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**Yesterday Once More?  
China and the Law of the Sea Negotiations**

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# Yesterday Once More? China and the Law of the Sea Negotiations

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## Introduction

One Autumn Day afternoon in August 2022, I was sitting in the United Nations Headquarter in New York, observing the fifth intergovernmental conference on marine biodiversity in areas beyond national jurisdiction (BBNJ). The international community has been negotiating a new legally binding agreement on the high seas since 2018. The BBNJ negotiations cover four major issues – marine genetic resources, including benefit-sharing; area-based management tools, such as marine protected areas; environmental impact assessment; and capacity building and transfer of marine technology.<sup>2</sup> The BBNJ Agreement, once concludes, is no doubt the most important international legal instrument for the world's oceans, following the adoption of the United Nations Convention on the Law of the Sea (UNCLOS)<sup>3</sup> in 1982.

In a lengthy debate on whether common heritage of mankind is a legally binding international principle or merely a concept, the Chinese delegate, who echoed a speech made by Bangladeshi delegation, emotionally spoke up about the West's lack of political will in sharing the benefit of marine genetic resources in the Area - the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.<sup>4</sup> This was a unique and Déjà vu moment. It somehow reminds me the famous photo of then Chinese Minister of Foreign Affairs Qiao Guanhua laughed happily at the UN General Assembly in 1971. That was the year when the CCP's People's Republic China (PRC), replace KMT's Republic of China as the only legitimate representative of China to the UN.<sup>5</sup> For every kid from mainland China, we are taught in the high school history class that in the 1970s China stood firmly with developing countries against superpowers – the United States and Soviet Union, and aspired to achieve a new international economic order. It was because of votes from the developing world that the PRC finally returns to the UN. Therefore, it seems to be unquestionable that during the Third UN Conference on the Law of the Sea (UNCLOS III, 1973 – 1982) when the UNCLOS was negotiated, China must be supportive of the third world's struggle to achieve a treaty that protects their sovereignty and interests in the oceans.

However, while countries celebrated the 40<sup>th</sup> years Anniversary of the adoption of the UNCLOS in 2022, the world, and China, have changed significantly over the past four

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<sup>1</sup> This is the first draft of a work-in-progress. Please do not cite and/or disseminate this draft paper without the author's permission.

<sup>2</sup> See United Nations Intergovernmental Conference on Marine Biodiversity of Areas beyond National Jurisdiction, <https://www.un.org/bbnj/>

<sup>3</sup> United Nations Convention on the Law of the Sea (UNCLOS), Montego Bay, 10 December 1982, in force 16 November 1994, 1833 UNTS 397.

<sup>4</sup> Article 1 (1), UNCLOS.

<sup>5</sup> A/RES/2758(XXVI), Restoration of the Lawful Rights of the People's Republic of China in the United Nations, 26th Session of the General Assembly, 1976th plenary meeting, 25 Oct. 1971.

decades. When the UNCLOS was negotiated, China was among one of the least developing countries in the world. In 2021, according to the World Bank, China's Gross Domestic Product (GDP) for the first time surpassed the whole of the European Union (EU) and is about 77% of the size of the United States.<sup>6</sup> In the meantime, Russia's GDP only counts for 10% of China. As many in the West argued, China itself, is now a superpower, competing with the United States in almost every corner of the globe.<sup>7</sup> Therefore, it would be highly interesting, as this paper aims to achieve, to compare China's stance during the UNCLOS and BBNJ negotiations and examine any convergence and divergence as well as reveals reasons behind. This paper is built upon participation observation of the fourth and fifth Intergovernmental Conference on Marine Biodiversity in Areas beyond national jurisdiction (BBNJ IGC4 & 5, 2022) as well as archive studies of official records of the third United Nations Conference on the Law of the Sea (1973 – 1982)<sup>8</sup> that was digitalized by the UN Office of Legal Affairs. The first part devotes to China's participation in the UNCLOS III, while the second part focuses on China in the BBNJ negotiations. Drawing upon comparisons from part I and II, the paper concludes with some insights on future direction of a powerful China's engagement with international law of the sea.

