

China and Humanitarian Law: Evolution, Contemporary Influence and Prospects of Traditional Ethics in Modern-day Practice

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The practice of IHL cannot be separated from countries' recognition of its traditional ethics. Finding sufficient support for the connotation of IHL from ethics is conducive to further improving its compliance and implementation. In promoting the global acceptance and implementation of humanitarian law, it is necessary to fully consider these differences in ethical value systems, and seek consensus and compromise to ensure that humanitarian law can play its due role in protecting people. China has a long tradition of humanitarian ethics. This paper discusses the composition of traditional Chinese humanitarian ethics and the background of the formation of the law of war in Chinese history from several special historical periods, and examines its evolution. The traditional war ethics have encouraged contemporary China to embrace the international humanitarian law system and its connotation and principles with an open mind. This paper will analyze the historical evolution of Chinese humanitarian law ethics, examine the impact of ethics on the practice of IHL in China, explore the influence of Chinese ethics on the international community, and assess the application of IHL in China in conjunction with traditional Chinese ethics.

Keywords: humanitarian law, traditional ethics, China, consensus

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In today's world, the establishment and implementation of international humanitarian law are crucial for maintaining international stability. All nations need to move toward improving their legal systems, advance their understanding and application of international humanitarian regulations, and actively engage in multilateral cooperation to jointly promote the realization of global objectives for the rule of law in warfare.

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Different countries, however, possess diverse value systems, which stem from the mainstream concepts formed due to various factors such as historical development, social backgrounds, and cultural contexts. Throughout different eras and stages of development, varying moral perspectives have led to the formation of each nation's traditional ethics.² It is imperative that one nation does not impose its own value system onto another, as equality of values among nations is essential for equal rights and obligations, as well as peaceful coexistence and equal communication.³ Exploring traditional ethics concerning war is conducive to understanding the value system of a nation. Mutual understanding, adaptation, and coordination among nations and ethnicities in ethical moral perspectives provide a condition for lasting peaceful coexistence, which is also the pursuit of our study on traditional humanitarian ethics in China.

In September 2023, during a meeting between the president of the International Committee of the Red Cross (ICRC) Ms. Mirjana Spoljaric Egger and Chinese President Xi Jinping, it was emphasized that humanitarianism constitutes the greatest consensus among different

¹ International Committee of the Red Cross, *Bringing IHL home: Guidelines on the National Implementation of International Humanitarian Law*, 2021, available at: <https://www.icrc.org/zh/publication/4532-bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law>(all internet references were accessed on September 2024).

² Arnold Toynbee, *A Study of History*, Shanghai People's Publishing House, Shanghai, 2000, pp. 73-91. Translated by Liu Beicheng and Guo Xiaolin.

³ United Nations Charter, Chapter I, Arts. 1 & 2, available at: <https://www.un.org/en/about-us/un-charter/full-text>.

civilizations. He remarked that the precepts of traditional Chinese culture, such as "[t]he benevolent loves others" and "[d]o not do to others what you don't want others to do to you", resonate with the purposes of the International Red Cross and Red Crescent Movement, and China is willing to further collaborate with the ICRC to make significant contributions to the cause of peace and progress for mankind.

Humanism provides ethical support and value orientation for international humanitarian law, and international humanitarian law is the concrete embodiment and guarantee of humanitarian principles on the legal level. It is argued that the practice of international humanitarian law cannot be separated from each country's cultural and ethical identification with it. Finding support for the essence of international humanitarian law within ethics can further improve its compliance and implementation. Currently, academic research on international humanitarian law in China focuses on empirical studies of the rules themselves, without enough attention paid to integrating the rules and systems of international humanitarian law with Chinese traditional humanitarian ethics. This paper aims to analyze the historical evolution of Chinese humanitarian ethics, expound on the impact of ethics on the practice of international humanitarian law in China, examine the influence of Chinese ethics on the international arena, and look to the future application and prospects of international humanitarian law as it intersects with traditional humanitarian ethics in China.

This paper discusses the composition of traditional humanitarian ethics in China against the background of the formation of warfare law in Chinese history, and analyzes the evolution of such ethics from the following perspectives: classic theories represented by Confucianism, which emerged during the Pre-Qin period and have had a profound and enduring impact on subsequent generations; ethical principles in the reformation of Chinese humanitarianism during the formation of modern international humanitarian law; ethical principles influenced by Marxist thought in the period of socialist revolution and construction of the

Chinese Communist Party starting from Mao Zedong's era; and the international humanitarian law theory characterized by "building a community with a shared future for mankind" in contemporary China.

1. **Emergence and Historical Evolution of Ethics in Ancient Chinese Warfare Law**

Warfare law in China originated during the Zhou Dynasty and gradually matured in the Western Zhou and the Spring and Autumn periods.⁴ During that time, not only was the legitimacy of the use of force addressed; rudimentary principles also began to emerge in specific combat actions, such as the "principle of distinction" (distinguishing between combatants and civilians), principle of humanity (regarding prisoners of war and civilians), and the principle of good faith, which are required by modern law of armed conflict (See section 1.2. for details). Various theories of warfare law, including moral requirements of "benevolence" and "righteousness" advanced by Confucianism,⁵ were proposed by ancient Chinese theorists and still show much relevance today.⁶ Throughout the course of Chinese history, a mainstream ethical

⁴ The Western Zhou Dynasty (C. 11th century-771 B.C.) and the Spring and Autumn periods (771 to 476 B.C.), which are important periods and dynasties in Chinese history.

⁵ See Confucianism, Xunzi, Discussing Military Strategy and Tactics.

Chen Xiao, one of Xunzi's students, asked Xunzi: "When you discuss the use of troops, you often take benevolence and justice as the fundamental. The benevolent love, the righteous follow the reason, if this is the case, then why use the army? The reason why everyone uses troops is to compete!"

Xunzi replied, "This is not what you understand. The benevolent love, and because they love, they hate others to harm them; The righteous follow the truth, and because they follow the truth, they hate others to mess with it. The use of troops is to prohibit violence and eliminate harm, not to compete. Therefore, the army of humanity, where they stay will be comprehensively governed, and where they pass through will be educated and influenced, just like the timely rain falling, no one is unhappy."

Translation available at: <https://www.rujiazg.com/article/22631>. (all internet references were accessed on September 2024).

⁶ Chinese President Xi Jinping delivered an important speech at the College of Europe in Bruges, Belgium, on April 1, 2024. He mentioned China is a country with a long history of civilization. Among the ancient civilizations in the world, the Chinese civilization is one

ideology was formed on the basis of Confucianism and Daoism, permeating every aspect of life: political, military and social affairs, and people's livelihood.⁷ The Confucian ethics of "benevolence" and "righteousness" not only applied to interpersonal relations and moral cultivation in the general field of life, but also played an important role in moral restraint and evaluation in the special field of war. By emphasizing the moral restraint in war and the reconstruction of benevolent government after the war, the Confucian ethics of benevolence and love injected profound moral connotation and humanistic spirit into the ancient law of war theory (See section 1.2. for details).

1.1. Background on Formation of Early Thought of Warfare Law

During the early periods of the Xia, Shang, and Zhou Dynasties (approx. from 2070 B.C. to 256 B.C.), there was no clear distinction between military strikes and criminal sanctions. Punishments were believed to have originated from campaigns against foreign tribes, and military conquest was generally regarded as the harshest punishment.⁸ Subsequently, with the differentiation of social classes and the establishment of states, the externality of military strikes was gradually distinguished from the internality of legal sanctions.⁹ At this time, there were only provisions for the conduct of *jus ad bellum*, and there was no understanding of the lawful conduct of the *jus in bello*. It was not until the period between the late Western Zhou dynasty and the end of the

that has continued uninterrupted and developed over the past 5,000 years. More than 2,000 years ago, China experienced a flourishing era of the various schools of thought, and many of the ideas they proposed, such as loyalty, righteousness, propriety, benevolence, kindness, are still deeply influencing the lives of Chinese people today. Chinese people have their own unique value system when it comes to viewing the world, society, and life. "Xi Jinping's Speech at the College of Europe in Bruges (Full Text)", *Beijing Review*, 2 April 2014, available at: http://www.beijingreview.com.cn/zt/txt/2014-04/02/content_611228.htm.

