

Interaction between Mainland China and the UN Human Rights Regime*

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As many observers have noticed, China has become increasingly confident in the area of human rights, an issue where it used to be criticized very often. Its signing both the International Covenant on Economic, Social, and Cultural Rights in October 1997 and the International Covenant on Civil and Political Rights one year later just reflects this rising self-assurance.

This paper investigates the early interaction between China and the United Nations human rights regime and traces how China managed to rise from a pariah state right after the 1989 Tiananmen massacre to today's self-designated representative of the Third World's voice which emphasizes community rights and the right to development over individual rights and political rights.

In conclusion, while the "divide and conquer" strategy currently adopted by China has dramatically affected global human rights politics, this strategy has not yet dominated the scene. Meanwhile, the idea of human rights has gained ground in China. Undoubtedly, human rights would continue to be a persisting issue for Chinese leaders, with pressure coming from both without and within.

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United Nations High Commissioner for Human Rights Mary Robinson visited China in mid-September 1998. Acquiring first-hand experience in reviewing "human rights with Chinese characteristics," Robinson declared her landmark mission to the world's last communist power "successful," at the same time saying that communist China had "very serious" human rights problems.¹ PRC Foreign Ministry spokesman Zhu Bangzao hailed Robinson's visit as a success and said Beijing had reacted "positively" to the commissioner's suggestions.² More importantly, Robinson stated that Vice-Premier Qian Qichen had pledged Beijing would sign the UN International Covenant on Civil and Political Rights enshrining the freedoms of speech, assembly, and participation in public affairs and elections. Within three weeks of Robinson's visit, Beijing carried out its pledge by signing the Covenant in the United Nations.³ On October 20, 1998, just about two weeks after signing the Covenant, China held the International Symposium on World Human Rights Toward the Twenty-first Century, its first international conference on human rights.⁴ All these events indicate the increasingly warm ties between China and the UN human rights regime and signal China's growing confidence in a field where it has faced much criticism.

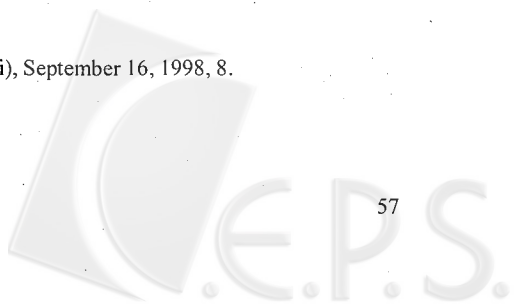
This paper will try to probe the interactions between China and the UN human rights regime. In the first section, I will elaborate on the UN human rights norms and their implementation. Then, I will discuss the interaction between China and the UN human rights regime before and after the Tiananmen massacre.

¹*China Post* (Taipei), September 16, 1998, 2.

²*Zhongguo ribao* (Central Daily News) (Taipei), September 16, 1998, 8.

³*Asiatic Wall Street Journal*, October 6, 1998, 9.

⁴*China News* (Taipei), October 21, 1998, 1.



The United Nations Human Rights Regime

Human rights are those claims and demands essential to the protection of human life and the enhancement of human dignity, rights that should therefore enjoy full social and political sanctions.⁵ Substance is given more weight than form in this definition, due to the growing consensus on the substantive value of human life and dignity.⁶

Although the international awareness of protection of human rights can be traced back to the eighteenth century,⁷ the efforts to underpin human rights politically and legally had not borne fruit until the end of World War II. A culmination of changing intellectual opinions that had gained momentum in the 1940s plus the widespread knowledge about the Holocaust in areas under Nazi control contributed to international determination to write human rights into the UN Charter.⁸ The Charter, which was drafted and approved at the San Francisco conference in 1945, provided the legal foundation for a later legal and diplomatic evolution of international protection of human rights.

The Charter's preamble states that a principal purpose of the UN is "to affirm faith in fundamental human rights." Under Art. 56, the members pledge themselves to take joint and separate action in cooperation with the UN for the achievement of the purposes set forth in Art. 55, under which the UN shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems;

⁵Samuel S. Kim, "Global Human Rights and World Order," in *The United Nations and a Just World Order*, ed. Richard A. Falk, Samuel S. Kim, and Saul H. Mendlovitz (Boulder, Colo.: Westview Press, 1991), 368-69; Maurice Cranston, "What Are Human Rights," in *The Human Rights Reader*, ed. Walter Laqueur and Barry Rubin (New York: New American Library, 1979), 17-24.

⁶At the most abstract level, this definition is not in conflict with Chinese official insistence that rights to subsistence and development should be given precedence over political and civil rights.

⁷Thomas G. Weiss, David P. Forsythe, and Roger A. Coate, *The United Nations and Changing World Politics* (Boulder, Colo.: Westview Press, 1994), 106-10; David P. Forsythe, *The Internationalization of Human Rights* (Lexington, Mass.: Lexington Books, 1991), chap. 2.

⁸Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 111.

and international cultural and educational cooperation; and
(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁹

The UN Charter presented the interesting situation of codifying a commitment to human rights before there was an international list of human rights. To answer the question of what internationally recognized human rights states are obligated to apply, the UN in its early years made an effort to specify Charter principles on this point. On December 10, 1948, the General Assembly adopted the Universal Declaration of Human Rights (UDHR) without a single negative vote.¹⁰ According to Jack Donnelly, the rights proclaimed in the UDHR fell into seven clusters: personal rights, legal rights, civil liberties, subsistence rights, economic rights, social and cultural rights, and political rights.¹¹

Usually, these rights are divided into two broader categories by analysts: first-generation negative rights (civil and political rights) and second-generation positive rights (social, economic, and cultural rights).¹² The civil and political rights that are well known in the West are called "first-generation" because they were the ones first endorsed in national constitutions and considered "negative" in the sense that they forbid action by public authorities. In the view of some observers, these are the only true human rights. Others, however, hold that these are the most fundamental of human rights because if one has civil and political rights one can use them to obtain and apply the others. Another view argues that these rights are not so fundamental after all because if one lacks the material basics of

⁹The UN Charter and human rights-related documents are widely reprinted, for example, in Laqueur and Rubin, *The Human Rights Reader*; Louise B. Shon and Thomas Buergenthal, eds., *Basic Documents on International Protection of Human Rights* (Indianapolis: Bobbs-Merrill, 1973); Ian Brownlie, ed., *Basic Documents on Human Rights*, third edition (Oxford: Clarendon Press, 1992). The citation is from Brownlie, *Basic Documents on Human Rights*, 5-6.

¹⁰There were eight abstentions, however: the Soviet Union, Byelorussia, Ukraine, Czechoslovakia, Poland, Yugoslavia, Saudi Arabia, and South Africa.

¹¹Jack Donnelly, "International Human Rights: A Regime Analysis," *International Organization* 40, no. 3 (Summer 1986): 599-641; Brownlie, *Basic Documents on Human Rights*, 21-27.

¹²Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 115; Forsythe, *The Internationalization of Human Rights*, 40-41; Zehra F. Arat, *Democracy and Human Rights in Developing Countries* (Boulder, Colo.: Lynne Rienner, 1991), 3.

life such as food, shelter, and education, then civil and political rights become meaningless.¹³

Social, economic, and cultural rights are emphasized mostly outside the West. They are called "second-generation" because they were associated with various twentieth-century revolutions emphasizing material benefits, and dubbed "positive" because they obligated public authorities to take positive steps to ensure minimal food, shelter, and health care. As indicated in the preceding paragraph, there is considerable debate as to how important these rights are.¹⁴

The list of rights proclaimed in the UDHR is further elaborated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which were opened for signature and ratification in 1966 and came into force in 1976. These three documents make up the International Bill of Rights, the most important statements of the norms of the international human rights regime. The list of rights is further elaborated in a variety of single-issue treaties and declarations on topics such as genocide, the political rights of women, racial discrimination, and torture. Today we can say that we have quite a coherent system of international human rights norms.¹⁵

The Implementation of Human Rights Norms

There is both positive progress and weakness in putting the human

¹³Marvin S. Soroos has a succinct summary of these diverse views in his *Beyond Sovereignty: The Challenge of Global Policy* (Columbia, S.C.: University of South Carolina Press, 1986), 250-54.

¹⁴For another glimpse of the debate, see Rhoda Howard, "The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights? Evidence from Sub-Saharan Africa," *Human Rights Quarterly* 5 (1983): 467-90; Jack Donnelly, "Human Rights and Development: Complementary or Competing Concerns?" *World Politics* 36, no. 2 (January 1984): 255-83.

