “sleeping lion”, once awoken, would activate its natural strength and power. These appropriations were complicated processes and at times represented political or advocacy strategies to advance reformist or revolutionary causes, but their outcome was a firm anchoring of these symbols in the Chinese national discourses and collective psyche. This is just one example of the belief that China has the potential to “rejuvenate” (*fluxing*, 复兴), the essence of Xi’s “Chinese dream” – not to *become* a great power, but simply to *revive* its historical greatness.

This grand narrative undoubtedly has its influence on the Chinese approach to international law. Thus, Cai could claim China is a “small and weak country” and a “great power” at the same time and does not see that as contradictory. Zhang Naigen could identify China as a developing country while at the same time holding that China’s international law approach should draw on that of the US instead of TWAIL. And He Zhipeng, when advocating for a “Chinese school of international law”, distinguishes this Chinese school not only from the West, but also from “other developing countries”.<sup>64</sup>

### *The combination of the two sides: China as the leader of the Global South*

One way of reconciling this seeming contradiction between the self-identification as both a developing country and as a “major country” is to consider China as a leader and/or role model for other developing countries. Cai Congyan proposes a concept of “international law of capacity-empowering” (*funeng guojifa*, 赋能国际法), meaning international legal practices that promote capacity building for developing countries. Cai argues that existing practices of “international law of capacity-empowering” are still West-centric, but China’s success in modernisation can provide an alternative path of “enabling international law” that is more suitable for developing countries. Moreover, Cai argues that China’s capacity building practices with developing countries go beyond “narrow national interest calculations” and actually aim at improving the capacities of the latter.<sup>65</sup> These arguments thus place China as a role model for other developing countries to look up to, and as a leader that helps and guides the latter on their path to becoming stronger.

He Zhipeng makes the point more explicit by arguing that it is China’s “global responsibility” to “shape an international law of developing countries”.<sup>66</sup> According to He, China needs to become a “great power of international law”, as any country that wants to become a “world-level, leading great power” has to have “guiding opinions on international affairs”.<sup>67</sup> But to do so, He argues, China needs to clearly self-identify as a developing country and to cooperate

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<sup>63</sup> Yang, 2010.

<sup>64</sup> He, 2022, 174.

<sup>65</sup> Cai, 2025, 45-46.

<sup>66</sup> He, 2024, 51.

<sup>67</sup> *Ibid.*, 49.

with other developing countries to form consensus so as to shape international law according to the values of developing countries, so that international law can become a more equal and just system.<sup>68</sup> Nevertheless, He does not omit to claim that China, as “the biggest developing country”, should “speak on behalf of developing countries”, and lead Third World international law to “development and maturity”.<sup>69</sup>

This stance is in alignment with official positions. At the 2024 Forum on China-Africa Cooperation (FOCAC) opening ceremony, President Xi Jinping stated the following:

Modernization is an inalienable right of all countries. But the Western approach to it has inflicted immense sufferings on developing countries. Since the end of World War II, Third World nations, represented by China and African countries, have achieved independence and development one after another, and have been endeavoring to redress the historical injustices of the modernization process [...] China and Africa’s joint pursuit of modernization will set off a wave of modernization in the Global South, and open a new chapter in our drive for a community with a shared future for mankind.<sup>70</sup>

Thus, the language of solidarity with the Global South goes hand in hand with the language of development and modernisation, concepts and processes closely tied to neoliberal globalization and capitalist expansion. More explicitly, speaking about the Asian Infrastructure Investment Bank, the Silk Road Fund and their support for the One Belt One Road Initiative, Xi urged the Bank and the Fund to “follow international customs” and learn from the practices of existing multilateral financial institutions, and “function under the current international economic and financial order”.<sup>71</sup>

China’s model operates within the same logic of the broader global capitalist system. While China criticises Western countries and leading international financial institutions, whether and to what extent its own model and practices can offer the benefits to Southern countries that it claims is still a debatable question. Based on her fieldwork in Zambia, Ching Kwan Lee argues that Chinese state capital is different from global private capital, and can be more responsive to local demands, more open to political negotiation and concession. Yet she observes at the same time that there are only “varieties of capital”, not “varieties of capitalism”: “capitalism is global, and it is the only game in town”.<sup>72</sup>

On the whole, China has become more confident in presenting itself “as both a leader of a victimised Global South and a developer of just alternatives to international norms and institutions portrayed as advancing Western interests”.<sup>73</sup> Hedley Bull asserted in the 1970s that “China disavows entirely the role of a great power, and views itself as the champion of the Third World nations in their struggle against ‘super power hegemonism’”.<sup>74</sup> Today, China is actively

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<sup>68</sup> *Ibid.*, 51-53.