### China in the UNCLOS III

The history of the law of the sea, its origin and development until the UNCLOS, is to large extent west centric. For example, Hugo Grotius wrote his famous book *Mare Liberum* (the freedom of the seas) in order to defend Dutch trade interests at sea against the Portuguese exclusive jurisdiction of the oceans. For the third world countries, after the rise of European colonial powers, be it Spanish, Portuguese, Dutch, French or the British Empire, the sea become a major source of threat to their sovereignty and national interests.<sup>9</sup> By the end of the second world war, most third world countries were still European and American colonies, without independent sovereignty to determine their own affairs and future.

Although China has never been fully colonized by any western power, the country also went through a so-called "the century of humiliation" since the first Sino-British/Opium War in 1840. Ever since China was forced to cede Hong Kong to the British following the adoption of the unfair Treaty of Nanking (1842), the country suffered significantly from foreign interference and invasion throughout the first half of the 20<sup>th</sup> Century. The PRC was established in 1949. However, it was isolated from the US-anchored western world since the broke out of the Korean War in 1950. The UNCLOS negotiation was, therefore, a starting point for PRC to re-emerge in the international arena, together with many developing countries in Asia, Africa and Latin America, who also gained independence as a result of UN-supported decolonization campaign after the Second World War.

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<sup>6</sup> The World Bank, 'GDP (current US\$) – China, United States', <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CN-US>

<sup>7</sup> See for example, according to US Secretary of State Antony Blinken, "China is the only country with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it." The Administration's Approach to the People's Republic of China, 26 May 2022, <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/>

<sup>8</sup> [https://legal.un.org/diplomaticconferences/1973\\_los/](https://legal.un.org/diplomaticconferences/1973_los/)

<sup>9</sup> For a comprehensive study on the third world's engagement with the law of the sea, see Endalew Lijalem Enyew, Sailing with TWAIL: A Historical Inquiry into Third World Perspective on the Law of the Sea, *Chinese Journal of International Law* (2022), jmac028.

On 17 December 1970, the General Assembly decided by resolution 2750 C (XXV),<sup>10</sup> to convene a third conference on the law of the sea in 1973. Indeed, the UNCLOS III, in which 160 states participated for 9 years, was a unique and exciting process for developing countries. It was clearly stated from the very beginning that

“It was the first Conference on the subject since the accession to independence of a large number of developing countries, a fact which gave it a very particular and historic significance..... It knew enough to realize that it had a real and vital opportunity to establish the legal foundations which could reconcile present needs and interests with those of future generations. That opportunity arose at a time when a dominant concern of the United Nations was to close the gap between developing and developed countries, which had rightly been a major theme in the discussions in the preparatory stage and was a major concern of the Conference.”<sup>11</sup>

Moreover, the developing countries formed the Group of 77 (G77) in 1964, with aim to enhance cooperation and joint negotiating capacity in the United Nations towards a new international economic order.<sup>12</sup> In 1967, Arvid Pardo, the then permanent representative of Malta to the UN, delivered his comprehensive speech to the UN General Assembly and urged the UN to consider “vital political questions involved and clear legal provision be made for an international regime, administered by an efficient international authority over the sea-bed and the ocean floor beyond a variously defined continental shelf.”<sup>13</sup> Pardo suggested that in order to avoid advanced States in a race to scramble resources of the deep seabed and ocean floor beyond national jurisdiction, those resources should be the “common heritage of all mankind”.<sup>14</sup>

The developing countries came to the UNCLOS III with high ambition. They were major forces in driving the inclusion of new concepts in the UNCLOS, such as common heritage of mankind, archipelagic waters and exclusive economic zone (EEZ). It was mentioned in the 1st Plenary Meeting of the UNCLOS III that

“It was essential to emphasize that the Conference would proceed on the basis of General Assembly resolution 2749 (XXV),<sup>15</sup> namely, that the sea-bed beyond national jurisdiction was the common heritage of all mankind. That fact in itself made the Conference unique; for the first time in history the representatives of States would be engaged in translating that vital concept into reality.....Any agreement reached at the Conference must promote the well-being of all

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<sup>10</sup> Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea, 1933<sup>rd</sup> Plenary Meeting of UN General Assembly, 17 December 1970.