¹⁵This is the consensus among scholars although there are a few discrepancies in these treaties and declarations. For example, the two covenants add a right to self-determination and delete the right to property. For a list of these conventions, see Robert E. Riggs and Jack C. Plano, *The United Nations: International Organization and World Politics*, second edition (Belmont, Calif.: Wadsworth Publishing Company, 1994), 208.

rights regime to work. On the one hand, the UN's efforts at rights protection clearly have expanded,¹⁶ and the promotion and protection of human rights has become one of the UN's more prominent activities in this post-Cold War era.¹⁷

As a manifestation of the UN's tremendous efforts, the overall UN process of helping to apply international human rights standards is exceedingly broad and complex. The fundamental point is that the UN is extensively engaged in supervising state behavior under these standards through the requirements of government reporting; scrutiny by the Human Rights Committee, the UN Human Rights Commission and its sub-commissions, and others; investigations and the sending of special rapporteurs; public condemnation and exposure; and the imposing of sanctions.¹⁸ Given the extensive nature of human rights enforcement, this paper will only take a look at five of the major bodies in the UN human rights regime (see figure 1).

The Human Rights Commission: If, when dealing with human rights, the broad and complex UN system is thought of as a wheel, its Human Rights Commission becomes the hub. This commission is made up of fifty-three states elected by the Economic and Social Council (ECOSOC).¹⁹ It is the major drafter of the UDHR, the two covenants, and other single-issue treaties on human rights. This commission has played a central role in creating norms in the international human rights regime.

In addition, the Human Rights Commission also has important promotional and monitoring functions. In 1967, ECOSOC Resolution 1235 (XLII) authorized the commission to discuss publicly human rights violations in particular countries. ECOSOC Resolution 1503 (XLVIII) (1970)

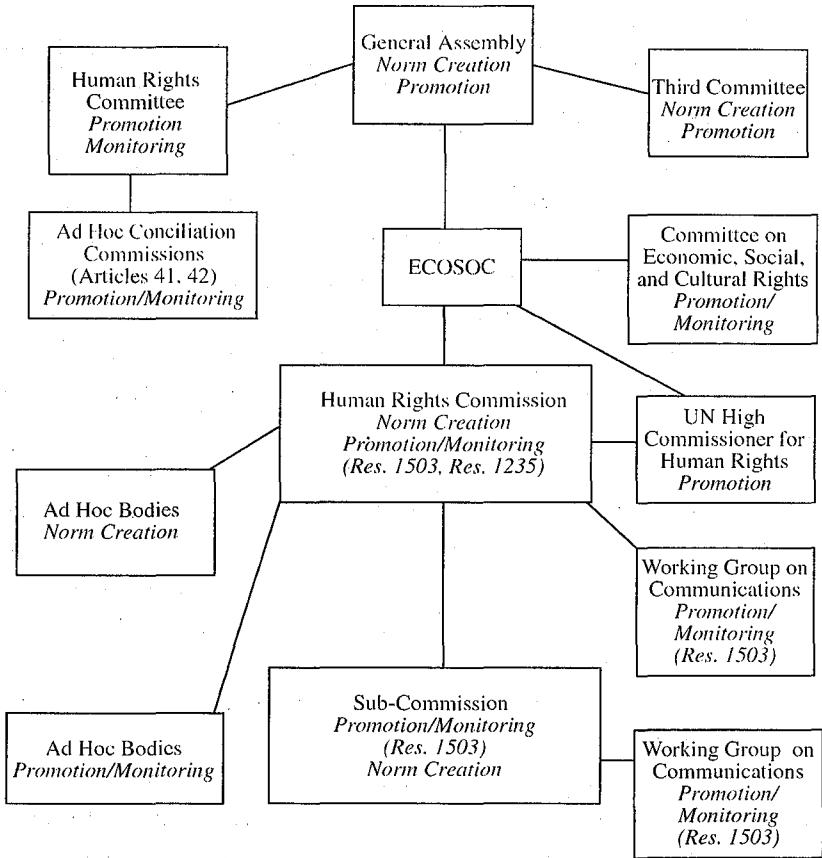
¹⁶Weiss, Forsythe, and Coate devote a whole chapter to the efforts. See their *The United Nations and Changing World Politics*, chap. 6. See also Tom J. Farer and Felice Gaer, "The UN and Human Rights: At the End of the Beginning," in *United Nations, Divided World*, ed. Adam Roberts and Benedict Kingsbury, second edition (Oxford: Clarendon Press, 1993), 240-96.

¹⁷Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 155.

¹⁸Peter Uvin and Isabelle Biagiotti, "Global Governance and the 'New' Political Conditionality," *Global Governance* 2, no. 3 (September-December 1996): 380.

¹⁹Only forty-three state comprised the commission before 1992.

Figure 1
Major Bodies in the UN Human Rights Regime



Note: The major bodies referred to in this paper, and their primary functions (indicated by italicized words), are presented in this figure, nominally arranged according to "constitutional" relationships of authority.

Sources: Adopted from Jack Donnelly, "International Human Rights: A Regime Analysis," *International Organization* 40, no. 3 (Summer 1986): 606; David P. Forsythe, "Politics of Efficacy: The United Nations and Human Rights," in *Politics in the United Nations System*, ed. Lawrence S. Finkelstein (Durham, N.C.: Duke University Press, 1988), 246-73; Tom J. Farer and Felice Gaer, "The UN and Human Rights: At the End of the Beginning," in *United Nations, Divided World*, ed. Adam Roberts and Benedict Kingsbury, second edition (Oxford: Clarendon Press, 1993), 258-59.

authorizes the commission to investigate communications (complaints) that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights."²⁰

The commission dealt in various ways with a series of specific states, both publicly and privately. During the waning days of the Cold War some of the targeted states were aligned with Washington; others were aligned with Moscow.²¹ The PRC was targeted after the Tiananmen massacre, proving that even permanent members of the Security Council are not immune to pressure.

The Sub-Commission: The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities is a second all-purpose human rights agency. It is composed of individual experts rather than state or governmental representatives. It screens private petitions before sending them to the Human Rights Commission. Many of these private petitions come from nongovernmental organizations (NGOs) as well as from victimized individuals. Experts view the Sub-Commission as the most potentially effective human rights forum for linking official governmental bodies and policy with the general public through the intervention of NGOs.²²

Much of the Sub-Commission's other work duplicates that of the Human Rights Commission. In practice, the Sub-Commission's recommendations often have been rejected or ignored by governmental representatives in the commission. During one financial crisis, the Sub-Commission's sessions were suspended, with some even suggesting that the Sub-Commission be either drastically reformed or dissolved.²³

The Human Rights Committee: This committee was created under the 1966 UN Covenant on Civil and Political Rights. From the late 1970s the

²⁰Brownlie, *Basic Documents on Human Rights*, 15-20; Howard Tolley, "The Concealed Crack in the Citadel: The United Nations Commission on Human Rights' Response to Confidential Communications," *Human Rights Quarterly* 6 (1984): 420-62.

²¹Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 135.

²²Asbjørn Eide, "The Sub-Commission on Prevention of Discrimination and Protection of Minorities," in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (New York: Oxford University Press, 1992), 211-64.

²³Karen Reiersen and David Weissbrodt, "The Forty-third Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities: The Sub-Commission under Scrutiny," *Human Rights Quarterly* 14 (1992): 271.

committee has processed state reports about the implementation of the civil and political covenant and handled related individual petitions.²⁴ The questions posed by members of the committee after reviewing state reports are often penetrating and critical. When the responses of state representatives are serious and thoughtful, the result can be an exchange of information and views that provides a real element of international monitoring. Cooperation by the state, however, is entirely voluntary; the representative need not answer any questions, let alone provide answers that the questioner finds satisfactory. The committee may ask for additional information, but states actually provide only what they choose.²⁵ And the major limitation of the Optional Protocol procedure is that after the committee states its views regarding private petitions, the process is thus concluded. Furthermore, most major human rights violators have elected not to be covered.²⁶

The Committee on Economic, Social, and Cultural Rights: The UN ICESCR authorized the ECOSOC to supervise the application of the treaty. State parties are obligated to submit a report periodically on state action to implement the Covenant. In 1979, ECOSOC created a Committee of Governmental Experts to process these state reports. Perhaps due to being drawn from governments, this committee was unable to encourage serious attention to treaty obligations.²⁷ In 1985 ECOSOC replaced it with a Committee of Individual Experts.

Since first meeting in 1987, this committee has made improvements unachieved by its predecessor. Initially taking a cooperative or positive approach toward reporting states, the committee has tried to get states to

²⁴State parties must allow their citizens this procedural right by acceding to the Optional Protocol to the Covenant. As of the early 1990s, more than 90 out of 120 states party to the covenant have done so. See Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 121.

