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RESEARCH ARTICLE

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Humanizing tendency of contemporary international law

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Abstract Humanization is not only a new concept and value-oriented, but also an ever-increasing positive phenomena in international law. Contemporary international law has been contributing to the establishment and improvement of global peace and development order for the co-existence among States on the one hand, and making endeavors to the formation and maintenance of humanizing order，which is both "individual-oriented" and "humankind-oriented". Such a humanizing phenomenon undoubtedly represents the advanced trend of international law, enriches its contents, updates some of its classic branches and impacts on the basic principle of reciprocity on which it is created and developed. However, the humanization of international law could not have taken shape without common accords among States by means of either treaties or customary rules; and without cooperation among States, the humanistic value of international law can never become true no matter how sublime it is.

Keywords humanizing international law, individual right and duty, common interests of human beings, core value of human beings

摘要 人本化既是应然国际法的一种新的理念和价值取向，又越来越突出地体现于实在国际法之中。现代国际法，一方面注重建立和完善国家间共处与合作的和平与发展秩序，另一方面又致力于确立和维护"以个人为本"和"以人类为本"的人本秩序。国际法的人本化现象丰富了国际法的内容，它不仅促进了一些经典的国际法部门与时俱进，还直接催生了一系列国际法的新分支。同时，它也冲击着国际法上权力与义务构建的基础——对等原则。诚然，没有国家间的条约和各国认可的国际习惯，不可能有国际法的人本化现象；没有国家间的合作，国际法的人本价值无论多么崇高，也不能变成现实。

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1 Introduction

The “inter-State” nature of international law has never been doubted, though it has been described differently as the “law of co-existence”, the “law of co-operation” or more recently as the “law of co-progressiveness”. (Yee, 2001) Politicians and academicians always believe that States make, obey and implement international law primarily for the maintenance of their interests. However, while persisting in and emphasizing on its nature, the humanization of international law as a matter of fact could not be neglected. Human factors of international law might be traced back to modern ages, even back to old times or the Middle Age. But humanizing process of international law started mainly after World War II. Since the ending-up of “cold war”, the notion of humanizing globalization (Lamy, 2006; Martin, 2002; Burack, 2000; Kourula, 1997; Okafor, Aginam, 2003) has been initiated and hotly discussed with the ever-increasing impacts on human beings brought by economic globalization. It could be reasonably prospected that humanizing globalization will speed up the humanizing process of international law in the 21st century.

However, so far there has been no uniform definition of humanizing international law in international legal academies. According to a recent impressive observation by a well-known western international lawyer, humanization of international law mainly refers to the influences and changes resulting from the formation and development of international humanitarian law and human rights law. (Moeron, 2006) In this opinion, the humanizing international law could be defined as that the rationale, values, principles, rules, regulations and system of international law have been developing increasingly toward the establishment, maintenance and realization of both individuals’ and humankind’s legal positions, rights or interests and obligations. At least, two basic features might be presumed from the definition above.

Firstly, humanization shows not only the present state of international law, but also its dynamic evolution tendency. In other words, there have emerged a large number of international legal principles, rules and even operational mechanisms related to individuals’ and mankind’s rights or interests and obligations in one picture, and some new humanizing rationale, conception and values in international law.

Secondly, judging from subject and object of the humanization, it refers to individuals and the whole mankind as well. The latter has so far (it seems to the author) not drawn proper attention from international lawyers in the context of humanizing international law. As for the former, it includes natural persons and legal persons as well.

Therefore, the author will display humanizing international law in two layers. The first part will concentrate on the individual aspects of the humanizing international law, which will be mainly a macro-survey (micro-views might be used occasionally) in selected fields such as humanitarian law, the law of human rights, extradition, international protection of intellectual property rights and public health, and core labor standards and trade liberalization. Then, the second part will turn to explore how the humanization has been taking place in those new areas of international law related to the whole mankind interests, such as international criminal law, outer space law, international environmental law and legal system of international seabed. In the final part, as conclusion, the author will try to figure out certain summary points on the key internal and external factors resulting in the humanization, and the far-reaching significance of humanization towards the development of international law.

2 The individual-oriented development of international law

2.1 International humanitarian law: The earliest manifestation of humanization

Humanitarian law is undoubtedly the origin of humanizing modern international law.[1] (Moeron, 2000) In traditional international law, humanitarian law had long been part of the Law of War, even being described as its supplementary rules and had not formed a relatively independent branch. Even many international lawyers take the view that the situation of humanitarian law is still the same as before, for it is closely linked to the Law of War or of armed conflict.[2] What is more, traditional humanitarian norms were enacted to restrain the means in international wars, which had developed as so-called the "Hague Conventions System" or the "Hague Humanitarian Law", or simply the "Hague Law". On the basis of the "Hague Law", modern humanitarian law has gradually been extended to protect the "victims" of hostilities, i.e., the wounded and sick in war fields, and shipwrecked at sea, prisoners of war, civilians and nonmilitary properties, which are generally called the "Geneva Conventions System" or simply the "Geneva Law". At this time, humanitarian law as a relatively separate branch from the law of wars seemed to take the shape; and from then on, its application has no longer been limited to international war, but expanded to international armed conflict and even to domestic war or armed conflict. As a result, the most constant circumstances in which humanitarian law is applied

[1] As for the humanization issues in international humanitarian law, see the most recent impressing monograph by Theodor Moeron.

[2] It seems to the author that all present textbooks of international law both at home and abroad still put the law of war or armed conflict and humanitarian law together in one chapter.

nowadays are internal wars or internal armed conflicts since international wars or armed conflicts have been happening much less or less than internal ones. The further reason is that prohibition of use or threat to use armed forces between States is set up as a preemptory principle in modern international law.

It is worthy of mentioning that humanitarian law as the "Geneva Convention System" as its core has been continuing its extension in the direction of concluding treaties regulating specific matters. To name a few examples: The 1954 Hague Convention on Cultural Property (updated by the 1999 Second Hague Protocol on the same matter); the 1996 Amended Protocol II to the 1980 UN Convention on Certain Conventional Weapons, which prohibits or restricts the use on land of mines, booby-traps and other devices; the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines, etc. However, as Professor Cassese observed, these treaties agreed upon after 1949 applicable to both external and internal armed conflicts, unlike the four Geneva Conventions of 1949, "have not turned into customary law, or in some instances, only some of their most fundamental provisions have ripened into general law, while the bulk of each treaty exclusively govern the conduct of the contracting parties." (Cassese, 2001) Therefore, humanitarian law once had long been the only symbol of humanizing factor in traditional international law, and has been turning into one of the most outstanding branches of modern international law in its humanizing process.