<sup>11</sup> A/CONF.62/SR.1, 1<sup>st</sup> Plenary Meeting, 3 December 1973.

<sup>12</sup> Joint Declaration of the Seventy-Seven Developing Countries made at the Conclusion of the United Nations Conference on Trade and Development, Geneva, 15 June 1964.

<sup>13</sup> A Pardo, UNGA, 22<sup>nd</sup> Session: First Committee, 1515<sup>th</sup> Meeting, UN Doc A/C.1/PV. 1515 (1 November 1967), 14.

<sup>14</sup> Ibid.

<sup>15</sup> The UN GA Resolution 2749 (XXV) on Declaration of Principles Governing the Sea-bed and Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction.

countries, especially the developing countries, by making them the beneficiaries of the common heritage of mankind. Such agreement must also protect the ecology of the oceans, on which mankind's survival depended to such a large extent.”<sup>16</sup>

Based on official records of China’s participation in the UNCLOS III, China to large extent aligns herself with the G77 and showed strong support of developing countries’ struggle for a new international economic order on almost all fronts. Nevertheless, throughout the negotiation, China’s leadership had a drastic shift from Mao Zedong to Deng Xiaoping in 1978. Consequently, Chinese diplomacy during the UNCLOSIII could also be divided into two stages.

The first stage (1972 – 1977) fell very much under Chairman Mao (1893-1976)’s final years of leadership, while domestic chaos like cultural revolution was hovering. Even though the tension between the US and China was eased following US President Richard Nixon’s historical visit to China in 1972, the Chinese diplomacy in those days can be said to take a “revolutionary approach”, meaning anti-hegemonies wherever they can. In Chairman Mao’s eyes, the world was divided into three camps – the first world being two superpowers (U.S. and the Soviet Union), the second world being other developed western European countries and Japan, while the rest is the third world, including China. Moreover, bilateral relations between China and the Soviet Union, although both are ruled by the Communist Party, had deteriorated dramatically in the 1960s, and reached to its lowest point in 1969 when border conflict broke out in Zhenbao (Damansky) Island. Therefore, ever since the first statement made by Chinese delegation,<sup>17</sup> the tone was set as “allying with developing countries,<sup>18</sup> fighting against hegemonies (especially after Soviet Union)”.<sup>19</sup>

During this period, firstly, Chinese diplomat repeatedly raised concerns about fair and equitable participation in the negotiation process, which has always been an issue for

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<sup>16</sup> A/CONF.62/SR.1, 1<sup>st</sup> Plenary Meeting, 3 December 1973.

<sup>17</sup> “Mr Ling Ching (China) formally proposed that before the Conference proceeded to elect the remaining officers it should take a decision on the principle of one State, one seat (concerning the number and distribution of seats in the General Committee, the three Main Committees and the Drafting Committee), concerning which divergent views had been expressed. The Asian, African and Latin American groups had indicated their support for that principle, a position which his delegation endorsed in view of its long-standing conviction that all countries, large or small, should have equal rights and that no country, however powerful, should enjoy a privileged position at an international conference. It should be noted that only the two super-Powers were asking for more than one seat. That was an unfair and unreasonable manifestation of super-Power hegemony, which his delegation firmly opposed.” First Session, 3rd Plenary Meeting, A/CONF.62/SR.3.

<sup>18</sup> E.g., Para.77, Second Session, 28<sup>th</sup> Meeting, A/CONF.62/SR.28: “China, which was one of the countries of the third world and would support their just demands, had never lorded it over others. His country had never been a super-Power and never would be one”.

<sup>19</sup> “Para.11, Mr. CHAI Shu-fan (China) said that the international situation had changed considerably since the two previous Conferences on the Law of the Sea had been held, and the third world countries had now become the main force combating colonialism, imperialism and hegemony, as had been demonstrated at the recent sixth special session of the General Assembly. The expansionist policies of the two super-Powers were being firmly resisted by third world countries and were also arousing opposition among many "second world" countries. The historical trend was irresistible—countries wanted independence, nations wanted liberation and the people wanted revolution.” Second Session, 25<sup>th</sup> Plenary Meeting, A/CONF.62/SR.25.

developing countries on many occasions of international negotiation due to the lack of capacity and resources. For example, according to Mr Ling Ching