²⁵Jack Donnelly, "Human Rights and International Organizations: States, Sovereignty, and the International Community," in *International Organization: A Reader*, ed. Friedrich Kratochwil and Edward D. Mansfield (New York: HarperCollins College Publishers, 1994), 207.

²⁶*Ibid.*, 208.

²⁷David Harris, "Commentary by the Rapporteur on the Consideration of State Parties' Reports and International Cooperation" (Paper presented at the "Symposium: The Implementation of the International Covenant on Economic, Social, and Cultural Rights"), *Human Rights Quarterly* 9 (1987): 149.

establish a "benchmark" by which they might determine whether the obligations under the Covenant have been met adequately. Thus the supervising committee did not seek at first to establish a global standard for socioeconomic rights. Rather, it prodded states to think seriously about what the Covenant meant in their jurisdictions.²⁸

Several problems plagued the committee, however. It functioned in a political vacuum, since few powerful actors wanted to devote diplomatic efforts to helping implement socioeconomic rights internationally due to the fact that these rights were still considered second-class in the UN system.²⁹ Moreover, the committee considered only a few state reports each year. Some reports were late, and others were delayed at the request of states. It was clear that this UN effort to monitor and improve state behavior pertaining to social, economic, and cultural rights was to be a long-term project.³⁰

The UN High Commissioner: In addressing the need to strengthen UN machinery for human rights, the Vienna Declaration of 1993 called for the General Assembly to consider, as a matter of priority, the establishment of the post of UN High Commissioner for Human Rights. Following these recommendations, the General Assembly created such a post in December 1993.

The High Commissioner, holding the rank of Under-Secretary-General, is the UN official with principal responsibility for the UN human rights activities, under the direction and authority of the Secretary-General and within the framework of the overall competence, authority, and decisions of the General Assembly, the ECOSOC, and the Human Rights Commission. The High Commissioner is charged with promoting the effective enjoyment by all of all human rights, promoting the realization of the right to development, providing advisory services to support human rights programs, coordinating human rights education and public information ac-

²⁸Julia Häusermann, "The Realization and Implementation of Economic, Social, and Cultural Rights," in *Economic, Social, and Cultural Rights: Progress and Achievement*, ed. Ralph Beddard and Dilys M. Hill (New York: St. Martin's Press, 1992), 47-73.

²⁹Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 137.

³⁰*Ibid.*, 140.

tivities, and preventing human rights violations. The Commissioner's mandate also includes: engaging in dialogue with all governments to improve respect for human rights, coordinating human rights activities with the UN system, and overseeing the UN machinery relating to human rights.³¹

In September 1997, Mary Robinson, former president of Ireland and human rights lawyer, succeeded the first high commissioner Jos Ayala Lasso. Robinson has sought to stress a sense of balance in her work: weighing a country's social and economic gains as well as its progress in civil and political rights. This approach has been welcomed by China and other developing countries. Nevertheless, how well this approach can achieve the goals set by the mandate remains to be seen.³²

Reviewing the UN's efforts at creating institutions to promote and monitor human rights protection inevitably touches on weaknesses in implementation. Generally, the monitoring and enforcement mechanisms are underfunded and understaffed, incapable of following up seriously on the numerous complaints that are sent to them. Most of them are limited to the weaker, and often ineffective, kinds of monitoring and sanctioning instruments; as they are also highly politicized, they often refrain from employing even their limited means. The fundamental problem is that states, in order to preserve the hope of their freedom of action, are willing to approve human rights treaties and to allow only diplomatic pressure that falls short of effective enforcement.³³ Furthermore, rich countries fear that the cost of human rights-based foreign policies in a world of bilateral relationships would be too high. Voting for international condemnations may impede economic or diplomatic relations, either now or in the future. Thus individual states favor autonomy, bilateralism, and occasional multilateral ad hoc reactions rather than a strong international human rights enforcement venture.³⁴

³¹ *Yearbook of the United Nations: UN Fiftieth Anniversary, 1945-1995*, special edition (New York: United Nations, 1997), 328.

³² Barbara Crossette, "At the UN, a New Voice Stresses Balance in Approaching Human Rights," *New York Times*, October 6, 1997, A6; Carroll Bogert, "Here's to You, Mrs. R," *Newsweek*, October 6, 1997, 45.

³³ Donnelly, "Human Rights and International Organizations," 204.

³⁴ See note 18 above.

What may be worse is that China and some Southern government leaders have, since the 1980s, begun to challenge the definition of the human rights regime. They argue that the human rights body, as currently defined, is an artifact of Western civilization, unadapted to many cultures elsewhere.³⁵ Some others contend that economic and social rights are at least as important as (if not more important than) the civil rights on which Northern countries focus almost exclusively. They also argue that their human rights performance should be judged foremost on their capacity to provide economic growth to their citizens and that political rights are secondary to that goal. The preparation for the 1993 Vienna Conference on Human Rights gave ample occasion to Third World leaders, spearheaded by China, to restate this vision.

Having reviewed the UN human rights regime, the next section turns to the interaction between China and the UN human rights regime before and after the Tiananmen massacre—an event which provoked strong international condemnation and therefore induced China to devise new strategies in global human rights politics.

The Interaction between China and the UN Human Rights Regime before the Tiananmen Massacre

Since its earliest days, China has used human rights arguments to help justify its foreign policy, emphasizing the rights of sovereignty and self-determination against colonial rule. Throughout the 1950s and 1960s China charged the United States and other Western powers with violating the rights to self-determination, independence, and sovereignty of the peoples of such countries as Korea, Laos, Cambodia, South Vietnam, the

³⁵Christina M. Cerna, "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts," *Human Rights Quarterly* 16 (1994): 740-52; Daniel A. Bell, "The East Asian Challenge to Human Rights: Reflections on an East-West Dialogue," *ibid.* 18 (1996): 641-67; Michael J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters," *ibid.* 19 (1997): 461-509; Bilahari Kausikan, "Asia's Different Standard," *Foreign Policy*, no. 92 (Fall 1993): 24-41.

Philippines, the Arab world, Latin America, Africa, and Cyprus.³⁶

China brought the tone of anti-imperialism and anti-colonialism to UN politics. After its entry into the UN in 1971, the PRC has refused to participate in the work of the Human Rights Commission, although it has taken part in another ECOSOC functional commission (the Commission on the Status of Women) and such other sessional committees as the Economic Committee and the Social Committee.³⁷ It was in the Social Committee that Chinese representative Wang Junsheng presented for the first time China's most comprehensive "principled stand" on human rights questions in May 1972. Wang quickly defined human rights as the struggle for justice and then made specific linkage of this struggle to the peoples of Azania (South Africa), Zimbabwe (Southern Rhodesia), Namibia (South West Africa), and occupied Arab territories. In support of this struggle (human rights), Wang declared that the Chinese government

had always refrained from having any diplomatic contacts with the South African and South Rhodesian white racist regimes. . . . China is ready to work together with all the countries and peoples who loved peace and upheld justice in supporting the struggles of the peoples of the world against imperialism, colonialism, and racism and for the attainment and defense of national independence, national sovereignty, and fundamental human rights in accordance with the spirit of the Charter.³⁸

As to the International Bill of Human Rights, China has not openly criticized any of the human rights conventions although it dismissed the Universal Declaration of Human Rights as a means of safeguarding the bourgeois dictatorship of capitalist states and as a cover to legitimize ideological infiltration of socialist countries as late as 1979.³⁹ It has adopted an evasive posture of being noncommittal. China asserted in 1974 that the

³⁶For a general discussion, see Edward Friedman, "Anti-Imperialism in Chinese Foreign Policy," in *China and the World: Chinese Foreign Relations in the Post-Cold War Era*, ed. Samuel S. Kim, third edition (Boulder, Colo.: Westview Press, 1994), 60-74.

³⁷Samuel S. Kim, *China, the United Nations, and World Order* (Princeton, N.J.: Princeton University Press, 1979), 292, 484.

³⁸*Ibid.*, 485.

³⁹Wei Yun Xiao, Haocai Luo, and Jieying Wu, "How Does Marxism Look at the 'Human Right' Question?" *Hongqi* (Red Flag), May 1979, 43-48, cited in Samuel S. Kim, "Thinking Globally in Post-Mao China," *Journal of Peace Research* 27, no. 2 (May 1990): 200.