It is further worthy of observing that the increasing humanization of humanitarian law has been making itself "become less geared to military necessity and increasingly impregnated with human rights values". (Cassese, 2001) Some international legal scholars even expect that the rules that ought to be complied with in armed conflicts have the tendency to be integrated into those of human rights. (Shearer, 1994) Such a new trend was emphasized recently by the ICTY, whose Appeal Chamber observed that "the impetuous development and propagation in the international community of human rights doctrines has brought about significant changes in international law, notably in the approach to problems besetting the world community". Thus, "a Sate-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Roman Law *hominum causa omne jus constitutum est* (all law is created for the benefit of human being) has gained a firm foothold in the international community as well."[3] (Cassese, 2001)

The reason for humanitarian law as the pioneer of humanizing international law lies in its own characteristics. Unlike other branches of international law, humanitarian law has direct binding force not only on States and their governments

[3] Decision of 2 October 1995, para. 97. The ICTY in Tadic (decision on interlocutory appeal), quoted from Casssese, 330.

and armies, but also on battle fighters evolved in the wars or armed conflicts concern, although it is also formed and developed with treaties among international customary rules recognized by States. And more importantly, those treaties setting up humanitarian rules, at least those core rules therein, are legally binding on contracting parties as well as non-contracting parties involved in the related armed conflicts,[4] the feature of which could hardly be shared by other treaties in general, with individual exceptions (such as the obligations upon non-member States in the UN Charter) .

2.2 International law of human rights: The most systematic representation of humanization

The rising and flourishing of legal protection of human rights has been one of the most important achievements as well as the broadest and most systematic manifestation bearing on modern international law. Why has international law of human rights been developing so fast since the past over 60 years? The main reason was the deeper and bitter lesson drawn from World War II by international community, more directly by the victorious powers. In the World War II, the Nazi and Japanese fascists not only aggressed against the foreign States' sovereignty and their territorial integrity both in Europe and in Asia, but also seriously violated human rights on large scale which had been unprecedented in history. As a result, during the ending period of the War and soon after, the Victors adopted "a two-pronged strategy". (Cassese, 2001) On the one hand, they engaged in setting up international tribunals together with national courts concerned to bring justice and punish those war criminals who had committed inhuman conducts. On the other hand, they worked out to create a set of basic principles and mechanism on human rights in the UN Charter which is universally recognized as the turning point of international protection of human rights.

Since then, the law of human rights, as the chief symbol of humanizing international law, speeds up its development and becomes a new branch in international legal regime. Its main achievements are outlined as follows: (1) There has been a great success in the codification of international law on human rights and "the conventional system of human rights" has been well-established with various general and specialized treaties at both universal and regional levels;[5] (2) Numerous intergovernmental and non-governmental organizations on human rights have been set up and each has been playing its own roles in the

[4] See the Geneva Conventions of 1949, Common Provisions, article 2.

[5] As for general treaties of human rights at both levels, one has no reason not to mention the 1966 UN Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights; the 1950 European Convention on Human Rights; the 1969 Inter-American Convention on Human Rights; the 1981 African Charter on Human and Peoples' Rights. As for specialized human rights treaties, there are numerous, covering all specific matters in the field.

protection of human rights at domestic, regional and universal level;[6] (3) The compliance monitoring mechanisms have been established and gradually reinforced, although there exist sharp differences between the universal and the regional and between each level itself.[7] (Cassese, 2001)

An applauding new and more advanced consensus seems to have been reached on international protection of human rights in recent years, i.e., combining respect for fundamental human rights and democracy with rule of law and good governance as the core value of international law. For instance, the top leaders of the UN Member States at the 2000 World Summit expressly declared that they "will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedom, including the right to development".[8] They re-gathered at the 2005 World Summit and further "acknowledge that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being" and "recognize that development, peace and security and human rights are interlinked and mutually reinforcing"; "acknowledge that good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger"; recommit themselves "to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and they belong to the universal and indivisible core values and principles of the United Nation."[9]

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[6] The most recent development in this aspect is that the UN General Assembly on 15 March 2006 adopted the resolution (A/RES/60/251) which "decides to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly". http://www.ohchr.org/english/bodies/hrcouncil/docs/A.RES. 60.251_En.pdf. On 30 June, 2006, the Human Rights Council has concluded its first session, which began on 19 June, adopting eight resolutions, three decisions and two statements by the President. http://www.ohchr.org/english/bodies/hrcouncil.

[7] Naturally monitoring mechanisms at regional level is more advanced than those at universal level. The principal mechanisms at universal level are of two kinds established by international treaties (particularly the two UN Covenants on Human Rights) and UN Resolutions, which consist of three basic supervisory procedures: (1) Examination of periodic reports by States; (2) Inter-State complaints; (3) Request of individuals or groups of individuals. The advanced mechanisms at the regional level are featured with their judicial bodies which are considered in general the best means of ensuring respect for human rights. The well-known regional judicial bodies are the European Court of Human Rights, the inter-American Commission and the inter-American Court of Human Rights.

[8] See United Nations Millennium Declaration (8 Sept. 2000), para. 24, A/RES/55/2. http://daccessdds.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf?OpenElement.

[9] See 2005 World Summit Outcome (16 Sept. 2005), paras. 9, 11 and 119, A/RES/60/1. http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement.

Most recently, the UN General Assembly at its 60th Session adopted two new resolutions concerning the specific matters on fundamental human rights and freedom: One is the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom,[10] the other is the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[11] Though the two resolutions do not formally have legal binding force, they still show the following two deepening trends in international protection of fundamental human rights and freedom: (1) Not only rights, but also responsibilities of non-State actors (individuals, groups and other social bodies) are increasingly specified and emphasized; (2) The victims' right to remedy and reparation related to basic human rights violations is affirmed and even the basic standards for such a remedy is established.

At regional level, the new Treaty for Establishing a Constitution for Europe has left deep impression on international community, especially for its provisions of human rights protection. It enacts for the first time in the EU's constitutional treaties that "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights…" (article I-2). Based on these values, the Constitution, in addition to scattered provisions related to human rights, in other parts, systematically provides the Charter of Fundamental Rights of the Union in its Part II with seven titles, up to fifty-three articles. Such a lengthy and systematic provision of fundamental rights and freedom could hardly be found out in constitutional treaties of other intergovernmental organizations.[12]

The broadening and deepening of international protection of human rights has been promoting humanizing evolutions in many other fields or aspects of international law, such as subjects of international law, international recognition, customary law, law of treaties, international monitoring of compliance for international law, enforcement of international law, international criminal justice and humanitarian law or law of war discussed above, etc. (Cassese, 2001) This author just selects two examples for further illustration as follows:

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[10] A/RES/60/161. In fact this resolution does not raise new issues, instead just reaffirming the so-called "Declaration on Human Rights Defenders" adopted by the UN General Assembly Resolution 53/144 of 9 December 1998.

[11] See A/RES/60/147 (16 December 2005). http://daccessdds.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement.

[12] Though this "Constitution" failed to be concluded at last, its contents concerning core values of democracy, human rights, rule of law and good governance and further systematic provision on the protection of human rights have been largely duplicated in the updated Lisbon Treaty which is in process of approval by the EU Member States.

Firstly, the rules of human rights have become new factors in the theory and practice of new States or governments recognition, particularly in the post-cold war era. For example, the UN Security Council in November 1965 adopted two resolutions (Resolution 216 and Resolution 217) calling upon all States not to recognize Southern Rhodesia for its unilateral declaration of independence because of its violation of the majority rule (or the rule of people's self-determination). The more recent example happened just following the break-up of the Soviet Union and radical changes in Eastern Europe. On 16 December 1991, the foreign ministers of the EC Member States adopted a Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union which set up especially the respect for "the rule of law, democracy and human rights" as one of the standards for the formal recognition. As for the recognition of those new States resulting from the collapse of the Former Yugoslavia, the EC even established a special arbitration commission to evaluate and decide whether the proposed new States had met necessary standards mentioned above.[13] (Cassese, 2001) Therefore, respect for human rights, especially the fundamental human rights and freedom, has been inserted as a new requirement into the recognition of new States and new governments.