“his delegation believed in the principle that all delegations should participate equally in all decision-making relating to the Conference. His delegation was not opposed to exerting every effort to arrive at a consensus. The consultation methods proposed by the President were one way of reaching a solution of the procedural question under discussion. However, if the proposed consultations were held with the participation of a few countries only and the resulting decision was then put before the Conference as a whole as a *fait accompli*, that would be unreasonable.”<sup>20</sup>

Secondly, China actively advocates for new countries to join the negotiation between sessions of the UNCLOS III as a result of the decolonization process. The Chinese delegate gave a long speech in the 20<sup>th</sup> Plenary Meeting of the Second Session, arguing that “Political developments could occur between sessions of the Conference, and the Conference and its Credentials Committee should be able to discuss problems arising from any such political developments.”<sup>21</sup>

Thirdly, China was also supportive of the new regime of establishing exclusive economic zones,<sup>22</sup> as suggested by Latin American countries.<sup>23</sup> The UN GA recognized the right to

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<sup>20</sup> Second Session, 13th Plenary Meeting, A/CONF.62/SR.13. This point was reaffirmed in future sessions. For example, in 11<sup>th</sup> Meeting of General Committee, A/CONF.62/BUR/SR.11, Mr. PI Chi-lung (China) says “All States should be able to take part in that process with equal rights. The establishment of an excessive number of working groups could create difficulties for many delegations, particularly of developing countries, which were short of personnel, and which would thereby be excluded from discussions on important issues. All delegations must therefore be given the opportunity of taking part in the work of the Conference on an equal footing by being allowed to expound their views and having those views taken into account in the Conference's working papers.”

<sup>21</sup> Second Session, 20th Plenary Meeting, A/CONF.62/SR.20.

<sup>22</sup> “Para.16: it was the sovereign right of every country to define its territorial sea and the scope of its national jurisdiction. Coastal States were entitled to define a territorial sea of an appropriate breadth and, beyond it, their exclusive economic or fishery zones with appropriate limits in the light of their specific conditions and the needs of their national economic development and national security. In so doing they should naturally take account of the legitimate interests of neighbouring countries and the convenience of international navigation..... He reaffirmed his delegation's support for the position taken by many Latin American, African and Asian countries for maritime rights in an area extending for 200 nautical miles, including the territorial sea and the economic zone. That position represented their legitimate and reasonable rights and interests, which were in no way conferred upon them by the super-Powers.” Second Session, 25th Plenary Meeting, A/CONF.62/SR.25.

<sup>23</sup> “The Latin American States had been precursors in the development of international legal thinking on the regime of the seas: as early as 1956, the Mexico resolution, adopted by the Inter-American Council of Jurists, had established that the breadth of three miles for the delimitation of the territorial sea was insufficient and did not constitute a general rule of international law. In 1970, a large group of Latin American countries had adopted the Montevideo and Lima Declarations which stressed the economic interest of the coastal States in disposing of the natural resources of the sea and noted the geographical, economic and social link between the sea, the land and man, which gave the coastal States legitimate priority in the utilization of the natural resources of the marine environment. In 1972, the Declaration of Santo Domingo had been signed, which had made clear the need to establish two zones in ocean space; one under the jurisdiction of coastal States, extending not more than 200 miles, and another subject to the authority of the international community.” Second Session, 21 Plenary Meeting, A/CONF.62/SR.21.

permanent sovereignty over natural resources in 1972 and 1973,<sup>24</sup> which provided legal basis for newly independent developing countries to expand their jurisdiction at sea up to 200 nautical miles to protect their fisheries and other marine resources.<sup>25</sup> In those days, China probably didn't realize that one day it could become the world's largest distant water fishing countries<sup>26</sup> and its distant water fishing fleet could cause diplomatic issues due to fishing activities in or near other countries' EEZs.<sup>27</sup>

Fourthly, China was enthusiastically and wholeheartedly supportive of the principle of common heritage of mankind. On numerous occasions, Chinese delegate states that "The international sea-bed should be used for peaceful purposes. Its resources were owned jointly by the peoples of all countries".<sup>28</sup> It was also clear from Chinese delegation that the International Seabed Authority should be established with a Council, General Assembly and an Enterprise to manage deep seabed mining on behalf of all countries.<sup>29</sup>

Finally, China openly attacked two super powers, in particular the Soviet Union against their "maritime hegemony". Chinese diplomats singled out the Soviet Union several times, calling them for example, "the super-Power that flaunted the banner of socialism";<sup>30</sup> "The super-Power which claimed to be the natural ally of the developing countries" ;<sup>31</sup> and "Ambitious Soviet social-imperialism"<sup>32</sup>.