<sup>69</sup> *Ibid.*, 53, 60-63.

<sup>70</sup> “Keynote Address by Chinese President Xi Jinping at Opening Ceremony of 2024 FOCAC Summit”, official translation, *Xinhua*, 5 September 2024, URL: <https://english.news.cn/20240905/e898a78004754f229763ad2bb5be7aa3/c.html>, accessed 6 September 2024.

<sup>71</sup> Institute of Party History and Literature, 2019, 85-86.

<sup>72</sup> Lee, 2017, xiii.

<sup>73</sup> van Staden *et al.*, 2018, 6-7.

<sup>74</sup> Bull, 1995 [1977], 286.

assuming the role of a great power, but it has not abandoned the position of “the champion of the Third World”. Quite to the contrary, “champion of the Third World” has become part of its self-portray as a rising power, one that is used to distinguish itself from the Western powers and from their baggage of colonialism, imperialism, hegemonism, etc.

One might argue that in practice, China endorses global neoliberalism and its positioning as part of the Global South is just a political and economic strategy that helps it to claim the moral high ground of speaking for the disenfranchised while at the same time to advance its economic interests in the Global South. While not denying the political and economic considerations in this self-positioning, I argue that they are not mere strategies, but reflect deep-seated psychological dynamics, which we will examine further in the next Section.

#### DOUBLE IDENTITY: BETWEEN VICTIMHOOD AND TRIUMPHALISM, HUMILIATION AND PRIDE, INFERIORITY AND SUPERIORITY

In recent decades, as advancements in neuroscience and psychology increasingly question the traditional dichotomies between reason and emotion, studies in international relations have started to go beyond the traditional rational actor model to recognise the significance of emotions, leading to what some call an “emotional turn” in International Relations studies since the early 2000s.<sup>75</sup> In international law, however, it remains marginal, as law is considered to be firmly associated with “reason” in the traditional dichotomy, and should be guarded from irrationalities, thus from emotions.<sup>76</sup> Yet emotions are a central part of decision-making and powerfully influence behaviours, and not just for individuals, but also on a collective level. What links together feelings, affective individuals and abstract social groups are social identities. When individuals identify with a group, they feel like the group; thus as Jonathan Mercer argued, one can also “feel like a state”.<sup>77</sup>

William Callahan uses the concept of “structure of feeling” to capture the interdependence and combinations of reason and emotion, and of optimism and pessimism in the case of China. According to Callahan:

To put it simply, China is a pessoptimist nation. To understand China’s glowing optimism, we need to understand its enduring pessimism, and vice versa. To understand China’s dreams, we also need to understand its nightmares. China’s national aesthetic entails the combination of a superiority complex, and an inferiority complex.

[...]

I think it is necessary to see how China’s sense of pride and sense of humiliation are actually intimately interwoven in a “structure of feeling” that informs China’s national aesthetic.<sup>78</sup>

I call this combination of victimhood and “humiliation” on the one hand, and heroism and victory on the other hand, a combination of pessimism and optimism, of humiliation and pride, of inferiority and superiority, China’s “double identity”. The idea of “structure of feeling”

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<sup>75</sup> Koschut, 2025.

<sup>76</sup> Saab, 2021.

<sup>77</sup> Mercer, 2014.

<sup>78</sup> Callahan, 2010, 9-10.

is apt to describe this duality as it underlines the affective elements as well as the prevalence and the constructing effects of such sentiments. In this third part, we will first see how this double identity is reflected in Chinese approaches to international law. We then move on to its manifestation in China's diplomatic practices and take the "wolf warriors diplomacy" as an example. We will then analyse this double identity from the lens of post-colonial dualities.