Secondly, the core rules of human rights law (those concerning the fundamental human rights and freedom) have become integral parts of peremptory rules (*jus cogens*), thus reinforcing the effect of international law and extending its application. The most important contribution of the 1969 Vienna Convention on the Law of Treaties seemed to be its new concept of *jus cogens,* which affirmed the existence of hierarchy relationship among the norms of international law, at least within the norms of treaties. Though it is so far unclear what norms of international law belong to *jus covens* and what norms not, which is a matter of affirmation by international community as a whole,[14] those core rules of human rights such as self-determination, and prohibition of genocide, racial discrimination and so on, have been undoubtedly affirmed as peremptory norms because of their absolute values and nature.

As a result of the peremptory nature of human right rules, the applicant or defendant or sometimes even the third parties in concrete cases might request the court involved to declare null and void a treaty or its specific provision which is contrary to *jus cogens*. Recently the judicial practice of the ICTY even shows that "Peremptory norms may produce legal effect at the municipal law level:

[13] See European Journal of International Law (EJIL), 1993, (4): 74–77; also Cassese, 50–51.

[14] In practice, such an affirmation largely lies in the conducts of States by forming customary rules, concluding treaties and adopting resolutions in the name of international organizations. In addition, international judicial and arbitral bodies have been playing an increasing role in this aspect with their judgments and decision.

They de-legitimize any legislative or administrative acts authorizing the prohibited conduct". (Furundzija, 1998; Cassese, 2001) The same tribunal in the same case further gave the ruling that the potential victims of conduct contrary to *jus cogens* who had *locus standi* before a competent judicial body (either international or national) could ask it to hold the national conduct internationally unlawful, or the victims could bring a civil suit for damage in a foreign court. (Furundzija, 1998) According to A. Cassese's investigation, the ICTY's rulings above have been shared by governments or courts of certain States, such as Switzerland, Spain and Italy, etc.[15] (Cassese, 2001).

2.3 Diplomatic protection law: A new sign of further enhancement of humanization

In the age of globalizing economy, not only exchanges and cooperation among States in the fields of politics, military affairs, economy, culture, education and technology are more frequent and complicated than ever before, but non-governmental exchanges and cooperation across States are increasingly proliferated and diversified. Such developing trend of international community directly brings forth new challenge to diplomatic law, an old branch of international law, i.e., adjustment of the focus of diplomatic functions. Specifically, for diplomatic representative agencies of States, especially the representative agencies abroad, when they represent and protect the interests of their States, their tasks for protecting the rights and interests of natural and legal persons of their States abroad are increasingly heavier and important, which will be sure to lead diplomatic law, especially the diplomatic protection law, to be more humanized on the basis of its inherent humanistic features. Currently, the Drafted Articles of Diplomatic Protection (hereinafter referred to as the Draft) passed by United Nations International Law Commission seems to have reflected such trend of development.

Firstly, the scope or objects of diplomatic protection determined by the Draft are very broad and though article 1 of the Draft mentions "a State to its national" when defining diplomatic protection, it can be found easily throughout the Draft that the "national" thereof not only refers to a natural person with a nationality of a State entitled to excising diplomatic protection, but including a legal person, and more importantly, refugees, persons without nationality or with multiple nationalities, in spite of different diplomatic protection conditions for each kind of those protection objects. Thus, in our advisory opinion submitted at the invitation of the Department of Treaty and Law, the Ministry of Foreign Affairs of the PRC, we suggest amending the definition of article 1 of the Draft, or

[15] See Cassese, 145.

making explanatory note on "national" separately, or listing the diplomatic protection objects involved in the Draft directly.

Secondly, article 6 and article 7 of the Draft provide that any State of which a dual or multiple national is a national may separately or jointly exercise diplomatic protection in respect of a dual or multiple national against a State of which that person is not a national. Such provision recognizes the legitimacy of dual and multiple nationalities from the perspective of international law at least in the diplomatic protection on the one hand, and further manifests the "human-oriented" principle of diplomatic protection law on the other hand. Here, we can not help associate it with the provisions and practices of China's present Nationality Law including the principle that dual and multiple nationalities shall not be recognized, which obviously goes against the legislative spirits and principles of the Draft, and at same time seems not conducive for China to utilize the diplomatic protection right to safeguard the legitimate rights and interests of overseas Chinese.

Thirdly, though the concept of "a legal person" in the Draft mainly refers to "a company", the Draft also provides that "the principles contained in this chapter shall be applicable, as appropriate, to the diplomatic protection of legal persons other than corporations" (article 13) . The "legal persons other than corporations" hereof include companies, public enterprises, universities, schools, foundations, churches, municipal authorities, non-profit organizations and non-government organizations. Such broad scope again shows the humanizing consideration on diplomatic protection of legal persons. However, note (4) of article 13 of the Draft further interprets that "universities funded and ultimately controlled by a State are not entitled to have diplomatic protection, while private universities are entitled to diplomatic protection". Clearly, such interpretation differentiates public universities from private universities with respect to the qualification for diplomatic protection and discriminates against public universities undoubtedly. It is very unfavorable for China since the vast majority of its universities are public. Therefore, China might argue strongly on justified grounds to delete such discriminatory interpretation in the further amendment of the Draft.

Finally, according to article 17 of the Draft, States, natural persons and legal persons can resort to the "actions or procedures other than diplomatic protection" to redress for relevant injuries. In the note to such article, some international and regional human rights conventions become the bases of "actions or procedures other than diplomatic protection", and a State can even "protect a person who is not a national of the State against the State of nationality of the victim or a third State in international lawsuits" according to those human rights conventions (note 2). Some members of International Law Commission even hold that "remedies pursued from human rights conventions belong to *lex specialis*, preceding remedies pursued from the diplomatic protection" (note 7). It can be

said that those notes are beyond the present practices of States in diplomatic protection field, and the practice linking human rights protection with diplomatic protection, without any doubt, will promote the humanization of diplomatic protection to a new level. However, the reasonableness of such practices is questionable, as human rights conventions can only govern contracting States rather than non-contracting States, unless those treaties contain the rules of peremptory law, and even so, they are specific rules in a treaty rather than the treaty as a whole. In addition, in the context of which States still have different views on the legal status and importance of relevant human rights conventions, the Draft links human rights with diplomatic protection could hardly be accepted by most States ultimately.

2.4 Extradition: A new humanizing measurement

In recent years, the affirmation of peremptory human right rules has been resulting in humanizing measurements in legislation, treaties and practices on extradition. First of all, there have been certain treaties explicitly providing the new principle that potential torture victims are not extraditable. For instance, article 3(1) of the UN 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN Convention against Torture)[16] provides that "no State party shall expel, repatriate or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". And according to article 3(2), the human right records or image of a State are key factors for the competent authority to determine whether there exist such grounds for non-extraditability.