Even in the UNCLOS III, there is one particular issue that China distanced itself with most developing countries – dispute settlement. Although developing countries, like Bangladesh,<sup>33</sup> place great importance on setting up a compulsory dispute settlement regime

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<sup>24</sup> UNGA Res 3016 (XXVII), Permanent Sovereignty over Natural Resources of Developing Countries (1972); UNGA Res 3171 (XXVIII), Permanent Sovereignty over Natural Resources (1973).

<sup>25</sup> See Endalew Lijalem Enyew, Sailing with TWAIL: A Historical Inquiry into Third World Perspective on the Law of the Sea, *Chinese Journal of International Law* (2022), jmac028.

<sup>26</sup> China's official document provides that there are 2,654 Chinese-flagged fishing vessels operated by 169 DWF companies on the high seas of the Pacific, Indian, Atlantic and Southern oceans, as well as in the exclusive economic zones (EEZs) of 42 countries.1 National People's Congress of the People's Republic of China, Report on the Enforcement of Fisheries Law (24 December 2019) available at <http://www.npc.gov.cn/npc/c30834/201912/022a2e6da6374d1dab4cb4606c54092d.shtml> (in Chinese).

<sup>27</sup> Nengye Liu, "China's Regulation of its Distant Water Fishing Fleets", *International Journal of Marine and Coastal Law* (2021) 36 (1) 165-175.

<sup>28</sup> Para. 17, Second Session, 25th Plenary Meeting, A/CONF.62/SR.25.

<sup>29</sup> 22nd Meeting of the First Committee, Third Session, A/CONF.62/C.1/SR.22: "Mr. TIEN Chin (China) said that he agreed with representatives of developing countries that the international sea-bed machinery should be an organization jointly administered by all sovereign States, big and small, on a basis of equality. It should not fall under the control of and be monopolized by the super-Powers or be used by them to plunder the common heritage of mankind, but should work for the benefit of all peoples. The organization should have broad powers, including the right to direct exploration and exploitation of sea-bed resources, and should regulate all activities in the international area, such as scientific research, production, processing and marketing. The super-Powers must not be allowed to reduce the machinery to a hollow administrative framework devoid of real power."

<sup>30</sup> Para. 12, Second Session, 25th Plenary Meeting, A/CONF.62/SR.25.

<sup>31</sup> Para. 18, Second Session, 25th Plenary Meeting, A/CONF.62/SR.25.

<sup>32</sup> Para. 47, Fourth Session, 67th Plenary Meeting, A/CONF.62/SR.67.

<sup>33</sup> Fourth Session, 62nd Plenary Meeting, A/CONF.62/SR.62: "Mr. RASH ID (Bangladesh) said that Bangladesh attached great importance to the procedure of dispute settlement, since, as a developing country, it would be depending more and more on the extensive exploitation and exploration of sea resources, which could be carried out only when the interests of countries like Bangladesh were secure and an atmosphere of peace reigned over the ocean."

under the UNCLOS, China holds a very different view. As early as the 60<sup>th</sup> Plenary Meeting in 1976, the Chinese delegation stated that

The Chinese Government had consistently held that States should settle their disputes through negotiation and consultation on an equal footing and on the basis of mutual respect for sovereignty and territorial integrity. Of course, States were free to choose other peaceful means to settle their disputes. However, if a sovereign State were asked to accept unconditionally the compulsory jurisdiction of an international judicial organ, that would amount to placing that organ above the sovereign State, which was contrary to the principle of State sovereignty. Moreover, problems within the scope of the State sovereignty and exclusive jurisdiction of a sovereign State should be handled in accordance with its laws and regulations. That was why his delegation considered that the provisions in document A/CONF.62/WP.9 concerning the compulsory jurisdiction of the law of the sea tribunal were inappropriate.<sup>34</sup>

This position has surprisingly been unchanged for more than four decades, as reflected in the 2016 *The Philippines v. China South China Sea Arbitration*, of which China boycotted from the very beginning based on the understanding that arbitration cannot be initiated unilaterally without consent of the parties.