*CAIL: the history of international law as part of national history*

In reaching his conclusions that "China is a pessoptimist nation", Callahan studied extensively China's collective memories and historical narratives of the "Century of Humiliation". The subject has indeed been thoroughly examined by the literature on Chinese nationalism because of its central importance in understanding contemporary China. As Wang Zheng observed, "historical memory is the most useful key to unlocking the inner mystery of the Chinese" and "the prime raw material for constructing China's national identity".<sup>79</sup>

The writing of the history of international law in China is interwoven with this broader historical narrative of China's modern history. Legal scholar He Qinhu (何勤华) stated that the most important feature of the development of modern Chinese international law as a discipline was that it went hand in hand with "the process of 'the Chinese people have stood up'".<sup>80</sup> In other words, the history of international law in China is the history of China's development as a nation-state.

To fully grasp how this intertwining affects Chinese approaches to international law, we need to take a closer look at how exactly the history of international law is written in China. Mainstream Chinese historiography of international law generally recounts how China gradually evolved from being forced into the international system, going through a long and winding learning process, to finally being capable of actively participating in and contributing to this system.

In their article *The Notion of International Law of China*,<sup>81</sup> He Zhipeng and Sun Lu (孙璐) represented this typical storyline so clearly that it is worth listing its subtitles here:

From the First Opium War to the Treaty of Shimonoseki: the humiliation of modern China's encounter with international law

From late Qing reforms to the *Beiyang* Government: China's struggle in the international system

From the Unequal Treaty Abrogation Movement to the creation of the UN: China's active participation in international law

From the Chinese Civil War to the Taiwan Strait standoff: the marginalized mindset of a country outside of the system

Open up and Reform and a harmonious world: China re-enters the international system and becomes stronger

<sup>79</sup> Wang, 2012, xiii.

<sup>80</sup> He, 2004, 60.

<sup>81</sup> He and Sun, 2015.

One can see clearly how this storyline is closely linked to and echoes the different markers of the broader historical narrative of Chinese modern history.<sup>82</sup> In this historical narrative, the First Opium War marked the beginning of what would be remembered as the “Century of Humiliation”, a century of Western and Japanese invasion, but also a century of heroic resistance of the Chinese people. This national saga of humiliation and resistance culminated in the establishment of the PRC, symbolising the victory of China. The story then connects smoothly to the contemporary “rise of China”, and an even brighter future, as the country restores its destined place in the world as a leading power.<sup>83</sup> In combining the history of international law with this broader narrative of China’s national history, the article reveals how Chinese perceptions of and approaches to international law are shaped by the self-images of China in different historical eras. The strongly anthropomorphised language used to depict the nation’s actions, motivations and emotions also shows the salience of emotions. Moreover, the trajectory from being victim to becoming stronger, from being marginalised to active participation, also recalls the divergence with TWAIL discussed earlier. While TWAIL’s stance is grounded in critique from the margins, CAIL’s intellectual trajectory is oriented toward the centre stage of the international legal order.

If this storyline seems to depict a linear trajectory from victimhood to victory, the reality is often more complex. The co-existence of the two sides is acknowledged in the writings of Chinese scholars. Zhang Yongle (章永乐), for example, distinguishes the Chinese approach from the Japanese one with regard to how both countries had to react to the Western hierarchy of civilisations. For Zhang, while Japan accepted the Western hierarchy and actively sought to climb the civilisational ladder according to Western standards, China could not choose the same path, the “biggest obstacle” being “the historical success of East Asian tribute system and the Sinocentric worldview of the Chinese scholar-official elite”.<sup>84</sup> Thus, this “nation with a glorious past yet burdened by a heavy historical legacy” chose to reject the hierarchy of civilisations, not only sought its own national independence, but also helped other colonised countries and has maintained relations with the latter in the light of “promises for the multi-polarisation and democratisation of international order”.<sup>85</sup>

Zhang’s depiction paints a rather promising picture, in which he acknowledges the duality of “glorious past” and “heavy historical legacy”, but views their consequences positively and optimistically. In his vision, both dynamics worked together to produce an independent, dignified approach that resisted the powerful while respecting the weaker. Whether that vision depicts accurately the reality is another issue. For our discussion, the point to note is the acknowledgement of that duality, and the almost natural, taken-for-granted linkage of this duality with China’s approaches to the international order.

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<sup>82</sup> d’Aspremont and Zhang, 2021, 911-913.