UDHR was signed prior to the founding of the PRC and thus a review of its contents was needed; this "study-first, no-specific-action-next" approach was also applied to the International Covenant on Economic, Social, and Cultural Rights.⁴⁰

When China entered the UN in 1971, some of the worst excesses of the Cultural Revolution were taking place. Arbitrary arrests, forced labor, and summary execution were the fate of hundreds of thousands of Chinese. Although Chinese violations in Tibet were debated by the UN General Assembly in 1959, 1961, and 1965 and resolutions calling upon China to cease depriving the Tibetan people of their fundamental rights and freedoms were adopted,⁴¹ no discussions took place of violations in China as a whole and UN concern for the Tibetans lessened as support developed for China's entry into the UN. During this period, China had been an exception to the general scrutiny of the international community and Western media on the issue of human rights for a variety of reasons, including the fact that its human rights violations did not involve people of the white or black race, reverence for China's centuries-old civilization had blinded many intellectuals in the West to human rights realities in China, and the absence of a lobby for human rights in China during the 1960s and 1970s.⁴² Of course, access to information about human rights abuses in mainland China was also a problem.⁴³

As Hungdah Chiu has observed, China's interest in the human rights issue took a new turn after the adoption of the "open-door" policy of actively engaging in international intercourse and exchange.⁴⁴ Since human rights issues are frequently invoked or mentioned in international relations,

⁴⁰Kim, *China, the United Nations, and World Order*, 486.

⁴¹Roberta Cohen, "People's Republic of China: The Human Rights Exception," *Human Rights Quarterly* 9 (1987): 489.

⁴²*Ibid.*, 447-97.

⁴³Amnesty International, for example, just began to learn about China's legal system and treatment of political dissidents in the mid-1970s and reported that cases of political dissidents were not available. *The Amnesty International Report*, June 1, 1975-May 31, 1976 (London: Amnesty International Publications, 1976), 117.

⁴⁴Hungdah Chiu, "Chinese Attitudes toward International Law of Human Rights in the Post-Mao Era," in *Chinese Politics from Mao to Deng*, ed. Victor C. Falkenheim (New York: Paragon House, 1989), 237-70.

China cannot avoid this subject in its foreign relations. Externally, the Helsinki Accord of 1975 gave new impetus to the international human rights movement and led to the founding of numerous NGOs in the human rights field.⁴⁵ The first among them to draw attention to China were the Fédération Internationale des Droits de l'Homme in Paris, Freedom House in New York, and Amnesty International in London.⁴⁶ Following Ross H. Munro's articles in the *Toronto Globe* regarding gross violations of human rights in China in October 1977, Amnesty International released a comprehensive study entitled *Political Imprisonment in the PRC*.⁴⁷ This first NGO report and other budding news on the Chinese government's human rights practices in the Western media made the issue more acute and forced China to put more attention and resources to dealing with the related fallout.

Finally, the dynamics of American politics gave impetus to the issue of human rights in China. First raised in the U.S. Congress, human rights were adopted in 1977 by President Jimmy Carter as a theme that could restore the national sense of mission after the nightmares of Vietnam and Watergate.⁴⁸ The theme continued to perform a unifying role in American politics under subsequent presidents. Also first adopted by President Carter, the practical decision of granting China conditional most-favored-nation (MFN) trading status was carried on by subsequent presidents and frequently led to highly charged debates. In 1979, the U.S. Congress passed a requirement that the annual human rights review of countries receiving American aid should be extended to include all countries, including China. State Department reports on China in subsequent years were increasingly

⁴⁵For the Helsinki Accord, see Graham Evans and Jeffrey Newnham, *The Dictionary of World Politics* (New York: Simon & Schuster, 1990), 154-55; Soroos, *Beyond Sovereignty*, 236. In late November 1997, some members in the U.S. Congress tried to apply the Helsinki model to Asia by proposing and considering a "Helsinki Commission" for Asia. For a critical review of this proposal, see Catharin Dalpino, "Promoting Human Rights: The 'Helsinki' Model Won't Work in Asia," *Christian Science Monitor*, December 3, 1997, 15.

⁴⁶Cohen, "Human Rights Exception," 502-8.

⁴⁷Chiu, "China's Attitudes," 238-39.

⁴⁸Andrew J. Nathan and Robert S. Ross, *The Great Wall and the Empty Fortress: China's Search for Security* (New York: W.W. Norton, 1997), 185-86. For the Carter administration's policies on human rights, see Jerel A. Rosati, *The Carter Administration's Quest for Global Community* (Columbia, S.C.: University of South Carolina Press, 1987), 134-37.

accurate and tough, helping create public opinion in favor of NGO and governmental pressure on Beijing.⁴⁹

Such forces of push and pull brought China closer to the international human rights regime. After a period of cautious observation, in 1979 China began to attend meetings of the UN Human Rights Commission as an observer, and by 1982 Beijing seemed to have acknowledged that human rights have become an integral part of world politics and decided to enter the fray by becoming a member of the Human Rights Commission.⁵⁰

Since then, China's participation in the UN human rights regime has increased. As its human rights diplomacy expanded, China drew a theoretical line. The Chinese leaders wanted to see sovereignty gain, not lose, from involvement in this regime. This position is best exemplified by the reservation Beijing made upon signature and confirmed upon ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1988. In its reservation, China does not recognize the competence of the Committee against Torture as provided for in Art. 20 and does not consider itself bound by paragraph 1 of Art. 30 simply because both statements all have the eroding effect on state sovereignty and the freedom of action.⁵¹

In international human rights law, the relationship between human rights and sovereignty is complex and contested. On the one hand, the UN Charter states, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the

⁴⁹Ibid. For the State Department update report, see its website http://www.state.gov/www/global/human_rights/hrp_reports_mainhp.html.

⁵⁰Kim, "Thinking Globally in Post-Mao China," 200.

⁵¹The first paragraph of Art. 20 of this Convention states: "If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned." Paragraph one of Art. 30 stipulates: "Any dispute between two or more State Parties concerning interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court." See *Multilateral Treaties Deposited with the Secretary-General Status as at 31 December 1988* (New York: United Nations, 1989), 178-79.

domestic jurisdiction of any state" (Art. 2, para. 7). On the other hand, like all international laws, the international human rights regime restricts sovereignty by virtue of its supranational character. As Samuel S. Kim points out, the UN Charter expresses the globalist aspirational norms in many aspects.⁵² These norms are especially prominent in the Universal Declaration of Human Rights and the other two covenants. The trend since World War II has allowed the international community increasing scope to exercise mainly suasion, occasionally impose economic sanctions, or even in some cases intervene militarily against a state on a growing range of human rights issues.⁵³

Publicly making efforts to hold onto the classical Westphalian notion of state sovereignty notwithstanding, China gradually accepted the proposition that a country's human rights performance was inextricably linked with its international image and reputation. This changing attitude was manifest in its increasing acceptance of select global human rights norms and its greater participation in the activities of the human rights regime.

Before 1980 when Deng Xiaoping had not yet assumed nationwide control, the PRC participated in none of the human rights conventions. During the 1980s, when Deng's "four modernizations" and opening-up policies were fully adopted and implemented, China became a party to seven such conventions.⁵⁴ Once entering the international human rights

⁵²Samuel S. Kim, *China in and Out of the Changing World Order* (Princeton, N.J.: Princeton University Press, 1991), 19.

⁵³In the Cold War era, international sanctions were adopted only twice: against Rhodesia and South Africa in 1968 and 1977, respectively. This interventionist trend accelerated after the end of the Cold War, with the UN authorizing mandatory sanctions and/or deployment of troops wholly or partly on human rights grounds in or against Iraq, Somalia, Bosnia, and Haiti. See Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, chap. 6.

⁵⁴They are: the Convention against Torture, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crimes of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Relating to the Status of Refugees, and the Protocol Relating to the Status of Refugees. See "Human Rights in China," *Beijing Review*, November 4-10, 1991, 43. In 1956 the PRC acceded to the 1949 Geneva Conventions relating to the treatment of wounded and sick soldiers, POWs and civilians in wartime, which are considered part of international humanitarian law rather than international human rights law. During the first half of the 1990s, China acceded to another two conventions: the Con-

regime, China quickly learned to shape the discourse and interpretation of this regime. While acknowledging that there are internationally protected individual human rights (this was so, for example, in the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China has acceded to), China's emphasis has been on group rights. As mentioned earlier, there is a debate regarding which cluster of rights—first-generation civil and political rights (individual rights) or second-generation social, economic, and cultural rights (group rights)—should be given primacy over the other. China engaged in this debate early on, siding with the developing countries to espouse the third-generation solidarity rights. Some rights are called "solidarity" mainly because they supposedly pertained to collections of persons rather than individuals. "Solidarity" also has the connotation that all states share responsibility for creating conditions for the full realization of human rights in developing countries; the North therefore shares responsibility for human rights shortcomings in the South.⁵⁵ Later formulations have included claims to a right to peace, development, and a healthy environment as the common heritage of mankind.