In 1978, Deng Xiaoping took power from Chairman Mao's designated successor Hua Guofeng and decided to implement the reform and open door policy. China quickly embraced the US anchored international community, opened its market to western corporations and was dedicated to establishing a market economy. This significant change was also reflected in the UNCLOS III negotiations. Although China's positions in the negotiation were not fundamentally changed, its tone was softened, and its involvement become more technical rather than ideological. For example, in the Eight Session, the Chinese delegation pointed out their view on the delimitation of continental shelf should be based on natural prolongation.<sup>35</sup> This can be seen as the first time the Chinese delegation was trying to express its specific position so as to protect China's own national interest. Accordingly, China become more active in committee meetings<sup>36</sup> rather than merely using politicized language in the plenary.

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<sup>34</sup> Para. 27, 60<sup>th</sup> Plenary Meeting, Fourth Session, A/CONF.62/SR.60.

<sup>35</sup> Para. 81, 116<sup>th</sup> Plenary Meeting, Eighth Session, A/CONF.62/SR.116: "His own delegation had consistently taken the view that the delimitation of the continental shelf of a coastal State should be based on the principle of the natural prolongation of its land territory rather than mechanically on certain distance criteria."

<sup>36</sup> At the first session, the UNCLOS III set up a General Committee, three Main Committees, a Drafting Committee and a Credentials Committee. The Conference allocated to the First Committee the topic of the international regime of the sea-bed and ocean floor beyond national jurisdiction, and to the Second Committee the topics of the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the high seas, land-locked countries, shelf-locked States and States with narrow shelves or short coastlines and the transmission from the high seas, while the topic of the preservation of the marine environment was allocated to the Third Committee. All the main Committees, as far as the topics were relevant to their mandates, were to deal with regional arrangements, responsibility and liability for damage resulting from the use of the marine environment, settlement of disputes, and the peaceful uses of the ocean space, zones of peace and security.



Moreover, previously, only diplomats appeared in the Chinese delegation, while since 1978, academics (e.g., Prof Wang Tieya, Professor of International Law at Peking University)<sup>37</sup> were also allowed to join the team. Prof Wang Tieya (former Judge of the International Criminal Tribunal for the former Yugoslavia) was educated at the London School of Economics and Political Science in the 1930s and therefore heavily marginalized during the Cultural Revolution. He returned to work in 1977. The UNCLOS III is probably his first appearance at the international arena, which is also a sign for China's willingness to re-engage with international rules-based order.

## China in the BBNJ

In its resolution 72/249 of 24 December 2017, the General Assembly decided to convene an Intergovernmental Conference, under the auspices of the United Nations, to develop an international legally binding instrument under the UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Overall, five sessions (IGCs) were convened between 2018 and 2023.<sup>38</sup> Although China was a little bit reluctant to convene the BBNJ negotiation, the Chinese delegation came to BBNJ IGCs well prepared. From the IGC I,<sup>39</sup> the Chinese delegation is always among the largest ones, consisting of diplomats, international law academics and marine scientists.

The BBNJ IGC was convened in a very different geopolitical environment comparing to the UNCLOS III. China, rather than Russian Federation, is now the second largest economy in the world. 2018 was also the year when Trump Administration officially launched the US-China Trade war by unilaterally imposing heavy tariff on more than \$360bn (£268bn) of Chinese goods. And China retaliated with tariffs on more than \$110bn of US products.<sup>40</sup> The US-China relations did not get better in Biden Administration, who continues to implement most of Trump's China policy.