<sup>83</sup> The narrative of the “Century of Humiliation” has been thoroughly studied notably in literature on Chinese nationalism. See, e.g., Callahan, 2010; Hays Gries, 2004.

<sup>84</sup> Zhang, 2016, 176.

<sup>85</sup> *Ibid.*, 177.

*The double face of “Wolf Warrior diplomacy”*

The duality of victimhood and triumphalism can be observed also in China’s diplomatic practices. We will now turn to the “Wolf Warrior diplomacy” as an example to examine how that duality works in practice. The term “wolf warrior diplomacy” is not a strictly defined academic concept, but a popular label first used by Western media and then picked up in China as well to refer to a confrontational approach of China’s public diplomacy. It is generally characterised by strong languages that are either defensive of PRC policies or attacks rival countries, most often “the West”.

The wolf warrior diplomacy diverges from the strategy of “hide our capabilities and bide our time” which served as the guiding principle of China’s foreign policy for most of the reform era. At first glance, this change seems to be a logical result of the China’s increased material strength. However, if we take a closer look at the major shifts in PRC’s foreign policy, we will find that the time when China adopted the most antagonist stance was arguably during the 1960s, when the newly established PRC decided to oppose the two superpowers at the same time. This was also a time when the PRC stressed its identity as a Third World country and the common struggle of the colonised against the colonisers, the oppressed against the oppressor, the exploited against the exploiter—in other words, the victim against the perpetrator.

This policy and narrative changed as China entered the reform era, and especially the first decade after the opening up. As China sought to join the international economic system, approached the West for its financial and technological resources, the narratives of victimhood and Western oppression also faded away. It was after 1989, faced with international sanctions imposed by the West, that the PRC leadership returned to a more antagonistic stance that stressed China’s independence and opposed Western interference. Interestingly, this stance again resorted to the victimhood narrative and recalled the image of China as part of the Third World defending itself against Western imperialism.<sup>86</sup>

It seems that the image of an innocent victim on the one hand, and that of a courageous fighter resisting the unjust Western oppression on the other, tend to go hand in hand. Both the post-1989 shift and the current emergence of a wolf warrior diplomacy demonstrate this Janus-faced character. Sullivan and Wang pointed out that the wolf warrior diplomacy could be triggered by “any issue, real or imagined, serious or trivial”, because of an “ever-present alertness to injustice and insult”.<sup>87</sup> China’s Minister of Foreign Affairs, Wang Yi, responded to the criticism of “wolf warrior diplomacy” from foreign media by saying: “We never take the initiative to bully others, but will definitely fight back against any deliberate insults and groundless accusations.”<sup>88</sup> Chinese ambassador to the UK, Liu Xiaoming (刘晓明) also stated that: “I think the reasons why there are ‘wolf warriors’, is because there are ‘wolves’ in this world.”<sup>89</sup>

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<sup>86</sup> Van Ness, 1993, 211-12.

<sup>87</sup> Sullivan and Wang, 2022, 71.

<sup>88</sup> Wang Yi as quoted in “Ambassador to the UK, Liu Xiaoming: The Reason Why There Are ‘Wolf Warriors’ Is Because There Are ‘Wolves’ in the World” (驻英大使刘晓明：之所以有“战狼”是因为这个世界有“狼”), CCTV, 25 May 2020, URL: <http://m.news.cctv.com/2020/05/24/ARTI8BYmADeqivsgNvMiMRF4200524.shtml>, accessed 10 September 2024, “我们从来不会主动欺凌别人，但是对于蓄意中伤，一定会作出有力回击”。

<sup>89</sup> *Ibid.*

Thus, for the Chinese, wolf warrior diplomacy is not aggressive. Rather, it is defensive. It reflects two seemingly contradictive mentalities at the same time: on the one hand, we are unjustly insulted and bullied as victims; on the other hand, we are strong and brave, with both the resoluteness and the material means to fight back against whatever threats and attacks imposed on us. Therefore, on the strategic and realistic level, the “major-country diplomacy” entails a re-positioning of China on the world stage, and more active involvement in world affairs. On a psychological level, the “wolf worrier diplomacy” nevertheless betrays a demand for respect and attention on the one hand following China’s rise, while at the same time a super-sensitivity to disrespect rooted in the historical memory of “humiliation”.