⁷ Sun Lin, "Comparison of Confucian and Taoist Social Governance Thoughts and Analysis of Modern Value", *Advances in Philosophy*, Vol. 13, No. 8, 2024.

⁸ Han Guopan, *A Study of Ancient Chinese Legal History*, People's Publishing House Press, Beijing, 1993, pp. 12-18.

⁹ Xiong Mei, "The Past, Present, and Future of Pre-Qin Warfare Law Research", *Journal of Xi'an Politics Institute of PLA*, No. 3, 2011.

Warring States period that rules and theories akin to today's international humanitarian law were formed, bringing certain restraints to acts of war. (See section 1.2. for details)

Three factors contributed to the foundations of the earliest Chinese warfare law. First, the formation of independent political entities - during the Xia and Shang Dynasties, political entities including vassal states and feudal states based on the system of enfeoffment were formed in China.¹⁰ The Zhou Dynasty officially established a state system during the period from approx. 1046 B.C. to 256 B.C. Second, the formation of patriarchal ideology and the ritual system. The patriarchal system, whereby the state divided rights, powers, and obligations formally, ultimately established a hierarchical social relationship. In the Zhou dynasty, the patriarchal system was essentially formed through the implementation of the enfeoffment system among nobles.¹¹ If a war occurred, it could disrupt the order established by the patriarchal system, leading to turmoil and panic. Therefore, people came to hope that war could be regulated.¹² To maintain the stability of the patriarchal system, a set of guidelines on handling social relationships among nobles became necessary.¹³ Thus, an entire ritual system, the equivalent to the law in the Zhou Dynasty, was devised. Third, shared cultural concepts. Cultural concepts are the ideological factors for the establishment of social systems, and the foundation of law formation. Law essentially signifies a vision of order shared by a certain group. The emergence of warfare law reflected the

¹⁰ Xiao Gongqin, "A New Theory on the Origin of Chinese States - From a Loose Federation to a Centralized State", *Literature, History, and Philosophy*, No. 8, 2016.

¹¹ Chao Fulin, *Social Changes in the Xia, Shang and Western Zhou Dynasties*, Beijing Normal University Press, Beijing, 1996, p. 266.

¹² See The Rites of Zhou, Chunguan, Zongbo. "With Military Salute to the State" can be interpreted as the use of military expedition to punish the vassal state's acts of unceremonious rites and violations. Translation available at: <https://ctext.org/rites-of-zhou/chun-guan-zong-bo/ens>.

¹³ Chen Hui, Zhao Hongbo, & Bai Lichao, "Rites and Music System and Military Salute in the Western Zhou Dynasty", *Journal of Northwest University (Philosophy and Social Sciences Edition)*, Vol. 52, No. 1, 2022.

rational appeal of relatively independent political entities within a certain regional scope, which was supported by converging cultural ethics.¹⁴

With independent political entities established and unified cultural concepts formed, the conception of just wars, legitimate rights to wage war, and rules of engagement flourished as people started to consider warfare from the perspective of patriarchal system and ritualism. These understandings were applied to ancient Chinese military practices, leading to numerous rules established for constraining one's own actions and judging the actions of the enemy during war. This laid the groundwork for the early development of ancient laws of war in China.

1.2. The mature and peak period of ancient thought of warfare law

The Western Zhou Dynasty and the subsequent Spring and Autumn Period and Warring States Period (approx. from 1046 B.C. to 221 B.C.) witnessed the gradual maturation of traditional warfare law. During this era, relatively sophisticated norms governing warfare within military etiquette (i.e. the system of military rules and regulations) emerged, which not only involved the legality of the use of force, but also specific combat actions. These traditional wartime ethics, formed in ancient times, have motivated contemporary China to embrace the system, customs, and principles of international humanitarian law in a proactive manner.¹⁵

Firstly, in terms of the notion of peace, ancient China regarded the world as "under heaven", with China positioned at its center and the sovereign as the highest authority.¹⁶ Peace was considered a natural state,

¹⁴ Ji Na, "Tracing the Origin of Ancient Chinese Laws of War", *Research on Chinese Military History*, No. 5, 2021.

¹⁵ Hu Peng, "On the Communication of International Humanitarian Law in China", *Social Sciences of Beijing*, No. 6, 2015.

¹⁶ See the Book of Poetry, Minor Odes of the Kingdom, Decade of Bei Shan.

"Under the wide heaven, all is the king's land. Within the sea-boundaries of the land, all are the king's servants."

and war should not occur.¹⁷ China, as a symbol of civilization, should bear the responsibility of maintaining peace and disseminating Chinese culture to achieve a harmonious world order.¹⁸ In the writings of renowned ancient Chinese philosophers such as Confucius, Mencius, and Xunzi, they discussed the concept of peace and interpreted war as the last resort to maintain peace and order under heaven.¹⁹ They believed that resorting to military means to maintain order was unnecessary.²⁰ The pursuit of peace should not involve warfare as a means. Instead, peace should be achieved through civilizing uncivilized regions, thereby disseminating civilization.²¹ The goal was not necessarily the annihilation or conquest of enemies through force but rather influencing them through Chinese cultural values, with violence seen as a last resort.²²

Secondly, regarding the understanding of just cause for war (legitimate reasons for initiating war), the Xia and Shang periods marked

Translation available at: <https://ctext.org/book-of-poetry/decade-of-bei-shan/ens>.

¹⁷ John K. Fairbank, "Varieties of the Chinese Military Experience", in Frank A. Kierman and John K. Fairbank (eds), *Chinese Ways in Warfare*, Harvard University Press, Cambridge Mass, 1974, p. 7.

¹⁸ Sheng Hong, "Civilization under Heaven -- On the International Political Principles of Confucianism", *Literature, History and Philosophy*, No. 5, 2013.

¹⁹ See Confucianism, Mengzi, Gong Sun Chou I. Mencius said,

"When one by force subdues men, they do not submit to him in heart. They submit, because their strength is not adequate to resist. When one subdues men by virtue, in their hearts' core they are pleased, and sincerely submit."

Translation available at: <https://ctext.org/mengzi/gong-sun-chou-i/ens>.

²⁰ See Confucianism, Xunzi, State System.

"If the doctrine of benevolence and justice is supported by irresistible majesty, then it can be won without fighting, won without attacking, and the whole world can be conquered without a single soldier, this is a prince who knows the way of calling himself a king."

Translation available at: <https://www.jianshu.com/p/da31a4407dde>.

²¹ See Confucianism, The Analects, Ji Shi.

"If remoter people are not submissive, all the influences of civil culture and virtue are to be cultivated to attract them to be so."

Translation available at: <https://ctext.org/analects/ji-shi/ens>.

²² Alastair I. Johnston, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History*, Princeton University Press, Princeton, 1995, p. 66.

the nascent stage of traditional Chinese warfare law.²³ During that time, warfare primarily involved conflicts with foreign tribes, driven by the pursuit of victory.²⁴ While specific regulations governing conduct in warfare had not yet been established, notions of just cause for war began to emerge. The earliest codified norms regarding warfare in China can be found in the *Shih Chi* and Book 8 of Mohism, which emphasized that warfare must possess the legitimacy of "acting on behalf of Heaven"²⁵ and should be based on the will of the people.²⁶ During the Zhou Dynasty, it was believed that only under specific circumstances could the Son of Heaven (the emperor Zhou) declare war.²⁷ Justifications for war could be summarized as punishment for the violation of laws, disruption

²³ Zhu Xiaohong, "The Evolution of the Law of War in Pre-Qin Dynasty and its Dynamics", *Journal of Xi'an Political Science University*, No. 12, 2011.