In March 1986 the developing countries won a victory, at least symbolically, by pushing the passage of a resolution in the Human Rights Commission that called upon the General Assembly to give the highest priority to considering the draft declaration on the right to development with a view to its adoption in 1986.⁵⁶ In December 1986, the General Assembly adopted Resolution 41/128, the Declaration on the Right to Development. This Declaration recognizes that the human person is the central subject of development and should be the active participant and

vention on the Rights of Child and the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

⁵⁵Russel Lawrence Barsh, "The Right to Development as a Human Right: Results of the Global Consultation," *Human Rights Quarterly* 13 (1991): 325.

⁵⁶*Year-book on Human Rights for 1986* (New York: United Nations, 1992), 191-92. This resolution was adopted by a roll-call vote of thirty-four to one, with eight abstentions. The only one vote against came from the United States. Philip Alston has a concise summary of the debate on the right to development in his "Revitalising United Nations Work on Human Rights and Development," *Melbourne University Law Review* 18, no. 2 (December 1991): 216-57.

beneficiary of the right to development. It acknowledges that all human rights are indivisible, interdependent, and call for equal attention. The Declaration then mandates signatory states to remove obstacles to development arising from the failure to respect rights and freedom.⁵⁷

The Declaration had strong backing from China, which praised it as a "breakthrough" that brought human rights concepts more in line with the needs of the less affluent countries. Although the right to development is usually viewed as having both individual and collective components, the latter is seen by Beijing as taking precedence over the former. Indeed, many mainland Chinese theorists interpret the right to development as inherent solely in the state, and as such they find it an especially useful concept.⁵⁸ PRC scholars concede, however, that the right to development is at too inchoate a theoretical stage to be analyzed as an aspect of international law.⁵⁹

The years from mid-1986 to mid-1989 witnessed China's activism in the human rights regime. In 1986 for the first time a positive reference was made to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights in Foreign Minister Wu Xueqian's annual "state of the globe" report before the world audience in the UN General Assembly.⁶⁰ Two years later, on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights in early December 1988, both Chinese delegates in the UN and Chinese scholars at home praised the achievement of the UN human rights regime. For China the first and second generations of human rights are claimed to be interdependent and inseparable.⁶¹ Thus China's increasing activism in global human rights politics made it vulnerable to charges brought against

⁵⁷ *Yearbook of the United Nations 1986* (New York: United Nations, 1990), 717-21.

⁵⁸ James D. Seymour, "Human Rights in Chinese Foreign Relations," in Kim, *China and the World*, 204; Guo Jisi, "On Human Rights and Development Right," *Beijing Review*, February 11-17, 1991, 16-18; Zhang Yishan, "On the Right to Development," *ibid.*, March 25-31, 1991.

⁵⁹ Wang Tiewa and Wei Min, eds., *Guoji fa* (International law) (Beijing: Law Press, 1981), cited in Chiu, "Chinese Attitudes," 252.

⁶⁰ Kim, "Thinking Globally in Post-Mao China," 200.

⁶¹ *Ibid.*

For instance, the KMT's construction company routinely gets awarded the government's major construction projects, and its stock company maintains a critical lead through inside information about the government's major policy initiatives. When the KMT enterprises are short on cash flow, they can easily receive financial support from state-controlled banks. The opposition parties have criticized the government for linking the state's coffers to those of the KMT.

Since the 1980s, these KMT enterprises have encountered increasing market competition due to the country's economic liberalization and democratization. The state budget has been under close scrutiny by the opposition parties. Moreover, local factions and conglomerates entered the lucrative construction and stock businesses. To maintain their competitiveness, these KMT enterprises began to develop their financial autonomy from the party center. Internally, they asked for a large portion of profits to remain with the enterprises instead of going to the KMT's coffers. They became more reluctant to sell or buy stocks to meet the party center's political purposes, e.g., to raise campaign money for party candidates. The leaders also pressured the party center to cut down the size of the party bureaucracy. Externally, they began to build alliances with conglomerates in order to maintain their oligopolistic status in the domestic market.³⁸

Local Factions

Under authoritarian rule, local factions provided a legitimacy function for the mainlander-dominated KMT government. At local election time, these factions were able to deliver enough votes through their personal networks to support KMT candidates, thus maintaining a cosmetic democracy for American consumption. The KMT government rewarded these factions by local monopoly and oligopoly rights, such as local transportation, schools, credit unions, and sales of government-controlled commodities. These protected profits were sufficient for maintaining factional

Challenges." *Journal of Democracy* 7, no. 3 (1996): 76; *Caixun* (Financial News), August 1998, 157.

³⁸Karl Fields, *Enterprise and the State in Korea and Taiwan* (Ithaca, N.Y.: Cornell University Press, 1995).

be allowed to address UN bodies. The French member Louise Joinet retorted that if national definitions of "criminal" prevailed at the UN, Yasser Arafat never should have addressed the UN and Nelson Mandela would not have been permitted to do so, either.⁶⁴

As the debate continued, informal head counts began to show that a resolution critical of China would succeed by a margin of several votes.⁶⁵ China lobbied hard to avoid such a resolution. The primary defense used by the Chinese expert and China's observer delegates during their four major interventions to persuade experts not to support the draft resolution was based on principles of nonintervention and state sovereignty. This hard-line position drew sharp retorts from Western experts and remonstrances from the Third World colleagues.⁶⁶ However, the Chinese government exerted such enormous pressure on the experts and their affiliated governments that the resolution's passage was by no means certain.

In order to attract enough votes, the draft resolution was weakened. No longer did the draft refer to specific violations. It merely read that the Sub-Commission, "[c]oncerned about the events which took place recently in China and about their consequences in the field of human rights: (1) requests the Secretary-General to transmit to the Commission on Human Rights information provided by the government of China and by other reliable sources; (2) makes an appeal for clemency, in particular in favor of persons deprived of their liberty as a result of the above-mentioned facts."⁶⁷

The secret vote on the China resolution passed by fifteen to nine votes. China reacted strongly by calling the resolution "null and void" as an interference in its internal affairs.⁶⁸ For some human rights advocates, this was significant in that it was the first time for a permanent member of

⁶⁴Robin M. Maher and David Weissbrodt, "The 41st Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities," *Human Rights Quarterly* 12 (1990): 305.

⁶⁵Ibid.

⁶⁶Ann Kent, "China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994," *ibid.* 17 (1995): 1-47.

⁶⁷Maher and Weissbrodt, "The 41st Session of the UN Sub-Commission," 306.

⁶⁸Ibid.

the Security Council to be subjected to a Sub-Commission resolution for violations of human rights.⁶⁹ Those advocates and experts, however, were also worried that China might retaliate in the future by leading a move at the Commission to limit the role of the Sub-Commission.⁷⁰

This diplomatic defeat put China on red alert. Beijing felt that it needed to make carefully calculated moves to mollify international pressure. Before the forty-sixth session of the Human Rights Commission from February to March 1990, China lifted martial law in January 1990 and released 573 persons.⁷¹ When the session was held, a large Chinese delegation of more than forty diplomats moved in to lobby strenuously against the reception of the Sub-Commission resolution or any other resolution of this kind.

Australia, Canada, and Sweden had collaborated in writing a draft resolution regarding the situation in China. The final form of the draft was a mildly worded document which endorsed the appeal of the Sub-Commission, welcomed China's lifting of martial law and the release of more than five hundred persons, urged the full observance of human rights, and requested the Secretary-General to transmit further information by China and other reliable sources to the Commission's forty-seventh session.⁷² China still stuck to its position opposing the consideration by any one of the matters as violation of human rights which fall within the domestic jurisdiction of a sovereign state.

Voting on the draft took place a day before it was expected, and Western lobbying was weak.⁷³ China called for a "no" motion, and a procedural no-action vote proposed by Pakistan succeeded by a narrow margin of

⁶⁹Kent, "China and the International Human Rights Regime," 4.

⁷⁰Ibid. This worry had become reality later. In the 43rd session of the Sub-Commission, China supported the position that the Sub-Commission should be drastically reformed. See note 23 above.

⁷¹These moves were also designed to help defeat the vote in the U.S. Congress on legislation to protect the more than forty thousand Chinese students in the United States against involuntary return to China. *Human Rights Watch Report 1990* (New York: Human Rights Watch, 1991), 277.

⁷²Kent, "China and the International Human Rights Regime," 20.