In December of 1990, the UN General Assembly adopted the Model Treaty on Extradition[17] and article 3(b) and 3(f) affirm the following circumstances as part of grounds for the mandatory refusal: (1) The requested State has substantial grounds for believing that the request for extradition has been made for the purpose prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that person's position may be prejudiced for any of those reasons; (2) The person whose extradition is requested would be subjected in the requesting State to torture, or cruel or inhuman degrading treatment or punishment or if that person has not received or would not receive minimum guarantees in criminal proceedings.

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[16] It was adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984 entered into force 26 June 1987, in accordance with article 27 (1).

[17] A/RES/45/116.

The judgments made by some national and international courts or tribunals have further crystallized that non-repatriation of potential torture victims or persons with potential inhuman treatment or punishment is not only the rule in treaties, but also a broadly accepted customary rule[18] or the concrete implementtation of prohibition of torture or inhuman or degrading treatment or punishment which has obtained the status of general principle in international law. Therefore, even if a specific extradition treaty does not contain the rule mentioned above, or the requesting State is the Contracting Party of a treaty which contains the general principle of international law mentioned above, the requested State may still refuse the extradition request.[19] (Bufano, 1982)

Even further, the Institute of International Law once proposed the extension of grounds for refusal of extradition to the violation of fundamental human rights as a whole. In September 1983, the Institute adopted a resolution on new problems of extradition which stated that "In cases where there is a well-founded fear of the violation of the fundamental human rights of the accused in the territory of the requesting State, extradition may be refused, whosoever the individual whose extradition is requested and whatever the nature of the offence of which he is accused".[20] The UN 1990 Model Treaty on Extradition (article 3(b)) discussed above seemed to be largely influenced by this resolution, if not the direct result of it.

Another practical trend of humanizing extradition might not be neglected, e.g. non-extraditability of individuals facing death penalty. Though it is debatable among international lawyers whether this has been qualified as an established principle of international law, yet as a matter of fact, non-extraditability of persons with potential death penalty is no longer only an ought-to-be rule, but also a positive rule of international law, at least in certain States and regions. For example, in the well-known case *Soreing v. UK*, the European Court of Human Rights pointed out that if the UK extradited *Soreing* to the US at request of the latter, the former would violate its obligations under the European Convention on Human Rights, because the prohibition of death penalty in the Convention not only bound the UK as its Contracting Party, but also extended its jurisdiction to actions (e.g. implementation of death penalty) of the US as non-Contracting Party to it.[21] In some States, such as Switzerland, Germany, Italy, the Netherlands, Ireland, etc., which have abolished the death penalty, non-

[18] See ICTY judgments in Delalic and others, paras. 455–474; Furundziia, para. 257; and Kunarac, paras. 483–497.

[19] Quoted from Cassese, pp.144–147.

[20] See the Institute of International Law, Yearbook, vol. 60, Part II, Session of Cambridge (Paris：A. Pedone, 1983), p.306. Quoted from Cassese, Notes, Chapter 6, note 88, p.429.

[21] See Soreing v. UK（1989）11 ECHR439, also in Martin Dixon & Robert McCorquodale (ed.). Cases & Materials on International Law. Oxford University Press, 2003, p.288.

extraditability of criminals with potential death penalty is one of the mandatory grounds for refusal. Even some other States which do not abolish the death penalty themselves have turned to do the same in practice of extradition, such as the US, Thailand, etc. The UN 1990 Model Treaty on Extradition mentioned above (article 4) includes the non-extraditability of potential criminals with death penalty as one of those optional grounds for refusal.

If principles of non-extradition of political criminals and criminals with the requested nationality are enacted mainly in consideration of respect for State sovereignty and national interests, the affirmation of principle of non-extradition of persons with potential death penalty seems to be aimed at linkage to protection of human rights. When those States set up and apply for this principle, they usually invoke as legal basis of the Conventions on Human Rights which contain the provision of "no one shall be subjected to torture or inhuman or degrading treatment or punishment" or the alike.[22] What is more important, the UN General Assembly in 1989 adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights which calls for all States to restrict or abolish death penalty. The Council of Europe has been even more active in this aspect. It firstly in 1983 adopted the Additional Protocol No.6 to European Convention on Human Rights requiring all Contracting Parties to abolish death penalty, then in 2002 adopted the Additional Protocol No.13 (entered into force in 2003) which inserted the general prohibition of death penalty in all circumstances.

The Treaty Establishing a Constitution for Europe signed by all Member States of the European Union in 2004 (though failed to be approved) definitely prohibits the death penalty in all circumstances (article II-62). It could be therefore predicted that with the affirmation and acceptance of abolishing or prohibiting death penalty by increasing States and international organizations, the date for non-extradition of death penalty to become totally a positive or mandatory international principle seem to be not far away.

2.5 Protection of intellectual property rights and public health: A recent new humanizing tendency

In the past decade or so, another new tendency of humanizing international law is concerning the connection of intellectual property rights with protection of human rights. With the speeding-up of globalization and increasing convenience

[22] See UN International Covenant on Civil and Political Rights, article 7; UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3; European Convention on Human Rights and Freedom, article 3; American Convention on Human Rights, article 5.

of transnational transportation, the gravity of the public health problems has been afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.[23] (Avafia, 2005) Therefore, it is a new challenge in the process of humanizing international law to effectively carry out international cooperation for controlling cross-border epidemics and preventing or overriding the public health crisis in the vast developing countries especially the least developed countries. There have been multiple factors resulting in crisis of public health, such war or armed conflict, poverty, bad governance, medical backward, lack of rule of law, etc. However, that people of the developing countries could not afford to buy the highly priced pharmaceutical products has been one of the main reasons. And the increasingly high-priced pharmaceutical products are directly linked to the increasingly high protection of intellectual property rights. Before the Agreement on Trade-Related Intellectual Property Rights (the TRIPS Agreement) within the WTO, existing treaties on intellectual property rights had rarely covered patent rights of pharmaceutical products and their manufacture. In such circumstances, developing countries might provide their people with cheap pharmaceutical products made domestically or imported abroad. Since the TRIPS Agreement extended its protection of intellectual property rights to all technical fields, prices of patented pharmaceutical products have kept going up. As a result, an increasing number of the epidemic diseased could hardly gained emergent medicines and died soon after in the vast developing countries because they are neither patent holders of such pharmaceutical products, nor capable of purchasing the patent to produce such products or the patented products from developed countries.

With the continuous efforts made by the developing country members, the Doha Ministerial Conference on 14 November 2001 adopted the Declaration on the TRIPS and Public Health (Doha Declaration on Public Health).[24] In the declaration the WTO Members "agree that the TRIPS Agreement does not and should prevent Members from taking measures to protect public health", and "affirm that the Agreement can and should be interpreted and implemented in a manner supportive of the WTO Members' right to protect health and, in particular, to promote access to medicine for all". Accordingly, the WTO

[23] A recent research on the public health situation in Sub-Saharan African shows that though Sub-Saharan African is home to a total of less than 10% of the global population, it is home to more than 70% of all cases of HIV/AIDS in the world. South Africa alone has an estimated population of some 5.3 million people living with HIV/AIDS. This figure equates to more people living with HIV/AIDS than can be found in North and Latin America, the Caribbean, Western and Central Europe as well as Oceania combined. Other epidemics such as malaria deaths that occur yearly on the globe, approximately 90% of them occur in Africa, with young children the most vulnerable sector of the population to disease.