²⁴ Zhao Boxiong, "On the Structural Characteristics of three Generations of States", *Journal of Hebei Normal School (Social Science Edition)*, No. 4, 1997.

²⁵ See Mohism, Mozi, Book 8, On Ghosts III.

"Before the battle, Xia Qi swore to the combatants: The Prince of Hu violated the five elements and disused the three calendars. Heaven decreed to exterminate his life!"

Translation available at: <https://ctext.org/mozi/book-8/ens>.

See Sima Qian, *Records of the Historian, Annals of Yin*.

"I have indeed heard the words of you all, but the Xia ruler is an offender, and, as I fear the Supreme god, I dare not but punish him. Now, as the Xia ruler has committed many crimes. We should carry out the punishment decreed by Heaven."

Translation available at: <https://ctext.org/shiji/yin-ben-ji/ens>.

²⁶ See Shang Shu, Speech of Tang.

"Quoting Xia's own subjects: 'Our prince does not compassionate us, but (is calling us) away from our husbandry to attack and punish Xia.' The king of Xia in every way exhausts the strength of his people, and exercises oppression in the cities of Xia. His multitudes are become entirely indifferent (to his service), and feel no bond of union'(to him). The Xia Jie possessed this evil virtue, so Shang Tang decided to punish him."

Translation available at: <https://ctext.org/shang-shu/speech-of-tang/ens>.

²⁷ See *The Rites of Zhou*, Xiaguan Sima.

"Stipulated the types of grounds for war, those who overpower the weak and invade the small with the great; Killing the virtuous and the people; Tyrannical at home and bullying neighboring countries abroad; The land is barren and the people are scattered; Relying on the precarious terrain to disobey; Innocent killing of relatives; Banished or killed his king; Violating the king's orders, flouting the laws and regulations of the state, etc."

Translation available at: <http://ewenyan.com/articles/zl/4/2.html>.

of social order, or contravention of moral principles by fiefs.²⁸ In the subsequent Spring and Autumn Period and Warring States Period, a group of prominent theorists reinforced the concept of just cause for war in warfare ethics based on the principles of the Zhou rituals. The representatives of Confucianism, such as Confucius and Mencius, argued that only higher political entities could wage just wars,²⁹ and wars initiated by morally superior individuals against usurpers, tyrants, or aggressors were deemed just.³⁰ However, while the Son of Heaven held supreme political authority, the highest political position could not guarantee his moral integrity. If a ruler was incompetent, oppressive, and harmed the populace, other political entities were justified in waging war against him,³¹ and the conquest and overthrow of his feudal states and rebel armies were seen as launching just wars.³² Moreover, in a highly influential military treatise of the time, it was believed that defensive warfare constituted a just war as the purpose of using force was to defend the nation.³³ Similarly, renowned theorists of the same period advocated

²⁸ Xu Yuangul, *National language solution*, Zhonghua Book Company press, Beijing, 2002, p. 67.

²⁹ See Confucianism, Mengzi, Jin Xin II.

“‘Correction’ is when the supreme authority punishes its subjects by force of arms. Hostile States do not correct one another.”

Translation available at: <https://ctext.org/mengzi/jin-xin-ii/ens>.

³⁰ Zuo Takayama, "Just War and the Justice of War: Reflections on the ethics of war", *Research in Ethics*, No. 6, 2005.

³¹ See Confucianism, The Analects, Ji Shi.

“When good government prevails in the empire, ceremonies, music, and punitive military expeditions proceed from the son of Heaven. When bad government prevails in the empire, ceremonies, music, and punitive military expeditions proceed from the princes.”

Translation available at: <https://ctext.org/analects/ji-shi/ens>.

³² See Confucianism, Mengzi, Liang Hui Wang II.

“The king said, ‘May a minister then put his sovereign to death?’ Mencius said, ‘He who outrages the benevolence proper to his nature, is called a robber; he who outrages righteousness, is called a ruffian. The robber and ruffian we call a mere fellow. I have heard of the cutting off of the fellow Zhou, but I have not heard of the putting a sovereign to death, in his case.’”

Translation available at: <https://ctext.org/mengzi/liang-hui-wang-ii/ens>.

³³ See School of the Military, Wei Liao Zi.

“Military is used to defeat strong enemies and defend the country.”

Translation available at: <https://ctext.org/wei-liao-zi/bing-ling-shang/ens>.

for joint military efforts among nations to rescue smaller states under aggression.³⁴

Thirdly, concerning attitudes towards warfare justice, the Zhou Dynasty established the earliest regulations regarding warfare justice in China. Specific provisions were made regarding the timing of battles to minimize harm to civilians, avoiding conflicts during times of farming, famine, epidemic outbreaks, or extreme weather conditions.³⁵ In terms of combat tactics, one must uphold good faith and integrity. When engaging in combat, one must confront the enemy head-on and only attack after the opponent had arrayed their forces and beaten the drums.³⁶ Humanitarian protection was extended to enemy personnel who abandoned the fight, with restrictions on pursuing fleeing enemies beyond a hundred meters, sparing incapacitated enemy soldiers, and aiding wounded or sick adversaries.³⁷ Furthermore, distinctions must be made between combatants and innocents, with prohibitions against harming the elderly and children; if encountered, they must be safely escorted back home. Regarding the treatment of the defeated enemies, able-bodied individuals who did not resist could not be treated as

³⁴ See Mohism, Mozi, Book 5, Condemnation of Offensive War III.

“When some large state attacks some smaller one he would join in the rescue.”

Translation available at: <https://ctext.org/mozi/condemnation-of-offensive-war-iii/ens>.

³⁵ See Si Ma Fa, Benevolence Oriented.

“The principle of war is: do not violate the farming season, do not raise troops to fight when disease is prevalent, in order to protect one's own people; We do not attack an enemy country during a time of mourning or famine, in order to protect its people. Neither in winter nor summer, in order to show love for both sides.” Translation available at: <https://www.gushiji.org/guwen/z2745>.

³⁶ See Si Ma Fa, Benevolence Oriented.

“Wait for the enemy to complete their formation before attacking; this demonstrates good faith.” Translation available at: <https://www.gushiji.org/guwen/z2745>.

³⁷ See Si Ma Fa, Benevolence Oriented.

“In order to demonstrate comity, we should not exceed 100 paces in pursuit of the fleeing enemy and 90 li in pursuit of the retreating enemy. To show compassion, we should refrain from killing enemies who are out of combat and instead offer aid to the wounded.”

Translation available at: <https://www.gushiji.org/guwen/z2745>.

enemies, and looting civilian property was prohibited. It was also required to protect religious buildings and forests.³⁸

These regulations, which closely resemble contemporary international humanitarian law, laid the foundation for principles such as the "principle of distinction" (distinguishing between combatants and civilians), the "principle of humanity" (regarding both prisoners of war and civilians), and the "principle of good faith".³⁹ They were further emphasized during the Spring and Autumn Period and Warring States Period through the discourse of philosophers and theorists. Confucian thought underscored that violence in war was a means to restore order and harm to innocent civilians should be minimized.⁴⁰ Warfare should not inflict harm upon innocent civilians,⁴¹ and prisoners of war should be treated humanely, with no killing or mistreatment allowed. After capturing a city, the living environment of residents should be protected,⁴² acts of harm, plunder, and rape against innocents should be condemned.⁴³

³⁸ See Si Ma Fa, Benevolence Oriented.

"When entering certain areas of the country, it is prohibited to desecrate sacred sites, hunt, destroy water conservation projects, burn down houses and buildings, cut down trees, or take livestock, food and utensils without permission. Show respect towards the elderly and children by escorting them home without causing harm. Even young people should not be treated as enemies unless they resist. For wounded enemies, provide medical treatment before releasing them." Translation available at: <https://www.gushiji.org/guwen/z2745>.

³⁹ See Customary International Humanitarian Law, Volume I (Rules), available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1>.