Yet this double face of aggressiveness and defensiveness still does not capture the full picture. There is an even more subtle paradox at play: the paradox between a genuine sense of victimhood and injustice on the one hand, and potential imperial ambitions on the other.

### *Post-colonial dualities and the ambivalence of CAIL*

To understand this paradox, one should not forget that when we speak of the sentiments of victimhood and “humiliation”, the unspoken presumption is that these sentiments are directed at the West as the reference Other. In the quotes of top Chinese diplomats above, it is not difficult to detect that the “wolves” that China needs to fight back, the “bullies” that impose “deliberate insults and groundless accusations” on China are the West. But the film from which the term “wolf warriors” comes, the eponymous box office smash, was a film featuring a Chinese hero who saved the day during the civil war in an unnamed African country. Leng Feng (冷锋), the main character in the film, defeated single-handedly both African rebels and white mercenaries to rescue not just Chinese expatriates, but also innocent African children and civilians, and led them to safety on a Chinese battleship.

The film’s stereotypical representation of “Africa” as chaotic, dangerous, waiting to be saved, and the depiction of China as the benevolent global actor that helps the Africans from the white villains have generated much discussion.<sup>90</sup> There is thus the Western/white Other against whom one needs to fight back, and the rest/non-white Other that needs to be saved. This brings us back to the arguments and stances of Chinese international lawyers discussed in the second part of this article: the comparison of Chinese and American exceptionalism by Cai Congyan, the proposal that the CAIL should look to the American approach, rather than TWAIL, by Zhang Naigen: because the Third World, to which China purportedly belongs, is never seen as an equal to China.

However, the contradiction is that this psychological self-distance from the Third World does not mean that the self-proclamation of “belonging to the Third World” is not real or is merely a political or economic strategy. Quite on the contrary, not only are they both real, they mutually reinforce each other. As observed by Chen Kuan-Hsing, China’s “energy for decolonization and deimperialization” and its potential “imperial desire” actually go hand in hand; “the real sentiment of suffering”, of victimisation and humiliation nourishes “the presently emerging Chinese triumphalism” and its growing imperial ambitions.<sup>91</sup>

<sup>90</sup> Liu and Rofel, 2018; Xiang and Wang, 2022.

<sup>91</sup> Chen, 2010, 13.

This duality Chen observed might not be specific to China. Dibyesh Anand notes that both China and India share very similar political behaviour towards their ethnic and/or religious minorities and argues that this is due to the central and structuring role played by nationalist politics in both countries.<sup>92</sup> Anand captures this paradox by calling China and India “postcolonial informal empires”.<sup>93</sup> “Postcolonial” in the sense that both countries understand themselves to be victims of foreign imperialism in the past, and still having “limited power of agenda-setting in the West-dominated international system” today, regardless of their increasing power and status.<sup>94</sup> “Informal empire” because the majoritarian nationalism of both countries subject their ethnic/religious minorities to territorial conquest and appropriation of the latter’s history and identity into the grand national story, while maintaining formal equality based on citizenship.<sup>95</sup>

Anand’s analysis is about the internal relations within China and India instead of external or international ones, but the idea of “postcolonial informal empire” or PIE is helpful for our discussions here. According to Anand:

Its [postcolonial informal empire or PIE’s] identity is formed around a sense of being a victim of Western imperialism. The emerging powers understand and represent their own rise as shedding off of colonial legacy—hence *an avowed identity as a postcolonial state*—while at the same time rejecting the label of imperialism/colonization for any of their actions.<sup>96</sup>

Thus, this is not just an issue of economic or political positioning, but something that operates on the deeper level of self-perception and national identity. And it applies equally to domestic periphery and to other parts of the world. China denies its imperialist ambitions and behaviours not only with regard to its domestic ethno-minorities, but also with regard to its activities and agendas in Africa and other parts of the Third World. What Anand’s observation points out is a fundamental element in such denial: that it is not simply a political or rhetorical strategy, but that it reflects deep-rooted beliefs and self-perceptions of these “PIEs”. As victims of Western imperialism, with “an avowed identity as a postcolonial state”, the recognition of their own imperialism might become particularly difficult. In reality, the political stance of anti-West and a certain postcolonial, anti-imperialist sensitivity on the one hand, and a neo-liberal tendency dictated by economic interests on the other hand might not be an either-or choice. Rather, they are intricately linked together.