[24] WT/MIN(01)/DEC/2. http://www.wto.org/english/news_e/pres03_e/pr350_e.htm, 2001-11-20.

Members reaffirm in the declaration their right to use to the full "the provisions flexibility" in the TRIPS Agreement against certain patented rights to protect public health, the core of which is that "each Member has the right to grant compulsory licenses and the freedom to determine the ground upon which such licenses are granted".

In order to implement the "provisions of flexibility" in the Doha Declaration on Public Health, the WTO General Council on 30 August 2003 adopted the decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.[25] The decision waives the WTO Members' obligations under article 31(f) of the TRIPS Agreement which provides that production under compulsory licensing must be predominantly for the domestic market. The provision had effectively limited the ability of those developing WTO Members who can not make pharmaceutical products at home from importing cheaper generics from countries where pharmaceuticals are patented. The WTO Members further agreed in the Decision that the waiver would last until the article is amended.

On 6 December 2005, the WTO Members adopted the decision on the Amendment of the TRIPS Agreement.[26] The decision directly transforms the "waiver" decision on 30 August into a formal amendment of the TRIPS Agreement. The far-reaching significance of this amendment is that it lays down once and for all the legal changes that will make it easier for the vast WTO developing members to import cheaper generics made under compulsory licensing if they are unable to manufacture the medicines themselves. And it might be even more important, just as Director-General Pascal Lamy observed, that "the agreement to amend the TRIPS provisions confirms once again that members are determined to ensure the WTO's trading system contributes to humanitarian and development goals."[27]

It might be concluded shortly from the description above that the formation and innovation of international legal protection of intellectual property rights itself might represent a privacy-oriented or individual-oriented humanizing phenomenon of international law on the one hand, and the integration of protection of public health which is part of human rights into the international legal regime symbolizes a public-oriented or collectivity-oriented humanizing international law on the other hand. The evolution of the linkage between the TRIPS and public health in the WTO proves that when there is a conflict

[25] WT/L/540 and Corr. 1. http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm, 2003-9-1.

[26] WT/L/641. http://docsonline.wto.org/DDFDocuments/t/WT/L/641.doc, 2005-12-8.

[27] WTO: 2005 PRESS RELEASES, Press/426. http://www.wto.org/english/news_e/pres05_e/pr426_e.htm, 2005-12-6.

between intellectual property rights and public health, the latter seems to prevail over the former. It is thus presumed when there exist conflicts between intellectual property rights as a representation of individual human right and public health as a representation of collective human right, collective or public human right seems to prevail over individual or private human right.

2.6 The linkage between core labor standard and trade liberalization: A new humanizing challenge

Since the last decade or so, there has been a new trend of humanizing international law in linking the core labor standard or "social clauses" to the multilateral trading system (or trade liberalization) which is still in a State of unresolved debate. Although currently the core labor standard is not subject to the WTO rules and disciplines, the initiation and supporting movement on the one hand and the opposing and preventing voices on the other have never been stopping.

The proponents, mainly consisting of the WTO Members in Europe and North America and their institutions or scholars, put forward the following arguments:[28] (1) The inclusion of core labor standards in the WTO could strengthen public confidence in the multilateral trading system; (2) Bringing the matter to the WTO will provide incentives for the WTO Members to improve conditions for workers around the world. In a word, the linkage of the two is a win-win creation both for promoting the fair trade liberalization and the protection of human rights. Some scholars even observe that the involvement of intellectual property rights in the WTO already opened the Pandora's box and there is no reason not to include the labor rights or human rights in broader sense, if intellectual property rights is an appropriate subject matter for the WTO. (Soros, 2002) In addition, some scholars in favor of the linkage have aimed at calling for the constitutionalization of the WTO, thus beneficial for overcoming its democratic defects. (Alston, 2002) The opponents, largely composed of developing Members in the WTO and some scholars globally, consider that the inclusion of labor standards in the WTO represents a smokescreen for undermining the comparative advantage of lower-wage developing countries and creates another guise for protectionism in the markets of developed countries. They argue that better working conditions and improved labor rights could only be realized through economic and trade growth. They further worry about that if the issue of core labor standard becomes enforceable under the WTO rules, any sanctions imposed against countries with lower labor standard would merely perpetuate poverty and delay

[28] http://www.wto.org/English/thewto_e/minist_e/min99_english/about_.

improvement in workplace standard.[29] There is another anxiety in academies that once human rights issue is included in the WTO, it is probable that human right will be departed from the basis of human dignity and it will be regarded as instrumental means to realize various purposes of economic policies; as a result, individuals would become the objects instead of holders of human rights. (Alston, 40)

Nevertheless, the existing WTO rules do contain certain provisions relating to "social clauses" or humanization, although there has not been an agreement on trade-related (core) labor standard or social clauses just like the TRIPS and the TRIMS Agreements. For instance, article 20(5) of the GATT 1994 explicitly includes the "jail products" as one of the "general exceptions" permitting the WTO Members to take safeguard measures which are contrary to the basic rules of the WTO, if other conditions provided in the article are met with. Perhaps the original intention of the article was just purely economy-oriented or trade-considered, i.e., ensuring the principle of fair trade not to be jeopardized by the man-made low costs of jail products. But objectively the article implies the protection of human rights for the specific group of individuals, thus producing practical humanizing effect.

The first document of the WTO that directly addressed the issue of core labor standard is the Singapore Ministerial Declaration. It stated that "we renew our commitment to the observance of internationally recognized core labour standard. The International Labour Organization (ILO) is the competent body to set and deal with the standard, and we affirm our support for its work in promotion. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration."

Since then, the WTO has not taken any further substantive actions on the matter beyond the collaboration between the WTO and ILO Secretariats in mutual participation of each other's meetings and exchanges of documentation and information. On the contrast, the ILO has taken two significant steps in addressing the workers' rights. The first is the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, in which the ILO Member States endorsed some basic principles embodied in the core ILO Conventions. Then in 1999, ILO Member States also agreed to prohibit and eliminate the worst forms of child labour. They defined the worst forms of child labour as all forms of slavery, child prostitution and pornography, the use of children to

[29] Ibid, note 27.

traffic in drugs and work which is likely to harm the health, safety or morals of children.[30]

We may now sum up from the illustration above some basic understandings of the linkage between core labor standard and trade liberalization: Firstly, the core labor standards contained in the core ILO Conventions are universally recognized "social clauses" by the WTO Members who commit themselves to respect for and make efforts to realize; secondly, ILO, instead of the WTO, is the most appropriate authoritative institution to set up, implement and supervise those core labor standards; thirdly, the WTO plays its active part to help the implementation of the core labor standards through its continuous promotion of world trade liberalization and economic development; finally, it must avoid that some countries carry out trade protectionism under the guise of maintaining the core labor standards, thus setting up new man-made obstacles to the products from low-wage countries.