⁴⁰ Karen Turner, "War, Punishment, and the Law of Nature in Early Chinese Concepts of the State", *Harvard Journal of Asiatic Studies*, vol. 53, 1993.

⁴¹ See Confucianism, Xunzi, Strategics.

"Those who fight and kill do not fight and kill the people, but fight and kill those who disturb the people."

Translation available at: http://www.ziyexing.com/files-5/xunzi/xunzi_15.htm.

⁴² See School of the Military, Liu Tao, Hu Tao, Lue Di.

"After capturing a city, refrain from burning the grain in its storehouses, destroying the houses of its people, cutting down trees in graves or jungles near temples, killing surrendering enemy soldiers, and mistreating captured enemy personnel. Show kindness and justice towards the enemy population." Translation available at: <https://www.gushiji.org/guwen/z7698>.

⁴³ See School of the Military, Wei Liao Zi.

Confucian thought also embodies the unity of just cause for waging war and warfare justice. War, according to Confucianism, is waged for the purpose of "punishing the guilty and benefiting the people". Confucianism emphasizes the importance of upholding "benevolence and righteousness" during combat, believing that "those who are benevolent are invincible". It aims to rally people under the banner of "benevolence and righteousness", as those who embody these qualities can win the hearts of the people, thus ensuring victory in war.⁴⁴ Confucianism advocates for governance through benevolent rule rather than tyranny, suggesting that people will willingly obey a ruler who governs with benevolence, rendering the use of violence unnecessary.⁴⁵ Confucianism opposes the notion of using any means to achieve victory and rejects a utilitarian approach to warfare, advocating instead for the building of morality and the attainment of lasting peace through moral and cultural means. The reflections on warfare by Confucian philosophers represent ancient Chinese sages' endeavor to regulate warfare based on moral principles, highlighting the enduring significance of moral ethics in the development of humanitarian law today.⁴⁶ It emphasizes that war should be waged for just and moral purposes, in accordance with moral norms and humanitarian principles, and with peace as the ultimate goal.

This is very similar to the Just War Theory. The Just War Theory provides an important ethical basis for humanitarian intervention and

"To kill a man's father and brother, to plunder his property, and to enslave his children are the acts of robbers."

Translation available at: <https://www.gushiji.org/guwen/z577>.

⁴⁴ See Confucianism, Mengzi, Liang Hui Wang I.

"The love and protection of the people; with this there is no power which can prevent a ruler from attaining to it."

Translation available at: <https://ctext.org/mengzi/liang-hui-wang-i/ens>.

⁴⁵ Liu Shaojun, "The Issue of City Slaughter in Ancient Chinese War", *Narada Academic Forum (Journal of Humanities and Social Sciences)*, No. 1, 2008.

⁴⁶ Xiong Mei, "On Confucius's Understanding of the Legality of War", *Journal of Xi'an University of Political Science*, No. 4, 2010.

has had a profound impact on contemporary international humanitarian law. Although the contemporary international humanitarian law does not directly judge the *jus ad bellum*, it requires that the acts of war must conform to the humanitarian principle, which reflects the concern of the just war theory on the morality of war to a certain extent. Similarly, Confucianism, as China's traditional ethical thought, laid the foundation for China to accept modern international humanitarian law in the future.

The concepts of warfare law that developed during the Xia, Shang, Zhou Dynasties, Spring and Autumn, and Warring States periods have had a lasting impact on China's warfare practices for over two millennia. These concepts, as ideological frameworks and knowledge systems, have served as the ethical foundation that continues to influence contemporary perspectives.⁴⁷ Many of the principles advocated during that time coincide with the fundamental rules of international humanitarian law today, demonstrating a theoretical foresight. Especially since the Qin Dynasty, successive rulers have praised and applied Confucianism as the mainstream ideology of society. Therefore, the humanitarian ethics of ancient China are still imperceptibly shaping China's contemporary concepts of international humanitarian law.

2. Continuation and Change of Humanitarian Law Discourse in Modern and Contemporary China

As previously discussed, ancient Chinese warfare law originated from the Zhou Dynasty and exerted a lasting influence on subsequent eras, particularly the flourishing periods of the Spring and Autumn and Warring States. Although its application diminished in later centuries and faced ideological disputes, an ethical system was still established

⁴⁷ Wu Haiwen. "The Ethical Thought of Confucian 'Benevolence' and its Modern Value", *Academic Forum*, No. 4, 2005.

under the impact of ancient Chinese warfare law and Confucian thought.

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This ancient law of war theory, based on Confucianism traditional ethics, also faced many challenges and developments in the subsequent dynasty changes. For example, the military thought developed in the late Spring and Autumn Period had many different ideas, which also had an impact on later generations. For example, the "Art of War" written by Sun Tzu had the idea that profit was the core driving force of military actions. It did not emphasize the just of the purpose of the war, and believed that war should be launched only when it is beneficial to the national interests.⁴⁹ Although the "Art of War" emphasized a utilitarian stance, it did not exclude moral considerations. Sun Tzu advocated respecting life and reducing casualties in war.⁵⁰ To some extent, it is similar to emphasizing the distinction between "*jus ad bellum*" and "*jus in bello*". However, it also advocates the theory of "using deception in warfare".⁵¹ This military theory was widely advocated in the Warring States Period, and a number of succeeding rulers also mainly adopted the military theory. However, in the Han Dynasty, the rulers adopted the

⁴⁸ Zhao Lujie, "A Probe into the Military Legal System Construction in Ancient China", *Military History*, No. 5, 2015.

⁴⁹ See School of the Military, Sun Tzu, *The Art of War*, The Attack by Fire.

"Move not unless you see an advantage; use not your troops unless there is something to be gained."

⁵⁰ See School of the Military, Sun Tzu, *The Art of War*, Attack by Stratagem.

"Therefore the skillful leader subdues the enemy's troops without any fighting; he captures their cities without laying siege to them. Do not interfere with an army that is returning home. When you surround an army, leave an outlet free. Do not press a desperate foe too hard. Such is the art of warfare."

⁵¹ See School of the Military, Sun Tzu, *The Art of War*, Laying Plans.

"All warfare is based on deception. Hence, when able to attack, we must seem unable; when using our forces, we must seem inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near. Hold out baits to entice the enemy. Feign disorder, and crush him. If he is secure at all points, be prepared for him. If he is in superior strength, evade him. If your opponent is of choleric temper, seek to irritate him. Pretend to be weak, that he may grow arrogant. If he is taking his ease, give him no rest. If his forces are united, separate them. Attack him where he is unprepared, appear where you are not expected. These military devices, leading to victory, must not be divulged beforehand."

policy of "Ban from Hundred Philosophers, Venerate Confucianism" to maintain the feudal unified rule.⁵² This laid the foundation for Confucianism thought to become the orthodox ethical thought of Chinese feudalism.⁵³

However, the Opium War in 1840 shattered the closed-door stance of Qing Dynasty, leading to successive defeats and challenging the existing concepts of warfare law.⁵⁴ Consequently, intellectuals of the late Qing Dynasty began studying modern European warfare law (See section 2.1. for details). During the Republic of China era, in response to the looming threat of World War II, scholars of Chinese international law conducted research and debates based on relevant international conventions, aiming to hold Japan accountable for its wartime actions promptly and effectively (See section 2.2. for details). In modern times, pioneering proletarian revolutionaries and military strategists such as Mao Zedong and Deng Xiaoping made significant contributions to the enrichment and development of Marxist military ethics, laying a foundation for China's correct understanding of war and peace.⁵⁵ With the progress and development of the times, the contemporary leader President Xi Jinping has put forward the theory of "building a community with a shared future for mankind" and dialectical views on war and peace, which reveal the laws governing national defense, military building, military preparedness, and the guidance of warfare in the new era, enriching and developing the dialectical thinking of the Party's military theory.⁵⁶

⁵² Lan Yongwei, "Analysis on the Characteristics of Sun Tzu's Art of War", *Chinese Social Sciences*, No. 3, 1987.