In the meantime, China and Russia have been moving closer and closer in recent years. This is evidenced by the fact that President Putin and President Xi, who share similar views of the world order, have met each other 38 times in person since 2013.<sup>41</sup> China and Russia

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<sup>37</sup> Para. 49, 112nd Plenary Meeting, Eighth Session, A/CONF.62/SR.112: "Mr. WANG Tieya (China) said that his delegation's position on the question of the settlement of disputes concerning sea boundary delimitations was quite unambiguous and need not be repeated at the present meeting. At the meeting of the Second Committee on the previous day, his delegation had already commented on the treatment of that question in the report of the Chairman of Negotiating Group 7, and had suggested that further consultations on the matter were necessary. For the moment, he wished only to stress that, in his delegation's view, any compulsory and binding third-party settlement of a dispute concerning sea boundary delimitations must have the consent of all parties to the dispute. Otherwise such a form of settlement would not be acceptable to the Chinese delegation."

<sup>38</sup> First session was convened from 4 to 17 September 2018, the second session from 25 March to 5 April 2019 and the third session from 19 to 30 August 2019. The fourth session, which was postponed owing to the COVID-19 pandemic, was convened from 7 to 18 March 2022. The 5.1 session of the Conference was convened from 15 to 26 August 2022, while session 5.2 was held from 20 February to 3 March 2023.

<sup>39</sup> See the List of Participant, IGC 1, A/CONF.232/2018/INF.3, <https://www.un.org/bbnj/node/382>

<sup>40</sup> BBC, 16 January 2020, A Quick Guide to the US-China Trade War, <https://www.bbc.com/news/business-45899310>

<sup>41</sup> Reuters, 12 September 2022, Xi to meet Putin in first trip outside China since COVID began, <https://www.reuters.com/world/china/xi-leaves-china-first-time-since-covid-pandemic-began-meet-putin-2022-09-11/>

upgraded the bilateral relations to a higher level called ‘comprehensive strategic partnership’ in 2019.<sup>42</sup> China-Russia Foreign Ministerial Joint Declaration on Issues of Global Governance was adopted on 23 March 2021,<sup>43</sup> which reaffirmed the Chinese view of the world order by criticising the US-anchored ‘rules-based international order’, and placing importance on ‘international law underpinned by the United Nations’. Although officially China is not supportive of Russia’s war in Ukraine, there is no doubt that Russia because of its complete isolation from the West, is moving even closer to China for security and economic reasons following the Ukraine war in 2022.

Nevertheless, during the BBNJ negotiations, China to certain extent aligns herself with the developing world – the Group of 77, and leaves Russia alone. Further, China did refrain itself from using “revolutionary” language to scold the United States directly. Like the UNCLOS III, China is enthusiastically supportive of the principle of the common heritage of mankind, while Russia rarely stands with the West to call it a “concept”. Free access to Marine Genetic Resources (MGRs) is emphasised by a small group of developed countries, such as Japan, the EU and the United States.<sup>44</sup> They believe that activities such as bioprospecting in the high seas are subject to the freedom of the seas. Whilst the G77 + China, which has in total 134 members,<sup>45</sup> support the idea that oversight and, more crucially, benefit-sharing are required in relations to the extraction of MGRs. <sup>46</sup> China stands with the Group of 77 and has made a written submission to the Preparatory Committee on 5 December 2016 to “reaffirm the view that the principle of common heritage of humankind must underpin the new regime governing marine genetic resources of areas beyond national jurisdiction”. <sup>47</sup> However, as an industrial power, China’s interest in the Area has shifted from a developing country passively seeking benefits shared by developed countries to a potential deep seabed mining State. <sup>48</sup> In practice, China and the Russian Federation are the only States currently sponsoring exploration of all three types of deep seabed mineral deposit in the Area (polymetallic nodules in the Clarion-Clipperton Fracture Zone, seafloor massive sulphides in the South West Indian Ridge, the Central Indian Ridge, and the Mid-Atlantic Ridge, and cobalt-rich ferromanganese crusts in the Western Pacific Ocean). The China Ocean Mineral Resources Research and Development Association (COMRA), which China

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<sup>42</sup> ‘Joint statement of the People’s Republic of China and the Russian Federation on the Development of a Comprehensive Strategic Partnership for Collaboration in the New Era (full text)’, *Xinhua*, 6 June 2019.