In this sense, a probe into this identitarian and psychological dimension does not negate the validity of material calculations. Both are valid. Yet revealing the identitarian side of the issue complements the picture and helps us better understand the ambivalence CAIL shows towards international law and its distancing from TWAIL.

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<sup>92</sup> Anand, 2012.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, 73.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, 74, emphasis added.

## CONCLUSION

This article has asked why the CAIL, though sharing TWAIL's critiques against Western dominance and unequal power structures in the international system, has not seriously engaged the latter. Instead, CAIL, while criticising Western dominance, takes an ambivalent attitude towards the international system. Unlike TWAIL, CAIL does not engage in a radical challenge of the very structure of the system from the margins. Rather, China portrays itself as a defender of the existing system, and the intellectual agenda of CAIL seems to aim at moving towards the center stage of the international order.

While existing literature tends to explain China's support for the existing system based on its economic rise and the fact that China benefits from the neoliberal international order, this article argues that economic or strategic considerations based on calculations of material interests alone cannot fully explain CAIL's double face towards the existing system. The article examined how China has always positioned itself as part of the Third World/Global South, and at the same time as a "major country" that is distinct from other members of the Global South, one that is meant to lead the latter and to challenge the West on an equal footing. The consistency of this positioning reveals that it is not based solely on China's material strength but has more deep-rooted psychological underpinning.

The article then goes a step further to analyze China's double identity that combines victimhood and triumphalism, inferiority and superiority. It is argued that this identity is the real driving force that lies beneath the ambivalences and contradictions that we find in CAIL as well as in Chinese diplomatic practices. These ambivalences might seem puzzling, but if we understand the two sides of the double identity, we may decipher why China could claim to be part of the Third World while at the same time distancing itself from the Third World and rather seeing the West as its proper pal. We could then also understand why CAIL overlaps with TWAIL but would not fully align itself with the latter. This is no contradiction because both dimensions are genuine: a genuine sense of victimhood and a decolonial, anti-imperial energy can co-exist with an attitude of superiority over the Third World and even with proper imperial ambitions.

International law exists. And TWAIL, while exposing and challenging the systematic and structural inequalities of the system, also has to work with it and within it. In his seminal book, *Imperialism, Sovereignty, and the Making of International Law*, Anghie asked "whether it is possible to create an international law that is not imperial" and expressed his hope "that international law can be transformed into a means by which the marginalized may be empowered".<sup>97</sup> In fact, the question might be even more pertinent to countries on the periphery of the system. Chimni calls the duality of being both an insider and an outsider to international law "the birth sign of the post-colonial state", and states that "from the very beginning international law scholarship at the periphery has had to deal with the double life of international law: the fact that it is an instrument of subjugation and also of liberation, of exploitation and possible emancipation."<sup>98</sup> Chimni thus acknowledges that attempts at systemic change need to take place "within the prison house of international law".<sup>99</sup>

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<sup>97</sup> Anghie, 2004, 317-318.

<sup>98</sup> Chimni, 2010, 23-24.

<sup>99</sup> *Ibid.*, 49.

To reflect on such possible changes inevitably involves examining the old and new forms imperialism might take, as well as old and new actors that might hold or develop imperial ambitions and behaviours. Today, relevant critiques that take on this challenge have not only examined the role of old (Western) imperial powers, but also debated the imperial potentials of emerging powers, including China and India. My argument here is that for these emerging powers, there is another sort of “prison house”, one which is all the more hidden as it is internal – that is, the “prison house” of their self-identification. The strategies they take to cope with the external “prison house of international law” is linked — and to a certain extent determined by — their relationship with their internal prison house. While much ink has been spilled on the former, the existence of the latter needs to be fully recognised, and its functions better understood before real emancipation – from both “prison houses” – could take place. This article is an attempt at examining this “prison house of identity” from the Chinese perspective. It is hoped that through a better understanding of how underlying identitarian and socio-psychological forces function, not only could we understand better how attitudes are shaped and behaviours are driven, but relevant actors could also make better informed choices, instead of being unconsciously driven by these underlying forces.

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