⁷³Ibid.

seventeen in favor, fifteen against, and eleven abstentions.⁷⁴

During the following years, as table 1 shows, China has managed to head off any resolutions that are critical of it in the Human Rights Commission. China has become sophisticated in using the carrot-and-stick strategy in the course of learning to play multilateral politics. For example, the Chinese government offered significant material inducements, including sports stadiums and highways to African countries in exchange for their vote in favor of China.⁷⁵ In the Human Rights Commission meeting held in April 1997, Germany and France refused to co-sponsor the resolution condemning Beijing.⁷⁶ Conceivably, the lucrative deals (to the tune of US\$2.1 billion) stricken between Germany and China when Chancellor Helmut Kohl visited China in late 1995 influenced German policymaking.⁷⁷ President Jacques Chirac, moreover, was scheduled to go to Beijing in May to confirm and sign the commercial deals which were promised by PRC Premier Li Peng in 1996.⁷⁸ Conceivably, Chirac did not want to spoil the atmosphere and risk the expected deals. As a result, Chirac's trip helped Airbus Industrie, of which French aviation companies were a big part, to sell US\$1.5 billion in aircraft to China.⁷⁹

In 1995, a procedural motion introduced by China was defeated by one vote. But in the substantive full vote on the resolution condemning China's continuing violation of human rights and fundamental freedoms, the Human Rights Commission rejected this resolution, also by one vote. The key vote that allowed China to foil Western censure was cast by Russia, which was against the procedural "no-action" motion. This incident revealed Russia's opportunistic approach (making good gestures to the United States and China in different points of time to extract as many bene-

⁷⁴Ibid.

⁷⁵Scott Kraft, "Bid in UN to Cite China on Human Rights Fails by 1 Vote," *Los Angeles Times*, March 9, 1995, A4; Barbara Crossette, "China Outflanks U.S. to Avoid Scrutiny of Rights Record," *New York Times*, April 24, 1996, A7.

⁷⁶"China Defeats a UN Resolution Criticizing Its Rights Record," *New York Times*, April 16, 1997, A6.

⁷⁷*Lianhe bao* (United Daily News) (Taipei), November 15, 1995, 4.

⁷⁸*Shijie ribao* (World Journal), April 14, 1996, A2.

⁷⁹*Far Eastern Economic Review*, May 29, 1997, 65.

Table 1
Vote on Resolution of "Situation in China" in the UN Human Rights Commission

Year	Procedural "No-Action" Motion			Full Vote		
	Yea	Nay	Abstention	Yea	Nay	Abstention
1990	17	15	11			
1992	27	15	10			
1993	22	17	12			
1994	20	16	17			
1995	18	19	16	21	20	12
1996	27	20	6			
1997	27	17	9			

Note: In 1991 and 1998, the United States managed to introduce no resolution. In the former case, the United States needed China's cooperation on the Gulf War against Iraq; in the latter, within the broader context pursuing a "strategic partnership" relationship with China, the United States found that China had taken some positive steps to improve its human rights situation.

Source: Ann Kent, "China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994," *Human Rights Quarterly* 17 (1995): 1-47. The record is updated by the author.

fits as possible) and indicated that the closer relations deriving from arms deal between Russia and China could spill over to such other issue areas as human rights.⁸⁰

With regard to the "stick," China often employs verbal attack and intimidation. For example, in a message sent to Denmark during the 1997 Human Rights Commission session, PRC Foreign Ministry spokesman said: "We still hope Denmark will think seriously about the consequences of [Denmark's insisting on pressing ahead with the resolution condemning China]. I can say relations will be severely damaged in the political and economic-trade areas."⁸¹ It was reported that China invited a stream of

⁸⁰For reports on Sino-Russian closer military relations, see Sophie Quinn-Judge, "Common Cause: Russia and China Join Hands for Mutual Benefit," *ibid.*, May 8, 1997, 15-16; Charles Bickers, "Bear Market: Russia Wants to Be the Top Arms Supplier to Asia," *ibid.*, September 4, 1997, 25-26.

⁸¹Paul Lewis, "China Warns Denmark Against Rights Resolution," *New York Times*, April 8, 1997, A7.



presidents, prime ministers, and foreign ministers of small countries to Beijing to be warned against participating in the resolutions critical of China.⁸²

China also launched attacks on the Sub-Commission in retaliation for its passage of the resolution critical of China in 1989. In the 1991 Human Rights Commission session, Zhang Yishan, a member of the Chinese delegation, identified the essential characteristic of the Sub-Commission as its composition by experts. Zhang further argued that the primary concern of the Sub-Commission was "to concentrate its limited human and financial resources and its time on the study of major and practical subjects concerning the promotion and enjoyment of human rights, to draft valuable studies, and to put forward feasible suggestions to the Commission."⁸³ For this reason, he objected to the tendency of the Sub-Commission to become politicized and thus intrude upon the responsibilities of the Commission, to engage in political debate, and "to make wanton attacks on the domestic affairs of sovereign states." Moreover, he charged that "no effective control was exercised over the participation of NGOs." He asserted that "the Commission must seriously consider the desirability of reaffirming the nature of the Sub-Commission's work and mandate and calling upon it strictly to abide by and implement the provisions in relation to its agenda items."⁸⁴

What worries some Western advocates of human rights most is that China seems to be intentionally leading the way and rallying some developing countries to reoperationalize, if not redefine, the international human rights regime.⁸⁵ In addition to emphasizing that the issue of human rights falls within state sovereignty, China also highlights cultural relativism, economic and social rights, and the right to development and thus downplays the political and civil rights. China argues that the cultural standards and historical conditions of nations are different. Each nation should make efforts to promote and protect human rights according to individual values and historical conditions. No culture's concept of human rights has greater claim than any other's. Thus the foreigner has no moral right to judge;

⁸²Crossette, "China Outflanks U.S. to Avoid Scrutiny of Rights Record," A7.

⁸³Kent, "China and the International Human Rights Regime," 22.

⁸⁴Ibid.

⁸⁵Ibid., 28; Uvin and Biagiotti, "Global Governance," 380.

interference constitutes cultural imperialism.⁸⁶

The Chinese government further argues that China's rights record has been as good as its critics. The most important rights are those to survival and development which are better assured in China than in most other places, including the West. The United States, with many human rights problems of its own, has no right to comment on the human rights situation in other countries.⁸⁷

Such arguments garnered vocal support from regional leaders such as Prime Minister Mahathir Mohamad of Malaysia and Lee Kuan Yew of Singapore.⁸⁸ These arguments are fashionably dubbed as "Asian values."⁸⁹ In March 1993, representatives of Asian countries met in Bangkok to discuss a UN General Assembly resolution that called for a Vienna World Conference on Human Rights. The document that came out of this meeting was called the "Bangkok Declaration" and reflected to a considerable degree China's thinking on human rights.⁹⁰

⁸⁶This is one of the major themes in two human rights "white papers" published by the Chinese government in 1991 and 1996. See "Human Rights in China," *Beijing Review*, November 4-10, 1991, 8-45; "The Progress of Human Rights in China," *ibid.*, Special Issue, January 1996.

⁸⁷*Ibid.*; Ren Yanshi, "A Look at the U.S. Human Rights Record," *ibid.*, March 17-23, 1997, 12-19; Seth Faison, "China Turns the Tables, Faulting U.S. on Rights," *New York Times*, March 5, 1997, A7.

⁸⁸Among others, see the interview of Lee Kuan Yew in *New Perspective Quarterly*, Winter 1992, 4-13. Mahathir went even further to propose a review of the Universal Declaration of Human Rights in July 1997. See Frank Ching, "Responsibilities and Rights," *Far Eastern Economic Review*, November 13, 1997, 38.

⁸⁹Kishore Mahbubani, "Live and Let Live: Allow Asians to Choose Their Own Course," *Far Eastern Economic Review*, June 17, 1993, 26; *idem*, "The Pacific Way," *Foreign Affairs* 74, no. 1 (January-February 1995): 100-111; Denny Roy, "Singapore, China, and the 'Soft Authoritarian' Challenge," *Asian Survey* 34, no. 3 (March 1994): 231-42. For critical views, see Aryeh Neier, "Asia's Unacceptable Standard," *Foreign Policy*, no. 92 (Fall 1993): 42-51; Alan Dupont, "Is There an 'Asian Way'?" *Survival* 38, no. 2 (Summer 1996): 13-33; Eric Jones, "Asia's Fate: A Response to the Singapore School," *The National Interest*, Spring 1994, 18-28; David I. Hitchcock, *Asian Values and the United States* (Washington, D.C.: Center for Strategic and International Studies, 1994). The recent Asian financial crises since July 1997 weaken this "Asian values" model to a certain extent. See Peter Waldman, "Asian Values' Concept Is Ripe for Revision as Economies Falter," *Wall Street Journal*, November 28, 1997, A1, A4; Amelia A. Newcomb, "Asia's Economic Model in a Muddle," *Christian Science Monitor*, December 3, 1997, 1, 8; Nicholas D. Kristof, "Crisis Pushing Asian Capitalism Closer to U.S.-Style Free Market," *New York Times*, January 17, 1998, A1, B3.