⁵³ Ge Zhiyi, "Ban from Hundred Philosophers", *Venerate Confucianism, Historiography*, No. 3, 1994.

⁵⁴ Cui Zhihai, "Reflections on the reasons for the Qing's Defeat in the Opium War", *Journal of Tsinghua University (Philosophy and Social Sciences)*, No. 2, 2024.

⁵⁵ Zhang Changling, "A Comparison of Contemporary Chinese and American Concepts of War and Ethics", *Military History Research*, No. 3, 1998.

⁵⁶ Xiao Dongsong, "The Major Innovation and Development of the Party's Military Dialectics Thought", *People's Daily*, 9 November 2016, available at: <https://www.rmzxb.com.cn/c/2016-11-09/1132309.shtml>.

2.1. Warfare Law in the Late Qing Period: Shift Based on the Law of Nations

Under the impact of the Opium War of 1840, the Qing government and the literati class began embracing modern Western concepts of warfare law, such as sovereignty, equality, and formal rationality. Traditional hierarchical, centralist, and absolutist beliefs gradually gave way.⁵⁷ However, elements of traditional warfare law, such as benevolence, righteousness, and propriety, representing notions of fairness, justice, and peace, were still incorporated into the interpretation of the Law of Nations.⁵⁸ Thus, traditional Chinese ethical principles of warfare law were not entirely abandoned, but underwent a partial transformation in the traditional knowledge system of warfare law.⁵⁹ The Qing government's study of the Law of Nations aimed to use it as a tool for war negotiations, and to achieve the principle of "learning from the West to serve the Chinese" and "adopting Western expertise to compete with the West", which did not entirely replace the ethical underpinnings of traditional warfare law. In addition, the development of military forces among the warlord cliques in modern China and challenges to imperial warfare capabilities also contributed to changes in traditional warfare law.

The translation of the Law of Nations during the Qing government was key, and both the military and civilians were required to study it to

⁵⁷ Zhang Shimin, *Law, Resources, and Spatial Construction: China, 1644-1945 (Volume on Military Warfare)*, Guangdong People's Press, Guangdong, 2012, pp. 219-220.

⁵⁸ The Law of Nations is a work of international law, originally titled *Elements of International Law*, by Henry Wheaton, an American diplomat and international law scholar. Originally published in 1836 in London and Philadelphia, the book has been translated into many languages, including Chinese and Japanese, and has had a profound impact on the modern system of international law. Under the supervision of the American missionary W.A.P. Martin, the book was translated into Chinese and published in 1864 under the title of "The Public Law of the Nations" by the Imperial Peking Tungwen College. The translation process was supported by the Qing Government.

⁵⁹ Feng Zhengzheng, "From 'All-under-heaven' to 'the World': the Ancient-to-Modern Transformation of the Law of War in Late Qing Dynasty", *Global Law Review*, No. 5, 2021.

prevent violations.⁶⁰ This approach also facilitated the dissemination of modern Western warfare law in China. The content of the Law of Nations regarding rules of engagement, including the initiation of war, rights during conflict, wartime neutrality, and peace treaties, laid a foundation for China at that time to understand the sovereignty, equality, and rationality inherent in Western warfare law, and also had a positive impact on other East Asian countries' adoption of Western warfare law.⁶¹

2.2. Debates based on the Kellogg-Briand Pact during the Republic of China period

The Kellogg-Briand Pact, passed in 1929, was concluded under the global pressure of people opposing imperialist wars and yearning for peace after World War I, with the participation of 63 countries including China. Its formal repudiation of the legitimacy of war also provided assurance and a vision for reducing international conflicts. It declared the abandonment of war as a means to pursue national policies and stood as the most crucial treaty at that time for restraining the right to wage war. Moreover, it served as a significant legal basis for the prosecution of major war criminals (crimes against peace) of Germany and Japan in post-World War II trials, becoming an international precedent inherited by subsequent international documents like the United Nations Charter, advancing the process of declaring aggressive war as illegal.

Following the *Pact*, while researchers focused on resolving peace crises and finding means to avoid war, some Chinese scholars proposed research into the intermediate states between peace and war,⁶²

⁶⁰ Qi Zhaoxi: "Diary of Traveling in America", in Zhong Shuhe et al. (eds), *Notes on the Spread of Western Learning to the East, Diary of Traveling in America, Notes on Traveling in France, Guide to Traveling in Scotland*, Yuelu Publishing House press, 1985, p. 265.

⁶¹ Feng Zhengzheng, "From 'All-under-heaven' to 'the World': the Ancient-to-Modern Transformation of the Law of War in Late Qing Dynasty", *Global Law Review*, No. 5, 2021.

⁶² Liu Chang, Study on Use of Force under International Law by Scholars of Republic of China, *Hebei Law Science*, No. 9, 2014.

advocating for diplomatic negotiations to settle disputes, reserving war as a last resort.⁶³ During this period, scholars from various countries focused on aspects such as restrictions on warfare methods, international humanitarian protection, and war sanctions.⁶⁴ The theories formed were based on the negation of the legitimacy of initiating war, which was also an inevitable trend shaped by China's imperative need for self-preservation.⁶⁵

It is worth noting that during this same period, Chinese scholars engaged in theoretical discussions regarding the legitimacy of exercising the right to self-defense, contextualized against the backdrop of the Japanese invasion of China, during which Japan violated international conventions but claimed its aggression against China as self-defense and non-belligerent.⁶⁶ The *Kellogg-Briand Pact* restricted the right to wage war except in self-defense, but it did not provide a precise definition of "self-defense", creating a risk of potential abuse of this right. Chinese scholars proposed theoretical viewpoints on this issue. Some argued that the right to self-defense should only be invoked in response to an immediate and irreparable harm to a sovereign state, as a measure of last resort, and should be exercised judiciously to avoid unlawful actions.⁶⁷ They emphasized that self-defense requires the precondition of absolute necessity, and the exercise of the right to self-defense is limited to circumstances of absolute necessity.⁶⁸ To distinguish from acts of self-

⁶³ Cai Kecheng, *International Law in Emergency Times*, China Book Company Press, Beijing, 1937, p. 1.

⁶⁴ Zhang Yan, Zhu Yanping, "Justice and Legality: An International Law Perspective on World War II", *Seeker*, No. 10, 2015.

⁶⁵ L. Chang, above note 62.

⁶⁶ Sakutaro Tachi, *Theory of International Law in Current Situation*, Japan Review Press, Tokyo, 1934, pp. 17- 21.

⁶⁷ Xu Yuntan, "The right to self-defense", *Foreign Affairs Monthly Bulletin*, Vol.3, No. 2, 1933, pp. 14-45.

⁶⁸ Zhou Pengsheng, *New Developments in public International Law*, The Commercial Press, Shanghai, 1934, pp. 276-278.

help, so-called self-defense warfare should be defensive actions taken by a state to eliminate imminent and unlawful threats.⁶⁹

During the Republic of China era, the influence of Western civilization and the practical needs of Chinese society ignited a fervor for the study of international law. Many young intellectuals went abroad to acquire advanced knowledge of international law, seeking ways for national liberation and salvation. The study of international humanitarian law reached a high level during the Republic of China era.⁷⁰ This phase laid a solid foundation for the subsequent development of international humanitarian law in China, serving as a link between past achievements and future progress. China also continued to engage in international affairs and further strengthened its exchanges with the international community, which also promoted the dissemination and acceptance of international humanitarian law in China.

2.3. Development of China's International Humanitarian Concepts Under the Guidance of Socialist Ideology

The Marxist theory of warfare believes that the nature of war is the fundamental basis on which attitudes towards war are established, and that judgment of the nature of war is a very complex issue. Lenin believed that there are just and unjust wars, progressive wars and reactionary wars, wars waged by advanced or backward classes, and wars used to consolidate or overthrow class oppression.⁷¹ Since the times of Mao Zedong, the Communist Party of China has advocated the "Theory of Revolutionary Peace", aiming to eliminate war through just war (a war to end all wars). Leaders represented by Deng Xiaoping and Jiang Zemin regard the opposition to hegemonism and power politics

⁶⁹ Wei Chu, "Dispute between China and Japan and War in International Law and Treaties", *Law Series*, Vol. 11, No. 13, 1934.