3 The humankind-oriented development of international law

The new conception of "mankind-oriented international law" implicates that a set of principles, rules, regulations or mechanisms of international law have been set up and implemented neither mainly for the States' interests, nor mainly for the benefits of individual persons, but mainly for maintaining common interests of the mankind as a whole or for promoting the well-being of whole mankind as its supreme purposes. Frankly, in some cases, the human common interests are in conformity with the interests of States or of individuals. But in other circumstances, these three kinds of interests are quite different, sometimes even in conflicts with each other. These differences and conflicts of interest are the very factors to develop necessarily the new conception of the mankind-oriented international law.

It is not long for the emerging tendency of mankind-oriented international law, and even much shorter than the history of the individual-oriented discussed above. But it has been developing fast in general. So far not only new mankind-oriented elements have been inserted into certain traditional sectors, such as international regime in the law of sea and expansion of universal jurisdiction in State jurisdictions, but also created a number of new mankind-oriented sectors or regimes, such as international criminal law, outer space law, Antarctic law, environmental law, etc.

[30] http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/briefl.

3.1 The expansion of universal jurisdiction and the definition and punishment of grave international crimes

Owing to the objective and subjective restrictions, such as transportation, technology, social consciousness or civilization, etc., traditional international law with maintaining co-existence between States as its primary tasks had neglected protection of individuals' rights and interests, not mentioning the rationale of mankind common interests. Though the principle of State universal jurisdiction began to be recognized in customary law and certain treaties, it had addressed only to the punishment of piracy and later slave trade. However, in spite of the specificity of piracy in terms of individual, States or individuals as its addressees, the fact that piracy was put into the State universal jurisdiction itself proves that it was defined and punished as a public offence or severe international crime to the mankind. In this sense, the universal jurisdiction recognized in traditional law had already contained the mankind-oriented factors.

With the development of modern science and technology and increasing convenience of transnational transportation, the harms brought by traditional forms of international crimes such as piracy to international community have become more and more serious on the one hand, and a number of newly emerged and even more severe transnational offences, such as hijacking of aircraft, drug trafficking, trafficking in women and children, certain acts of terrorism, etc., have become world-wide threats and dangers on the other hand. The gravest circumstances have been international crimes offended by particular persons with State powers or military forces, such genocide, war crimes, crimes against humanity, torture, aggression, etc. Therefore, it is imperative for modern international law to define these new international crimes and incorporate them into State universal jurisdiction, as well as to set up special international military and criminal tribunals directly prosecuting and punishing those gravest international offences, as supplements to State universal jurisdiction.

The first attempt to establish an international criminal tribunal could be traced back to the peace treaty signed by the victors with Germany at Versailles in 1919 after World War I. Article 227 of the Peace Treaty provided that the German Emperor (Wilheim II) should be responsible for "the supreme offence against international morality and the sanctity of treaties" and that special tribunal should be established to charge with trying the emperor. Although this provision was not put into enforcement because the Netherlands, where the emperor had taken refuge, refused to extradite him, (Cassese, 2001) but its historical significance might not be ignored. First of all, it meant that from then on, not only the ordinary individuals, but also high officials with State, government and military powers, even the heads of State or governments and commander-in-chief, could be charged with international crimes in international law. Secondly, though the

war powers of State had not been prohibited totally in international law at that time, its top political and military leaders might still be charged with international criminal responsibilities, if the State violated the related treaty and launched an aggressive war against other States. Thirdly, the individuals' international criminal offences might be tried not only before domestic courts of justice through the universal jurisdiction, but also before international military or criminal tribunals which might be set up for special purposes.

The possibilities presumed above were soon to be realized after World War II. The establishment and operation of the International Military Tribunals in Europe and Far East to try the major German and Japanese leaders accused of grave breaches of international law symbolized that from then on war crimes, crimes against humanity and crimes against peace have been defined as the most serious crimes in international law. Since then, to set up international military or criminal tribunals ad hoc to try those offenders who committed grave international crimes, regardless of their identities and positions, has been not only fully legitimated in international law, but also brought into practical enforcement. However, since the Nuremberg Tribunal and the Tokyo Tribunal were set up by the Allies to try defenders, they were called as "victors' justice". (Cassese, 2001)

Further efforts were made in the same routine soon after. In 1948, the UN General Assembly adopted the Genocide Convention. The main contribution of the Convention to international criminal justice or to humanizing international law could be summed up as follows: (1) The first time defining genocide as a specific grave crime; (2) Prohibiting genocide both in time of war and peace; (3) Treating genocide as both a crime involving the criminal responsibility of the perpetrator (and other participants) of the State whose authorities engage or otherwise participate, in the commission of genocide; (4) Perpetrator or participants in genocide shall be tried before the courts of State in whose territory the genocide has occurred, or before a future "international penal tribunal". (Cassese, 2003)

The avoidance of "victors' justice" had not occurred until the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. Unlike their two precedents (the Nuremberg and the Tokyo Tribunal), the two ad hoc tribunals were set up by the UN Security Council pursuant to its powers envisaged in Chapter VII of the UN Charter.[31] The jurisdiction of the two ad hoc tribunals covered grave breaches of the Geneva Convention, violation of the laws and customs of war, genocide and crimes against humanity committed by individuals in the territories of the Former Yugoslavia and Rwanda within the specific period of time. The birth of the ICTY and ICTR is the turning point in the realization of

[31] See SC Resolution 827, 25 May 1993; SC Resolution 955, 8 November 1994.

international criminal justice. It means that the grave international crimes subject to jurisdiction of ad hoc international tribunals are no longer limited to those committed in wars or armed conflicts between States, but extended to those occurred in wars or armed conflicts with a State. However, the establishment of the two tribunals has also attracted much criticism. One of its major defects is that the jurisdiction of these ad hoc tribunals is limited to specific crimes committed by specific persons at specific time within specific places, not crimes committed everywhere in the world, thus representing a kind of "selective justice". (Roberson, 2000; Cassese, 2003)

It has been widely accepted that the best way to overcome the defects of both "victors' justice" and "selective justice" is to set up a permanent international criminal court of justice. In fact, the UN General Assembly once empowered its International Law Commission (ILC) to start the possibility of establishing a permanent international criminal court, while it adopted the 1948 Genocide Convention. But the ILC's work on the subject matter had not produced any substantive progress until the end of the 1980s with the end of the Cold War. After the constant efforts within the ILC in the 1990s, the Statute of International Criminal Court (ICC) was adopted at a diplomatic conference held in Rome from 15 to 17 July 1998, which through the reconciling process thereafter entered into force on 1 July 2002. ICC was then formally established and its first judges were elected in February 2003. According to the Statute, ICC shall have jurisdiction over "the most serious crimes of concerning to the international community as a whole" (Preamble), namely, genocide, crimes against humanity, war crimes, and the crime of aggression (article 5).[32] Though there exist certain defects in this permanent criminal court of justice and its practical roles still lie in the sincere cooperation between the Contracting Parties of the Statute, its establishment itself signals a break-through in modern international law. It has not only filled up the gaps of international judicial bodies and their jurisdictions to a great extent, but also marked the new achievement in protecting the core human values in the international community, thus representing the higher purposes of the humankind-oriented international law.