<sup>43</sup> China Ministry of Foreign Affairs of the People’s Republic of China, China-Russia Foreign Ministerial Joint Declaration on Issues of Global Governance, 23 March 2021, [www.fmprc.gov.cn/web/zyxw/t1863317.shtml](http://www.fmprc.gov.cn/web/zyxw/t1863317.shtml) (in Chinese).

<sup>44</sup> International Institute for Sustainable Development, ‘Summary of the first session of the Intergovernmental Conference on an Internationally Legally Binding Instrument Under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction’ (2018) 25(179) *Earth Negotiations Bulletin* 1, 3.

<sup>45</sup> Group of 77 at the United Nations, ‘The Member States of the Group of 77’, [www.g77.org/doc/members.html](http://www.g77.org/doc/members.html).

<sup>46</sup> International Institute for Sustainable Development, *Earth Negotiations Bulletin, 2<sup>nd</sup> Session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ), Summary Highlights*, 25-5 April 2019.

<sup>47</sup> Group of 77, *Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, Group of 77 and China’s Written submission*, 5 December 2016.

<sup>48</sup> Nengye Liu, Rakhyn Kim, “China’s New Law on Exploration and Exploitation of Resources in the International Seabed Area of 2016”, *International Journal of Marine and Coastal Law* 31 (4), 692-694.

has been sponsoring, is the only contractor currently operating in the Area with all three mineral deposit types.<sup>49</sup> China's position on common heritage of mankind was even questioned by its own scholars. For example, Prof Yang Zewei, a leading international law professor from Wuhan University, believes that China's position is based on ideology, rather than real interests, and should be abandoned.<sup>50</sup>

It is fair to say that China's practice in the BBNJ negotiations is less likely to be based on ideology though. A good example is that China argues for state-led environmental impact assessment (EIA) for activities in the high seas, which is similar to the US position. On the contrary, many developing countries would prefer to establish a competent international body to approve EIAs as a prerequisite for commercial activities in the high seas. As major powers in contemporary world, China and the US both aspire to have less constraints for their activities in the high seas as possible. On this matter, it can be said that their negotiation strategy is similar as well, which is to make sure nothing in the BBNJ Agreement is to be against their national interest.

China and the US did clash on one specific item in the BBNJ negotiation, which is area-based management tools, including marine protected areas. The debate, though is nothing new, given China has been blocking the establishment of Southern Ocean MPAs in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for over a decade.<sup>51</sup>

### **Concluding Remarks**

We may say that Chinese diplomacy in the UNCLOS III is a reflection of that exciting decolonisation era – romantic, revolutionary and ideological-based. Even though China still carry the same position as a big supporter of the CHM principle, the Chinese diplomacy has been completely mature to fully serve its own national interest in the BBNJ. It is difficult for China to openly abandon the CHM principle, given China firmly supported G77 to include the CHM principle in the UNCLOS negotiations during the Third United Nations Conference on the Law of the Sea. Nevertheless, China, a country with advanced maritime technology, might inevitably favour unrestricted access to the MGRs in the future. China's 2016 Deep Seabed Law provides that 'the guiding principles of Chinese activities in the deep seabed are the peaceful use, cooperation, environmental protection, as well as for the "common wellbeing of humankind".' This deliberate, vague wording 'common wellbeing of humankind', leads some to believe that when it comes to state practice related to CHM principle, China might stay in the middle ground of two camps and adopt a more nuanced approach. This may not necessarily a good news for the decolonisation campaign, which is an unfinished project until today.

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<sup>49</sup> 'Deep Seabed Minerals Contractors' (International Seabed Authority). Available at [www.isa.org.jm/deep-seabed-minerals-contractors](http://www.isa.org.jm/deep-seabed-minerals-contractors);

<sup>50</sup> Yang Zewei, China and 40 Years of the United Nations Convention on the Law of the Sea: Progress, Impact and Future Prospects, *Contemporary Law Review (Dang Dai Fa Xue)* (2022) 4 (in Chinese).

<sup>51</sup> See, Nengye Liu, "The Rise of China and Conservation of Marine Living Resources in the Polar Regions", *Marine Policy* (2020) 121, 104181; Nengye Liu, Cassandra Brooks, "China's Changing Position towards Marine Protected Areas in the Southern Ocean: Implications for Future Antarctic Governance", *Marine Policy* (2018) 94 189-195