⁷⁰ Wang Guiqin, "Research on international law during the Republic of China", *Journal of the East China University of Political Science and Law*, No. 7, 2004.

⁷¹ See *The Complete Works of Lenin*, Vol. 29, People's Publishing House, Beijing, 1956, p. 307.

(considered the root cause of war), and the pursuit of gradually establishing a new international political order, as necessary conditions for achieving universal and lasting peace. Mao Zedong, Deng Xiaoping, and other senior proletarian revolutionaries and military strategists have made significant contributions to the enrichment and development of Marxist ethical thoughts on war.⁷²

In terms of the origins of war, Mao Zedong believed that war arises with the emergence of property and class, serving as the special continuation of politics. When political contradictions develop to an impasse that cannot be resolved by other means, armed struggle is eventually adopted to achieve political objectives.⁷³ Deng Xiaoping developed Mao Zedong's thoughts on warfare and believed that contemporary world wars are inseparable from hegemonism, and that the direct cause of war is the conflict of interests between hegemonic countries and those that are not.⁷⁴

In terms of the justice of war, Mao Zedong believed that one should oppose all wars that hinder social development and progress.⁷⁵ Wars that impede progress are unjust while the just wars that promote progress should not be opposed. Just wars are manifested in several aspects. First, just wars are a means to maintain peace, using justice to eliminate injustice and revolution to eradicate counter-revolution.⁷⁶ Second, just wars can propel historical progress, and revolutionary wars can wipe out old social systems that hinder the progress of productive forces.⁷⁷ Third, just wars can improve morality. Mao Zedong believed that just wars can extinguish the enemy's poisonous flames, cleanse one's own impurities, and advance the moral character of the people and the military.⁷⁸

⁷² C. Zhang, above note 55.

⁷³ *Mao Zedong Selected Works*, Vol. 1, People's Publishing House, Beijing, 1991, p. 174.

⁷⁴ *Deng Xiaoping Selected Works*, Vol. 3, People's Publishing House, Beijing, 2008, pp. 126-129.

⁷⁵ M. Zedong, above note 73, pp. 170-174.

⁷⁶ *Ibid* para, pp. 170-174.

⁷⁷ *Ibid* para, pp. 170-174.

⁷⁸ "China's First Atomic Bomb Exploded successfully", *People's Daily*, October 17, 1964.

Furthermore, he advocated firmly adhering to the principle of "not invading others unless invaded", opposing any form of aggression, and considering any form of military intervention in the internal affairs or ideology of sovereign countries as unjust.⁷⁹

In the new era⁸⁰, then-General Secretary Xi Jinping put forward the concept of "strengthening the military", making original contributions to the Marxist-guided theory of warfare.⁸¹ First, he explicitly proposed the basic function of national strength, particularly in the military aspect and in safeguarding national security and international justice, regarding the capability to employ strength as a fundamental support.⁸² Second, he developed a pioneering military strategy of active defense, advocating the military strategic policy of the new era characterized by "initiative and proactiveness".⁸³ He upheld that strategy is based on defense, the essence of which is proactive adherence to justice and the application of countering unjust wars through just wars. Third, he put forward the principle of "not believing in or fearing evil, not causing or fearing trouble, and being prepared to defend against aggression and to counterattack when provoked".⁸⁴ This essentially reveals a clear attitude

⁷⁹ *Mao Zedong Selected Works*, Vol. 2, People's Publishing House, Beijing, 1991, p. 590.

⁸⁰ Xi Jinping delivered a report to the opening of the 19th National Congress of the Communist Party of China (CPC) on October 18, 2017. "Socialism with Chinese characteristics has entered a new era. The CPC has given shape to the Thought on Socialism with Chinese Characteristics for a New Era, a long-term guide to action that the Party must adhere to and develop. The Thought builds on and further enriches Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Theory of Three Represents, and the Scientific Outlook on Development. It represents the latest achievement in adapting Marxism to the Chinese context." Available at: http://www.chinatoday.com.cn/english/spc/2017-10/18/content_748785.htm#

⁸¹ People's Liberation Army Daily, "The original contribution of Xi Jinping's thought on strong military development", *Ministry of National Defense of the People's Republic of China*, available at: <http://www.mod.gov.cn/gfbw/jmsd/4842332.html>.

⁸² Have a profound understanding and grasp of the "ten clear statements", *People's Daily*, available at: <http://opinion.people.com.cn/n1/2022/0426/c1003-32408657.html>.

⁸³ *Ibid* para.

⁸⁴ "Speech at the Celebration of the 95th Anniversary of the Founding of the Communist Party of China from Xi Jinping", *Xinhua News Agency*, 1 July 2016, available at: http://www.xinhuanet.com/politics/2016-07/01/c_1119150660.htm.

of adhering to just wars, opposing unjust wars, employing war to eliminate war, and defending peace.⁸⁵

In terms of justice, Xi Jinping acknowledges the historical laws recognized by Marxism that justice will prevail, peace will prevail, and the people will prevail,⁸⁶ which are in line with the moral law of traditional Chinese ethics emphasizing that "the righteous will receive help, the unrighteous will receive little help".⁸⁷ He points out that "[t]hroughout the world history, it will ultimately fail to rely on military force for external aggression and expansion. This is the law of history."⁸⁸ He also gives a positive response to the development of contemporary international humanitarian law. In a speech delivered in the Palace of Nations in Geneva in 2017, he pointed out that the "spirit of international humanitarianism established by the Geneva Conventions more than 150 years ago" has become one of the "recognized principles", and "these principles should be the basic guidelines for building a community with a shared future for mankind".⁸⁹

Thus it can be argued that the humanitarian ethics in contemporary China are based on Marxism, the fundamental guiding thought, while influenced by the concepts of just war in traditional Chinese ethics of warfare law.

3. Practice and Development of International Humanitarian Law in Contemporary China under the Background of Traditional Ethics

⁸⁵ Chen Dongheng, "Xi Jinping Thought on Strengthening the Military: Enriched and Developed Concept of War of Marxism", *Military History*, No. 1, 2023.

⁸⁶ *Xi Jinping: The Governance of China*, Vol. 2, Foreign Languages Press, Beijing, 2017, p. 447.

⁸⁷ See Confucianism, Mengzi, Gong Sun Chou II.

"He who finds the proper course has many to assist him. He who loses the proper course has few to assist him."

⁸⁸ *Xi Jinping: The Governance of China*, Vol. 1, Foreign Languages Press, Beijing, 2014, p. 248.

⁸⁹ Xinhua News Agency, "President Xi Jinping's Speech at the United Nations Headquarters in Geneva (Full Text), *CPPCC Network*, 19 January 2017, available at:

<https://www.rmzxb.com.cn/c/2017-01-19/1294301.shtml>.

The outlook on war under traditional ethics prompts contemporary Chinese to embrace the system, spirit, and principles of international humanitarian law with an open mindset, and consider compliance with international humanitarian law as a necessity, which guides China's practice of international humanitarian law on multiple levels.⁹⁰ China's Permanent Representative to the UN, Zhang Jun, said in a speech to the UN in 2019 that "China appreciates the ICRC for adhering to the fundamental principles of neutrality, impartiality, and independence, and for its long-standing contribution to the widespread dissemination and effective implementation of the Geneva Conventions and their Additional Protocols."⁹¹ Traditional ethics, combined with the characteristic theories formed by modern China in the development of international humanitarian law, still have practical significance for the implementation and development of China's warfare law theories today.