3.2 The human common interests beyond the State sovereign jurisdiction

In traditional law, areas beyond the State sovereign jurisdiction, or usually called "international areas", had long been treated as areas without owners or *terra nullius*, which each State could proclaim as its own territories through "preoccupation" and "effective governance" or could freely engage in all kinds

[32] However, the jurisdiction of the ICC over the crime aggression has to wait for the adoption of a definition in accordance with article 5(2) of the Statute.

of activities. With the continuous progress of modern science and technology, the international areas have been discovered of great practical values, either processing rich natural resources, or being of vast usages for scientific researches. As a result, each State, for the sake of its own interests, has made its claims beneficial to its own advantages. Developed countries have speeded up their research, exploitation and development with their absolute advantages in economic, military and scientific and technological fields, thus resulting in the increasing opposition of the vast developing countries. Therefore, to fix as soon as possible the legal status of those international areas such as international seabed, outer space and the Antarctica and so on, and to establish respectively international legal regimes have become an emergent task confronted by international community since the 1960s.

After the continuous efforts of nearly the half century by international community, most of the international areas have their legal status fixed through resolutions of international organizations and international treaties between States, some of which have even formed systematic legal regimes. Though their legal positions could not be exactly the same and even some of their legal regimes could not be called complete or lack of operation, they have a basic commonness that the old concepts and principles of "land without owners", "preoccupation" and "effective governance" in traditional law have gradually been abandoned and at the same time a number of new concepts and principles with "common heritage of mankind as its core values have been enacted in modern international law. Such new concepts and principles, under which relative legal systems have thus been formed, present the aim that international areas must be used for the well-being of the mankind.

3.2.1 International seabed as the common heritage of mankind

There had not been the conception of international seabed in the traditional law of sea. Beginning at the early 1960s, developed countries intensively explore the rich natural resources embodied in international seabed, which caused the high concern from developing countries who strongly proposed the establishment of legal status of international seabed areas for the benefits of the whole mankind and not merely for the benefit of developed countries. Encouraged by the well-known "Malta's Proposal" in 1967, the UN General Assembly adopted two resolutions relating to this international area respectively in 1969 and 1970. The 1969 resolution declared that each State should not claim as its ownership the seabed and its natural resources beyond State sovereign jurisdiction before the birth of the new convention on the law of sea.[33] The 1970 resolution further

[33] See A/RES/2574 (XXIV).

clarified the international area and its natural resources as the common heritage of the mankind. On the basis of these resolutions,[34] the 1982 UN Convention on the Law of Sea in its Part XI systematically envisaged the legal positions of international seabed and its natural resources and their exploration and management system. The core in the Convention in this aspect might be two folds. First, it reaffirmed the principle of human common heritage of international seabed and its natural resources, and explicitly envisaged that no State could claim its sovereign rights over any part of the area and its natural resources and no State, natural persons or legal persons shall claim ownership over any part of the area. Second, it affirmed that natural resources of international seabed belong to the humankind and empowered the Management Bureau of International Seabed to conduct the management on behalf of the mankind.

It should be frankly recognized that some developed countries had not attempted to accept Part XI of the UN Convention on the Law of Sea concerning the parallel development system of international seabed during its negotiation and conclusion, and thus become the main reason for them delaying the approval and taking into effect of the Convention. After repeated consultations, the Implementation Agreement on Part XI of the Convention was reached in 1994. Though the Agreement did some substantive revisions to the parallel development system as a result of the compromise between the developing and developed countries, still the common heritage of mankind as the legal status of international seabed and natural resources has remained the same.

3.2.2 Outer space and its natural resources as human res communis

Scientific and technical progress has been enabling States and humankind to carry out activities not only down to the seabed, but also up to the outer space. Therefore, to establish the legal status and legal system of outer space beyond air space became another new emergent task of modern international law. Through a period of debates and negotiations, the UN has adopted a number of treaties and agreements relating to outer space, the moon and other celestial bodies since 1960s, namely, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty");[35] the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space

[34] See UN Resolution 2749 (XXV) of the 17th December 1970.

[35] Adopted by the UN General Assembly in its Resolution 2222 (XXI), opened for signature on 27 January 1967, entered into force on 10 October 1967, 98 ratifications and 27 signatures (as of 1January 2006).

(the "Rescue Agreement");[36] the Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention");[37] the Convention on Registration of Objects Launched into Outer Space (the "Registration Convention");[38] the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the "Moon Agreement").[39] The five treaties listed above represent the main contents of the outer space law, including legal system of the moon and other celestial bodies. To sum up, this newly emerging branch of international law contains three fundamental principles as follows: (1) These international areas and their resources are human "common objects" which shall not be appropriated by any State, international organizations, legal persons and natural persons; (2) These areas are open to the whole mankind and States, organizations, legal persons and natural persons all could freely and equitably enter into and carry on activities in the areas in accordance with international law; (3) All activities engaged in these areas must be aimed at promotion of the human well-being and solely for the peaceful purposes.

3.3 The common interests of the humankind embodied in international environmental law

International environmental law is another fast developing new branch and one of the symbolic areas of the humankind-oriented international law. The common interests of the mankind implicated in international environmental law as its main theme lies in the basic factors as follows:

Firstly, in objective analysis, the increasing environmental issues confronted by international community are challenges of States individually or commonly, as well as of the whole mankind, and it could be even concretely described as the challenges of the human existence and development. Progress of science and technology is a double-edged sword: On the one hand, it has been continuously creating new ways for human economic growth and social progress; on the other hand, it might bring about constantly negative environmental influences on the

[36] Adopted by the UN General Assembly in its Resolution 2345 (XXII), opened for signature on 22 April 1968, entered into force on 3 December 1968, 88 ratifications, 25 signatures, and 1 acceptance of rights and obligations (as of 1 January 2006).
[37] Adopted by the UN General Assembly in its Resolution 2777 (XXVI), opened for signature on 29 March 1972, entered into force on 1 September 1972, 83 ratifications, 25 signatures, and 3 acceptances of rights and obligations (as of 1January 2006).
[38] Adopted by the UN General Assembly in its Resolution 3235 (XXIX), opened for signature on 14 January 1975, entered into force on 15 September 1976, 46 ratifications, 4 signatures, and 2 acceptances of rights and obligations (as of 1 January 2006).
[39] Adopted by the UN General Assembly in its Resolution 34/68, opened for signature on 18 December 1979, entered into force on 11 July 1984, 12 ratifications and 4 signatures (as of 1 January 2006).

sustainable development of the mankind. It has also been proved that human wisdom could be used both to enrich the material and spiritual aspects of human life and do harm to human living environment. The increasing threats to environment of the international community have been resulted mainly not from the natural movement itself, but from the human activities.

Secondly, subjectively international actors (States, organizations, legal persons and natural persons) and public have more and more universally recognized the globalization and commonness of environmental issues to the mankind. It has not been long for international community to understand the transnational characters and commonness of environmental issues to mankind. Before the 1960s, States and other actors in international society could hardly realize the necessity of international law to protect human environment. There were at least three factors behind such a late understanding of the environmental issues. First, industrial development had not caused environmental pollution and harms in large scale. Second, though States did recognize the transnational nature of environmental issues to certain extent, they still persisted in coping with the issues with traditional approach in international arena, i.e., regarding environmental issues as matters concerning relationship between States. They cared much for their maintenance of their own interests and concerned much with their own economic development and social progress, but did not care much for the management of spaces and resources in other States, not to mention the concern with global environmental quality and weather changes. Third, the public had not been sensitive appropriately for potential dangers to environment caused by industrial and military progress. (Cassese, 2003) The situation has been changing a lot since the past over 40 years: The broadness and depth of understanding of the environmental threats to the whole globe and the whole mankind have been furthering continuously.