⁹⁰"Bangkok Declaration," *Beijing Review*, May 31-June 6, 1993, 9-11.

At the UN World Conference on Human Rights in Vienna in June 1993, the China-led bloc—composed of Cuba, Myanmar (Burma), and other Asian and Muslim nations—outnumbered the European and American countries. On the last day of the conference, participants adopted the Vienna Declaration and Program for Action.⁹¹ While some see this document as a defeat for the West,⁹² others consider it as a compromise reflecting universality and cultural pluralism.⁹³ No matter how we evaluate the Vienna Declaration, it is plain that China does occupy a definitive position in the discourses on human rights that cannot be ignored—at least for the time being.

Conceivably, China has to tack between the multilateral settings and bilateral negotiations on human rights issues, especially given its perennial disputes with the United States. Without the rallying crowd in the multilateral conferences, China has often been put on the defensive by the United States. However, as table 1 indicates, the United States has usually, if not always, compromised on human rights when other higher priority political and economic interests were at stake.

Following the Tiananmen massacre, the Bush administration was forced to walk a very fine line in defining policy toward China. On the one hand, Washington was under great public pressure to impose severe sanctions on China in response to the massacre. On the other, it was attempting to preserve a viable working relationship with the Chinese government. This policy of limited sanctions, muted rhetoric, and continued communication with Chinese leaders had caused a certain amount of debate and controversy.⁹⁴ Bill Clinton, who accused the Bush administration of "coddling" the "dictatorship" in Beijing, won the presidential election in

⁹¹*The United Nations Yearbook 1993* (New York: United Nations, 1994), 908-9.

⁹²E.g., Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), 106.

⁹³E.g., Christine Loh, "The Vienna Process and the Importance of Universal Standards in Asia," in *Human Rights and Chinese Values*, ed. Michael C. Davis (Hong Kong: Oxford University Press, 1995), 145-67.

⁹⁴Harry Harding, *A Fragile Relationship: The United States and China since 1972* (Washington, D.C.: The Brookings Institution, 1992), 229; Robert G. Sutter, "Tiananmen's Lingering Fallout on Sino-American Relations," *Current History*, September 1991, 247-50.

1992. President Clinton signed an executive order in May 1993 trying to condition the extension of the MFN status to China on its performance in some issues, especially concerning improvements in human rights.⁹⁵ Beijing leaders were infuriated, considering this a "coercive ultimatum," and fired back a list of demands of their own for changes in U.S. policy. A rapid-fire series of confrontations developed with a rapidity that startled Sino-American observers. Concerned about the state of U.S.-China relations, U.S. officials began a reassessment of U.S. policy, a process that culminated in September 1993 with President Clinton approving a new strategy that removed most of the post-Tiananmen taboos, authorized a series of cabinet-level visits, restored military-to-military contacts with China, and okayed a summit meeting with Jiang Zemin in Seattle.⁹⁶ After several high-level meetings between the two nations, some analysts have observed what appears to be a tacit bargain between the two sides. In essence, China gives Clinton "face" on human rights by taking steps to meet minimum U.S. demands in the 1993 executive order. The quid pro quo requires the United States to provide assurance to restore the "normal" dealings that were shattered by Tiananmen.⁹⁷

By the end of January 1994, Beijing had: released prominent Tibetan political prisoners; begun talks with the International Committee of the Red Cross aimed at reaching accord on regularizing the monitoring of those detained in Chinese prisons; agreed to provide access for U.S. customs officials to inspect prisons alleged to be exporting goods to the United States as part of implementing an agreement between the United States and China

⁹⁵Don Oberdorfer, "Replaying the China Card: How Washington and Beijing Avoided Diplomatic Disaster," *Washington Post*, November 7, 1993, C3. The debates continued. Christopher P. Carney, "Human Rights, China, and U.S. Foreign Policy: Is a New Standard Needed," *Asian Affairs* 19, no. 3 (Fall 1992): 123-32; James Lilley, "Freedom Through Trade," *Foreign Policy*, no. 94 (Spring 1994): 37-42; Robert L. Bernstein and Richard Dicker, "Human Rights First," *ibid.*, 43-52; Holly J. Burkhalter, "The 'Cost' of Human Rights," *World Policy Journal* 11, no. 1 (Spring 1994): 39-49.

⁹⁶Robert G. Sutter, *Shaping China's Future in World Affairs: The Role of the United States* (Boulder, Colo.: Westview Press, 1996): 87.

⁹⁷For example, John Kruger and Charles Lewis, "Bill's Long March: When Big Money Talked, Clinton Retreated to George Bush's Policy," *Washington Post*, November 7, 1993, C3; Robert A. Manning, "Clinton and China: Beyond Human Rights," *Orbis* 38, no. 2 (Spring 1994): 193-205.

on prison labor exports; released Wei Jingsheng, the most prominent dissident, in September 1993, and some other prisoners (in the week prior to the International Olympic Committee's decision on the 2000 Olympic Games in 1993); agreed to review a list provided by Washington of 235 political prisoners; and further hinted that a number of prominent political prisoners would soon be released.⁹⁸

In May 1994, President Clinton announced his decision to extend China's MFN status for an additional year, even though his administration was not fully satisfied with China's improvement in human rights. He also decided to delink human rights from the annual extension of MFN status for China.⁹⁹

Afterwards, the irresolution flowing from the internal debates and division over ends and means has made the U.S. human rights policy move toward what a keen observer has called "a state of crisis."¹⁰⁰ In government and out, the dominant views now are that the United States: can no longer afford to hold larger issues hostage to the fate of a few dissidents; should not overlook long-term favorable trends because of the Chinese government's harshness toward a few highly-outspoken dissidents; and must not let petulance over violations of Western values blind Washington to the chance to improve the lives of large numbers of people and reduce the risks of war in Asia by developing closer relations with China's leaders. These views dovetail with the interests of the business community which fears that human rights pressure will spoil the environment for trade and investment. Human rights remain on the list of U.S. diplomatic concerns with China, but it has slipped to the bottom—after such issues as security, arms proliferation, and the trade deficit.¹⁰¹

U.S. irresolution makes China take the human rights issue only half-heartedly. In March 1994, Wei Jingsheng was arrested again for being "in-

⁹⁸Manning, "Clinton and China," 198.

⁹⁹David M. Lampton has a fine analysis of this decision. See his "America's China Policy in the Age of Finance Minister: Clinton Ends Linkage," *The China Quarterly*, no. 139 (September 1994): 597-621.

¹⁰⁰Andrew J. Nathan, "China: Getting Human Rights Right," *Washington Quarterly* 20, no. 2 (Spring 1997): 135-51.

¹⁰¹*Ibid.*, 136.

volve[d] in a conspiracy of subverting the government" and was sentenced to a fourteen-year prison term.¹⁰² On the eve of then-Secretary of State Warren Christopher's November 1996 visit, the Chinese government staged a trial that sentenced Wang Dan, the prominent student leader on Tiananmen Square in 1989, to an eleven-year prison term.¹⁰³ In addition, there are still many rights abuses including religious repression, violations related to criminal procedure, torture and abuse of inmates, and other civil and political rights violations.¹⁰⁴

On the other hand, China has been willing to make timely concessions to improve the atmosphere or reward quiet diplomacy in dealing with the United States. For example, Chen Ziming, another political prisoner arrested after the 1989 Tiananmen Incident, was released on November 6, a day after Clinton's reelection and two weeks before Christopher was scheduled to visit China to lay the groundwork for the summit meeting in 1997.¹⁰⁵ A week before the summit meeting, China allowed, for the first time, the UN human rights officials to have private interviews with about thirty inmates.¹⁰⁶ Qin Huasun, the Chinese envoy to the UN, signed the International Covenant on Economic, Social, and Cultural Rights on October 27, 1997, the first day of President Jiang Zemin's visit to the United States for the summit meeting.¹⁰⁷ One product of the summit meeting was that both governments made a commitment to law enforcement cooperation; the United States agreed to send lawyers and jurists to China to consult on development of civil and criminal justice systems. This agreement might

¹⁰²*Lianhe bao*, December 14, 1995, 1. For a glimpse of Wei's cause of "the fifth modernization in China," see Wei Jingsheng, "The Missing Modernization," *New York Times*, December 5, 1997, A23; Baogang He, *The Democratization of China* (New York: Routledge, 1996), chap. 3.