3.1. China's Active Participation in Relevant International Conventions and Legislative Processes

Since China's accession to the First Geneva Convention of 1864 in 1904, it has joined the majority of international humanitarian law treaties and agreements. The current Geneva Conventions include the four basic treaties on international humanitarian law re-signed in Geneva in August 1949: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention relative to the Treatment of Prisoners of War, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. In 1956, the 50th Session of the Standing Committee of the National

⁹⁰ Liang Zhuo, "Ancient Chinese Humanitarianism and its Impacts on Contemporary China's Conception of International Humanitarian Law", *Journal of Mudanjiang College of Education*, No. 6, 2020.

⁹¹ People's Daily Online - International Channel, "Chinese delegate Calls for Implementation of International Humanitarian Law", *People's Daily*, 14 August 2019, available at: <http://world.people.com.cn/n1/2019/0814/c1002-31293655.html>.

People's Congress of China approved these four conventions. In 1978, two Additional Protocols to the four Geneva Conventions came into effect, and China officially joined in 1983. For a long time, among the five permanent members of the United Nations Security Council, China was the earliest and only country to have ratified all four Geneva Conventions and two Additional Protocols. Since these conventions serve as fundamental documents of the law of armed conflicts, they have been highly praised by the international community,⁹² including commendation from the former president of the ICRC, Somaruga.⁹³ Furthermore, China continuously joins other important conventions on armed conflict law.⁹⁴ According to statistics, before the reform and opening up⁹⁵, China ratified and joined one armed conflict law convention about every three and a half years on average.⁹⁶ In the 30 years since the reform and opening up, China has averaged joining one armed conflict law convention in less than one and a half years. This

⁹² Institute of Armed Conflict, Xi'an Political Science University, "Research and Practice of Armed Conflict Law in China in the 30 Years of Reform and Opening Up", *Journal of Xi'an Political Science University*, No. 6, 2008.

⁹³ Cornelio S., "The Additional Protocols to the Geneva Conventions in search of Universality", *International Review of the Red Cross*, Vol. 69, 1987.

⁹⁴ Among them: ratification of the Convention on Certain Conventional Weapons in 1982; accession to the Convention on the Prevention and Punishment of the Crime of Genocide, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the two Additional Protocols to the Geneva Conventions in 1983; accession to the Biological and Toxin Weapons Convention in 1984; ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second and Third Additional Protocols to the South Pacific Nuclear-Weapon-Free Zone Treaty in 1988; ratification of the Seabed Arms Control Treaty in 1991; accession to the Treaty on the Non-Proliferation of Nuclear Weapons in 1992; ratification of the Chemical Weapons Convention in 1997; ratification of the Second and Fourth Protocols to the Convention on Certain Conventional Weapons as amended in 1998; ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2007, etc.

⁹⁵ Reform and opening-up refer to the series of economic and social reform policies implemented by China since 1978. It is an important historical milestone in China's opening up to the outside world.

⁹⁶ "Treaty Status", *Ministry of Foreign Affairs*, available at: https://www.mfa.gov.cn/web/ziliao_674904/tytj_674911/tyfg_674913/index.shtml.

reflects China's full affirmation of the principles and legal system of international humanitarian law.

3.2. Active Domestic Legislation in China to Align with International Humanitarian Law Conventions

Firstly, the preamble of the Constitution of China explicitly emphasizes China's positive attitude towards the international order by advocating the "Five Principles of Peaceful Coexistence"⁹⁷, which signifies China's commitment to the path of peaceful development and the promotion of building a community with a shared future for mankind. It also articulates China's steadfast opposition to imperialism, hegemonism, and colonialism, the nation's support for oppressed nations and developing countries in their just struggle to fight for and safeguard national independence and develop their national economies, and the efforts to strive for world peace and the progress of humanity. Thus, the Constitution, the fundamental law, expresses contemporary China's philosophy regarding war and peace.

Although the Constitution does not stipulate the domestic validity of international treaties, specific laws have been enacted to ensure the applicability of China's obligations under relevant international treaties on armed conflicts to which China is committed. Article 67 of the National Defense Law of the People's Republic of China, promulgated and implemented in 1997, explicitly states that "The People's Republic of China shall abide by relevant treaties and agreements concluded with

⁹⁷ The Preamble to the Constitution of the People's Republic of China stipulates, "[T]he future of China is closely bound up with the future of the world. China pursues an independent foreign policy, observes the five principles of mutual respect for sovereignty and territorial integrity, mutual nonaggression, mutual noninterference in internal affairs, equality and mutual benefit, and peaceful coexistence, keeps to a path of peaceful development, follows a mutually beneficial strategy of opening up, works to develop diplomatic relations and economic and cultural exchanges with other countries, and promotes the building of a human community with a shared future."

foreign countries, or to which it has acceded or accepted, in its external military relations."⁹⁸ As a basic law governing national defense and military building, it serves as the fundamental legal basis for China to fulfill its obligations under ratified international conventions.

Secondly, for the prosecution of war crimes, China implements them through existing criminal legislation. Chinese Criminal Law specifies acts that violate the four Geneva Conventions and two Additional Protocols as crimes. In the Articles 446 and 448 of the Criminal Law, specific provisions regarding war crimes stipulate that military personnel who, during military operations, commit acts such as harming innocent civilians in areas of military action, looting their property, and physically abusing, punishing, or insulting enemy captives who no longer resist, shall be punished in serious cases. Moreover, other criminal violations of international humanitarian law can be convicted, sentenced and punished under various provisions of China's Criminal Law, including intentional homicide, intentional injury, rape, intentional destruction of property, intentional damage to cultural relics and historic sites, and destruction of environmental resources protection.⁹⁹

Thirdly, in terms of weapon control, China has developed a comprehensive legal system covering various fields including nuclear, biological, chemical, and missile technologies to prevent proliferation. To implement the provisions of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) domestically, after China's accession to the NPT, the State Council issued the Regulations of the People's Republic of China on the Control of Nuclear Export in September 1997. In 1988, the Chinese government signed the Agreement on the Implementation of Safeguards in China with the International Atomic Energy Agency (IAEA), voluntarily placing its civilian nuclear facilities under IAEA safeguards. In 1998, the Chinese government also signed the Additional

⁹⁸ National Defense Law of the People's Republic of China, Article 67.

⁹⁹ Tian Longhai, Chang Xuan, "On the Perfection of Domestic Legislation on Punishing War Crimes", *Journal of Xi'an University of Political Science*, No. 10, 2006.

Protocol on Strengthening Safeguards with the IAEA. On March 28, 2002, the Chinese government officially notified the IAEA that China had completed all domestic legal procedures for the entry into force of the Additional Protocol, which came into effect on that day. China was the first of the five nuclear-weapon states to complete the aforementioned procedures, fully demonstrating China's effective implementation of strengthening the safeguards system and its proactive and responsible attitude towards fulfilling non-proliferation obligations.¹⁰⁰ In addition, in response to various arms control treaties to which China has acceded, China has enacted various laws and regulations through domestic legislation, including the Regulations on the Management of Controlled Chemicals of the People's Republic of China, Lists of Controlled Chemicals, Implementing Measures for the Regulations on the Management of Controlled Chemicals of the People's Republic of China, Regulations on the Export Management of Military Items of the People's Republic of China, Regulations on the Export Control of Missiles and Related Items and Technologies of the People's Republic of China, Regulations on the Control of the Export of Dual-Use Biological Items and Related Equipment and Technologies of the People's Republic of China, Regulations on the Control of Export of Chemicals and Related Equipment and Technologies, Interim Measures for the Administration of Licenses for the Export of Sensitive Items and Technologies, Supplementary Protocol on Combating Illicit Manufacturing and Trafficking of Firearms, Their Parts, and Ammunition, etc.

3.3. China's Implementation of International Humanitarian Law in International Armed Conflicts

Just as ancient Chinese military ethics emphasized the protection of "innocents" (civilians and prisoners of war) in wartime, China's longstanding military culture has also influenced contemporary practices, responding to the objectives of international humanitarian law. The

¹⁰⁰ Above note 91.