Finally, international environmental law in the process of formation and development has been aimed at promoting the well-being of the humankind as its core values. It is the interaction between objective and subjective factors of the environmental issues mentioned above that makes international environmental law set up the human well-being as its supreme goal from the very beginning. For instance, legal principles, rules and regimes relating to the use, protection and improvement of environment and resources in those international areas (such as international seabed, outer space, the moon and other celestial bodies) are fully in conformity with the legal positions of these areas as “common heritage of mankind”. Another example is the implications of the sustainable development which is the primary basic principle of international environmental law. The human well-being is the core value of the principle, which does not only refer to the present generation, but also the next generations to come. According to some scholars’ observation, the principle of sustainable development contains four

layers of meaning as follows: (1) Fairness between generations, i.e., the balance of environmental necessity of both the present generation and next generations; (2) Fairness within the generation, i.e., environmental fairness for all people in the present generation, regardless of their nationalities, races, genders, levels of economic development and cultural differences; (3) Development and use of natural resources through sustainable approaches; (4) Mutual conciliation between environmental protection and development in economic and other fields. (Song, 2005) Among the four basic implications mentioned above, the first two are the primary and core of the sustainable development, while the last two are the expansion and guarantee of the first two elements.

4 Conclusion

As a conclusion, to sum up and emphasize the following understandings of the humanizing international law from the survey above:

(1) The fast humanizing tendency of international law has been resulted from external and internal factors of international law. Among various external factors, war and science & technology are two primary elements. It is the war or armed conflict that destroys or seriously harms the human life and property, thus urging the makers of international law increasingly to take into consideration of the human values. It is the continuous discovery and creation of science and technology that brings constant wealth to this world on the one hand and growing challenges to the human living environment and sustainable development on the other hand, thus making enactors of international law turn to more and more concerns to the latter. Judging from the internal factors (or international law itself), the humanitarian law and the law of human rights are the two "engines" of humanization-oriented trend of international law. It is humanitarian law that makes the start of humanizing process of international law. It is the fast development of human rights law that symbolizes humanization turning to be the main stream of international law. It has proved since the recent half a century or so that it is the continuous self-perfection of humanitarian law and human rights law, their mutual interactions and their putting-out effects on other areas of international law that have been promoting the growing humanization of international law as a whole.

(2) Humanizing tendency represents the advanced direction of international law. Though co-existence and cooperation between States to establish and maintain orders for peace and development are the permanent chief tasks of international law and what international law maintains are the individual or common interests of States through conciliation, the "individual-oriented" and "mankind-oriented" rationale of international law has been taking the shape.

Therefore, the tasks of modern international law no longer merely maintain the interests of States, but also include the interests of individuals and whole mankind. In some cases, these three sorts of interests are in conformity with each other. In other cases, they are different and even in conflict with each other. However, it is not meant that the contradictions among the three types of interests could not be conciliated and the key lies in the value orientation decided by the international law makers in specific sectors or areas. Practice shows that the humanization value of modern international law has become the common desires of international community.

(3) Humanization of international law has greatly enriched the contents of international law. Firstly, humanization has directly produced a series of new branches of international law, among which international human rights law, international environmental law and international criminal law are the most persuasive examples. Secondly, humanization has promoted some classic sectors of international law being continuously updated and adapted themselves to new conceptions, principles, rules and mechanism, such as various new elements in the law of sea, space law, law of diplomatic protection, humanitarian law, law of extradition, etc. In addition, humanization has urged international community to seek for dynamic links and appropriate coordination among certain sectors or areas of international law, such as the interactions between security, development, human rights and rule of law, the balance between economic development and environmental protection, the conciliation between intellectual property rights and public health, the connection between trade liberalization and core labor standards, etc. As a result of these horizontal and vertical development of humanizing international law, while sectors, areas or matters that are solely subject to domestic jurisdictions of States have been greatly decreasing, international law has been extending its scopes not only into various internal sectors of States, but also into all aspects of human life. In a word, humanizing international law symbolizes the end of absolute sovereignty and popularity of relative sovereignty both in theory and practice.

(4) Humanization has been impacting the classic principle of reciprocity as the basis of rights and obligations in international law. Reciprocity is the primary manifestation of sovereign equality between States. As a result, Each State has a right or obligation in relation to other State only. In the same domain, once a State has infringed the sovereignty of another State, only the victim has the right to claim reparation and no other State can interfere on the victim's behalf or on behalf of the international community to claim cessation of the wrong or reparation. (Cassese, 2001) Though it remains to be the foundation in perfecting international law, there have been growing principles, norms and regimes of international law departing the principle of reciprocity and bearing the character

of obligations *erga omnes*[40] (De Hoogh, 1996; Ragazzi, 1977) or community obligations. (Cassese, 2001) The fundamental features of such new obligations could be summed up as follows: (a) They are obligations aiming at protecting the human fundamental values; (b) They are obligations towards all members of international community or the whole mankind (or all other contracting parties in the case of multilateral treaties); (c) They are obligations attended by a correlative rights that belong to any State or human being or each other contracting party; (d) This right may be exercised by any other State or any other contracting party, whether or not it has materially or morally injured by the violation; (e) The right is exercised on behalf of the whole international community (or the community of the contracting parties) to safeguard fundamental values of this community. (Cassese, 2001) Through the survey of obligations *erga omnes*, its is not difficult to find out that these obligations are not only originated from the rationale and value of humanizing international law, but also largely reflected in those sectors of international law where the humanization is mostly intensified.

(5) Humanization of international law does not mean the "inter-State" nature has been changed. Though it may bring about a substantive break-through of international law, such as value-added contents, reinforcement and non-reciprocity or obligations *erga omnes* or community obligations, etc., humanization has mainly resulted in the ever-growing of principles, rules, regulations, regimes and mechanism in international law aiming at the affirmation of a safeguard of human rights and interests either individually or collectively or as a whole. Humanization could never change the "inter-State" nature of international law, but rather it could only be realized through the "inter-State" agreements or recognition in the end. Humanizing international law could have never taken place without the affirmation by "inter-State" treaties or recognition or acceptance by States through the customary rules. In a word, the humanizing value of international law, no matter how highly it should be respected, could never turn to reality without the sincere cooperation

[40] It is generally accepted that the notion of obligations *erga omnes* originated from the judgment by International Court of Justice (ICJ) in Barcelona, see Barcelona Traction, Light & Power, Ltd., Second Phase, Judgment, ICJ Reports, 1970, paras. 3, 32–34. In recent years, European Court of Human Rights and American Court of Human Rights have also confirmed the non-reciprocity in respect of compliance with human rights. There have been plenty of research on the obligations *erga omnes* by European and American scholars, among which the most systematic and recent monographs are the two works by Andre de Hoogh and Maurizio Ragazzi. In comparison, there has not been much specific study on the issue so far in China. Perhaps Professor Wang Xi is the first Chinese Scholar who has lengthily touched the issue in his doctoral dissertation entitled "Issues on Human Environment and Modern International Law", 2000, pp.12–60.

between States.

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