¹⁰³Kevin Platt, "A Tale of Two Dissidents in China: Wang and Wei," *Christian Science Monitor*, November 25, 1997, 6.

¹⁰⁴Nathan, "China: Getting Human Rights Right," 146-47; Stephen J. Yates, "Advancing Freedom in China: The Human Rights Issues," in *Between Diplomacy and Deterrence: Strategies for U.S. Relations with China*, ed. Kim R. Holmes and James J. Przystup (Washington, D.C.: The Heritage Foundation, 1997), 189-209.

¹⁰⁵Seth Faison, "China Paroles Key Dissident Seen as Gauge of U.S. Ties," *New York Times*, November 7, 1996, A5.

¹⁰⁶*Ibid.*, October 22, 1997, A5.

¹⁰⁷*Ibid.*, October 28, 1997, A6.

be significant in the longer term for China to develop a legal system more congruent with the concept of rule-of-law and thereby substantially improve the protection of human rights in China.¹⁰⁸ An important result of this summit meeting was that Wei Jingsheng was freed on medical parole and sent to the United States in November 1997.¹⁰⁹

From the above discussion, we can see that China's human rights policies and behavior are partially dependent on how high the United States puts human rights on its priority list of foreign policy and the efforts it puts into pursuing human rights as a national interest. Judging the two press conferences after the latest two Sino-American summit meetings, there is a great deal of truth to Clinton's statement that the key dispute between these two leaders representing two nations is about human rights.¹¹⁰ Human rights issues, as a mixture of idealism and realism, will remain high on, if not at the top of, the list that the United States and China need to address in their relations.

Conclusion

Deng Xiaoping's economic reform and opening-up policy brought China closer to international human rights politics. Although the global normative politics on which human rights issue is based may not on the surface be of great help to China in materialistic terms, China has gradually come to grips with the idea that human rights have become an integral part of world politics and has thus decided to enter the fray. As a result, during

¹⁰⁸China has carried out a series of legal reforms since the early 1990s. How well those reforms are able to contribute to establishing the rule of law is a matter of debate. Among others, see *The China Quarterly*, no. 141 (March 1995), Special Issue: "China's Legal Reforms"; Frank Ching, "China Reforming Legal System," *Far Eastern Economic Review*, May 15, 1997; Henry S. Rowen, "The Short March: China's Road to Democracy," *The National Interest*, Fall 1996, 61-70; Merle Goldman, "Is Democracy Possible," *Current History*, September 1995, 259-65; James V. Feinerman, "The Rule of Law . . . with Chinese Socialist Characteristics," *ibid.*, September 1997, 278-81.

¹⁰⁹This pressure-then-release pattern was criticized as hostage diplomacy by some NGOs such as Human Rights Watch. See Francis X. Clines, "Rights Group Criticized U.S. over Mines and China Ties," *New York Times*, December 5, 1997, A9.

¹¹⁰*Lianhe bao*, June 28, 1998, 8.

the 1980s China acceded to seven less controversial human rights instruments. In time, numerous old international labor conventions that the Republican government had ratified before 1949 were recognized.¹¹¹ However, China's participating in the international regimes signals to protect, if not strengthen, state sovereignty rather than a willingness to impose international rules on itself; China always finds ways to exempt itself from strong international supervision and binding obligations by making reservations on the treaties it joined.

The issue of sovereignty becomes more acute after the internal and external events of 1989. Imbued with what David Shambaugh calls "siege mentality,"¹¹² China has been more cautious about making concessions in human rights area than it has been in other issues like trade and arms control. If concessions are necessary in human rights, they will be merely cosmetic. In addition, China further found that the normative consensus on the international human rights regime has not been so solid. The resolution on the right to development passed by the UN General Assembly strongly suggested that between the developing countries and the rich North there is a gap which China could exploit.

Thus, as Samuel S. Kim has pointed out, China has devised and adopted a "divide and conquer" strategy in its global human rights diplomacy.¹¹³ The logic of this strategy is to slice up the concept of universality little by little, region by region, to the point where there is little left of the UN human rights regime. State sovereignty and cultural relativism are two major underlying themes: highlight the right to development as a group right and downplay civil and political rights. China published its first human rights white paper in 1991 to concretize these themes, which signaled an acknowledgment that the best defense is a good offense. This strategy scored concrete gains in the Bangkok Declaration. On the eve of the World Conference on Human Rights in Vienna in 1993, China was poised to lead

¹¹¹Chiu, "Chinese Attitudes," 255.

¹¹²David Shambaugh, "Containment or Engagement of China? Calculating Beijing's Responses," *International Security* 21, no. 2 (Fall 1996): 22-49.

¹¹³Samuel S. Kim, "China as a Great Power," *Current History*, September 1997, 246-51.

a pack of Third World countries in an attack on the core principle of universal human rights. As a self-styled Third World champion, China declared that the final conference document should be based on the declarations of the three regional preparatory meetings (Bangkok, Tunisia, and San José), with emphasis on state sovereignty, territorial integrity, and non-interference in the internal affairs of states, rather than on the working paper proposed by the UN Secretariat, which put emphasis on the strengthening of the global human rights regime.¹¹⁴ Although a compromise between universalism and relativism was eventually achieved in Vienna, China emerged as a vociferous champion of cultural relativism in the issue of human rights.

So far, Beijing's human rights politicking has been tactically successful. The success is only tactical because there is still a wide gap between its words and deeds, thus leaving much room for criticism from domestic dissidents and foreign countries. In its *Human Rights Watch World Report 1999*, Human Rights Watch states that despite some "encouraging development" with greater freedom to debate allowed among intellectuals on political and economic reform issues, China maintained generally strict controls on expression, association, and assembly, with political and religious dissidents particularly facing arrest and detention.¹¹⁵ What can best exemplify this gap is that Beijing's signing of the International Covenant on Civil and Political Rights has been followed by a crackdown on dissident activity.¹¹⁶ In early December 1998, in response to concern expressed by White House spokesman Joe Lockhart about the detentions of veteran pro-democracy campaigner Xu Wenli and other dissidents for trying to set up the Chinese Democracy Party, China told the United States to back off.¹¹⁷

Furthermore, Chinese decision-makers have not mastered the politics of human rights in the West. Chinese leaders may have failed to understand the cultural root of Western human rights policy and the power of the

¹¹⁴Kim, *China and the World*, 138-39.

¹¹⁵See its website, <http://www.hrw.org/hrw/worldreport99/index.html>.

¹¹⁶Matt Forney, "Beijing Crackdown Focuses on New Party, Not Its Ideas," *Asian Wall Street Journal*, November 20-21, 1998, 1, 6; Editorial, *ibid.*, November 4, 1998, 8.

¹¹⁷*China Post*, December 3, 1998, 1; *China News*, December 4, 1998, 5.

pluralistic public opinion that helps drive it.¹¹⁸ Although sometimes conveying the impression that it is halfhearted on human rights issues, the United States will not drop these issues entirely due to its domestic politics and basic value system.

Meanwhile, the human rights idea has gained ground in China, leading to some domestic reforms.¹¹⁹ The trend was propelled partly by China's growing openness to the outside world and partly by the need of its socialist market system for a stronger legal system to resolve economic and social disputes. Nathan and Ross have observed that Chinese lawyers, people's congress staff members, scholars, journalists, and even Communist Party liberals argued for the legally binding status of the international law of human rights, the political wisdom of China's joining the world mainstream, and the practical advantages of revising Chinese law to bring it into conformity with international standards.¹²⁰ In a nutshell, human rights would likely continue to be a persisting issue for Chinese leaders and pressures may come from both without and within.

¹¹⁸Nathan and Ross, *The Great Wall*, 191.

¹¹⁹Amy B. Epstein, "Village Elections in China: Experimenting with Democracy," in *China's Economic Future: Challenges to U.S. Policy* (Study papers submitted to the Joint Economic Committee, Congress of the U.S., August 1996), 403-22; Yan Jiaqi, "June Fourth Ignited the Great Changes in China," *Shijie ribao*, May 22, 1996, A10; Pei Minxin, "The Current State and Prospect of Political Reform in China," *Lianhe bao*, August 22, 1995, 6; Kevin Platt, "China's Village Elections Hint at Democracy," *Christian Science Monitor*, March 26, 1997, 1, 14.

¹²⁰Nathan and Ross, *The Great Wall*, 192.