Chinese People's Liberation Army (formerly known as the Eighth Route Army and the New Fourth Army in different historical periods) has experienced international armed conflicts such as the War of Resistance Against Japanese Aggression, the War to Resist US Aggression and Aid North Korea, the Sino-Indian Border Self-Defense Counterattack War, and the Sino-Vietnamese Self-Defense Counterattack War. During the period of the War of Resistance Against Japanese Aggression, an era before the founding of the People's Republic of China, China's treatment of Japanese prisoners of war not only fully complied with the requirements and rules of international humanitarian law but, in some ways, were more favorable to prisoners than international humanitarian law.¹⁰¹ For example, China developed policies to provide preferential treatment to Japanese prisoners, improved their living conditions,¹⁰² established Japanese worker and peasant schools, supported prisoners in forming anti-war alliances,¹⁰³ and implemented the humanitarian repatriation of Japanese civilian internees.¹⁰⁴

In 1956, after the founding of the People's Republic of China, the Special Military Court of the Supreme People's Court of China conducted trials against Japanese war criminals for their crimes committed during the war of aggression against China in accordance with the *Decision on the Handling of the Criminals in Custody from the Japanese War of Aggression against China*. As noted by Mei Ruao, a Chinese international law expert and former judge of the International Military Tribunal for the Far East, "[S]uch trial procedures fully comply with international norms and legal principles, which are imbued with humanitarian spirit while meeting the demands of legal justice. Such

¹⁰¹ Meng Fanming, "On the Practice of International Humanitarian Law in China," Ph.D. dissertation, China University of Political Science and Law, March 2011.

¹⁰² "The benevolent division of the Japanese prisoners of war: Japan soldiers are not the real enemies of our army", *China News*, 16 August 2010, available at: <https://www.chinanews.com.cn/cul/2010/08-16/2470504.shtml>.

¹⁰³ Zhao Anbo, "From Prisoner of War to Anti-Aggression Fighter--Recalling the Yan'an Japanese Workers and Peasants School", *Scientific and Technological Essays*, No. 10, 1995.

¹⁰⁴ Liu Guowu, "Repatriation of Japanese Prisoners and Overseas Chinese in Postwar China", *Seeker*, No. 5, 1999.

lenient treatment reflects the great magnanimity and profound humanitarian spirit of the Chinese people. Only the victorious Chinese people could have the courage to undertake such an unprecedented action."¹⁰⁵

In the subsequent wars after the founding of the People's Republic of China, China strictly adhered to the rules of international humanitarian law regarding the treatment of prisoners of war, and in certain aspects, could be considered as an exemplar of international humanitarian law. For instance, during the war to resist US aggression and aid North Korea, China implemented the policy of "lenient treatment of prisoners";¹⁰⁶ and after the border conflicts with India, it adopted a policy of repatriating all Indian prisoners.¹⁰⁷ After the Sino-Indian War, the Chinese military voluntarily returned a large number of captured weapons, vehicles, and military supplies to India, setting a precedent worldwide for a victorious army to voluntarily cease fire, withdraw, return captured materials, and repatriate prisoners.¹⁰⁸

3.4. Reflection on Relevance of Traditional Ethics of Chinese Humanitarian Law

Humanitarian law, as a value consensus, indeed exists in different forms of acceptance in practice. These differences stem from various factors, such as ethical value systems, religion, history and experience, politics and economics, legal systems, etc., and have a profound impact on the

¹⁰⁵ *People's Daily*, 23 June 23 1956.

¹⁰⁶ *Political Work of the Chinese People's Liberation Army in the War of Resistance Against the United States and Aid Korea*, People's Liberation Army of China Publishing House press, 1985, p. 139.

¹⁰⁷ "Statement by Spokesman of the Ministry of National Defense on the Completion of the Release and Repatriation of All the Indian Military Prisoners", *Bulletin of the State Council of the People's Republic of China*, No. 7, 1963, p. 137, available at: <https://www.gov.cn/gongbao/shuju/1963/gwyb196307.pdf>.

¹⁰⁸ Wang Zhongxing, "The Sino-Indian Border Conflict in the 1960s and the Self-defense Counterattack of Chinese Border Forces", *Contemporary Chinese History Research*, No. 5, 1997.

implementation effect, international cooperation, and the development of humanitarian law itself. Therefore, in promoting the global acceptance and implementation of humanitarian law, it is necessary to fully consider these differences and seek consensus and compromise to ensure that humanitarian law can play its due role in protecting people.

The law of war is a common reaction to the horrors of warfare. The importance lies in how to connect the values in humanitarian law with the traditional values and ethics of the state itself. But our ultimate goal has always been to accept international humanitarian law as a common norm. The goal of traditional ethics corresponds to the values that are understood today as "humanitarian".

As discussed, China has a long-standing traditional culture of humanitarian ethics dating back to ancient times. The traditional Chinese approach to warfare emphasizes the morally guided concepts of "just purpose", "just war" and "the army of benevolence and righteousness"¹⁰⁹, which are rooted in traditional Chinese ethics. With the modernization of warfare law, countries have gradually accepted a global war governance mechanism that emphasizes the "just means" of warfare. After the introduction of international humanitarian law into China, China has consistently emphasized the implementation and compliance with international humanitarian law in the armed conflicts it has experienced, and has continuously joined various related conventions, and taken many representative actions (See Sections 3.2 and 3.3 for details).

¹⁰⁹ See Confucianism, Mengzi, Liang Hui Wang II.

“Mencius replied, 'I have heard of one who with seventy li exercised all the functions of government throughout the kingdom. That was Tang. I have never heard of a prince with a thousand li standing in fear of others. Thus, the people looked to him, as we look in a time of great drought to the clouds and rainbows. The frequenters of the markets stopped not. The husbandmen made no change in their operations. While he punished their rulers, he consoled the people. His progress was like the falling of opportune rain, and the people were delighted. It is said again in the Book of History, 'We have waited for our prince long; the prince's coming will be our reviving!'"

After experiencing two World Wars and numerous regional conflicts, nations have reached an unprecedented consensus on the value of warfare governance. However, with the advancement of science and technology and the evolution of the forms of warfare, information-driven and intelligence-based wars continue to emerge, posing challenges to the theoretical framework of modern warfare law. It is worth contemplating whether, by disregarding moral assessments of the purpose of war and only seeking to regulate wartime conduct to realize humanitarian values, one can genuinely mitigate the perils of warfare. No human behavior can be presumed inherently immoral. Can social philosophy, without referring to ultimate goals, lead the way? Can people's conduct be shaped by norms alone?

Although the codified IHL is related to the provisions of *jus in bello*, the ethics of the law should have a wider extension, and the ethics of the law can be complementary to the written law. The implementation of IHL is closely related to the achievement of peace. As in the "75th Anniversary of Geneva Conventions reaffirms relevance, calls for States to recommit" campaign, Jurg Bürri, Swiss Ambassador to China, said: "If we look around the world today, 75 years later, we note that we are still far from achieving the goal of ending the pains of armed conflict. However, this should not lead us to accept war as inevitable. We should still condemn war as a means prohibited by the UN Charter. And even more importantly, it should not make us give up on the commitment to 'humanize war' and lessen the misery it causes."¹¹⁰

People's reverence for the law stems not only from its standards of behavior but also from the acknowledgment of the moral and ethical values behind it. We should endow contemporary significance to the

¹¹⁰ "75th Anniversary of Geneva Conventions reaffirms relevance, calls for States to recommit", *International Committee of the Red Cross*, 14 August 2024, available at: <https://www.icrc.org/en/article/75th-anniversary-geneva-conventions-reaffirms-relevance-calls-states-recommit>.

traditional Chinese ethical values of "benevolence, righteousness, and propriety". The ancient ethical framework of warfare law, guided by "righteousness of purpose", based on moral values, and founded over thousands of years ago, may bring some insights into contemporary international humanitarian law.