



## **China and the global reach of human rights**

**LSE Research Online URL for this paper:** <http://eprints.lse.ac.uk/116661/>

Version: Accepted Version

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### **Article:**

Zhang, Yongjin and Buzan, Barry (2020) China and the global reach of human rights. *China Quarterly*, 241. pp. 169-190. ISSN 0305-7410

<https://doi.org/10.1017/S0305741019000833>

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## China and the Global Reach of Human Rights

Yongjin Zhang and Barry Buzan

### Introduction

It is generally acknowledged that China has had difficult, strained and often contentious relationship with the global governance of human rights, given in particular its generally poor and now widely-regarded as deteriorating human rights record in domestic practices.<sup>1</sup> It is also increasingly accepted that China is no longer just a norm taker and has become increasingly influential and even assertive in shaping the global normative order of human rights so that it fits better with its domestic and international preferences.<sup>2</sup> There is yet another set of sharp contradictions in the relationship between China and the global human rights norms and regimes. On the one hand, China has been socialized into signing and ratifying most human rights treaties and conventions. The omnipresence of human rights rhetoric in Chinese official discourse is plainly notable. On the other, such omnipresence has not been matched by the improved record of political and civil rights in China. Ratifications of international treaties seem to have had only limited, if not entirely negligible, impact on human rights practices within China.<sup>3</sup>

This article grapples with this contentious and paradoxical relationship between China and the global governance of human rights. It offers a different, but ultimately complementary analytical perspective, the principal focus of which is not on measuring China's progress using such metrics as state ratification of conventions, or on evaluating China's compliance to human rights treaty obligations through norm diffusion/cascade, or on studying changes (or lack thereof) of Chinese human rights policies over time. The central concern of this perspective is the evolving and changing dialogical relationship between China and the global reach of human rights as a particular ongoing and interactive

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<sup>1</sup> See for example, Kent 1999; Foot 2000; Gaer 2010; Kim 2015; Campbell 2016; International Federation of Journalists 2017.

<sup>2</sup> See Nathan and Scobell 2009; Scaat with Breslin 2012; Kinzelbach 2014; Foot and Iboden 2016; Worden 2017.

<sup>3</sup> Cohen 2009; Ahl 2015.

normative and institutional dynamic. The critical question to be addressed is, accordingly, why and how China matters in ‘moral globalization’<sup>4</sup> in a morally divided world in the instance of human rights. This entails more specifically getting beyond the omnipresence of human rights rhetoric to examine China’s communicative engagement with human rights as social and political processes to enhance and enlarge moral concerns about human rights on a global scale. It argues that a careful examination of the dialogical relationship between China and the global reach of human rights helps us attain a richer understanding of this contentious and paradoxical relationship and how it contributes to global governance of human rights.

The examination of this dialogical relationship and communicative engagement serves as a counterpoint to those who argue that China will, and indeed must, eventually conform to Western norms of human rights either because of a liberal teleology linking markets to individualism,<sup>5</sup> or because of a materialist link between level of development and human rights.<sup>6</sup> We also offer this article as an empirical contribution to both constructivist work on norm diffusion<sup>7</sup> and the work of the English School on tracking normative aspirations of the society of states and the way in which deep norms and principles embodied in the primary institutions of that society interact with intergovernmental organizations and regimes.<sup>8</sup>

### **The Global Reach of Human Rights 1.0: The China Exception**

It is hardly disputable that the proclamation of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948 inaugurated what Cass Sunstein calls ‘the rights revolution’<sup>9</sup> in the second half of the 20th century. Although the UDHR embodies only ‘an ethical assertion—not a proposition about what is already legally guaranteed’,<sup>10</sup> it did outline a ‘common standard of achievement’ for the future of human rights, which has provided ‘the

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<sup>4</sup> Ignatieff 2017.

<sup>5</sup> Subedi 2015.

<sup>6</sup> Peerenboom 2005.

<sup>7</sup> Risse and Sikkink 1999; Reus-Smit 2011.

<sup>8</sup> Buzan 2004, 2014; Hurrell 2007.

<sup>9</sup> Sunstein 1990.

<sup>10</sup> Sen 2009, 359.

cornerstone of a burgeoning international human rights regime'.<sup>11</sup> 'The decades following the Second World War', as Jack Donnelly states, 'saw the development of an extensive body of international human rights law that recaptured, in a substantially purified form, the morally appealing idea of adherence to shared standards of justice as a condition for full membership in international society'.<sup>12</sup> This 'extensive body' would include, among others, the International Bill of Human Rights, which comprises the UDHR in 1948, the International Covenant of Political and Civil Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR), both in 1966.

A recent study statistically confirms 'the creation and expansion of a worldwide system of international law designed to identify and protect a growing number of basic human rights' and argues that the global institutionalization of human rights 'signals a fundamental shift in the structure of international society'.<sup>13</sup> Put differently, a critical discourse was enacted into international law for the purpose of enlarging and expanding the international circle of moral concern. Human rights began to be progressively embedded in what Martin Wight refers to as the 'collective judgment of international society about rightful membership'.<sup>14</sup>

There is a revolutionary dimension of the global reach of human rights 1.0, too. The potent force of the 'rights revolution' for the transformation of the post-war international society was most compellingly demonstrated and exploited by what Hedley Bull calls 'the revolt against the West'.<sup>15</sup> Not only did the acknowledgement and acceptance of human and racial equality discredit the old standard of 'civilization', but the 'rights revolution' also progressively hollowed out many arrogant and presumptuous cultural assumptions entrenched in European civilization. The principle of self-determination enshrined as a 'right' in the UN Charter served to undermine the legitimacy of colonial rule and to legitimate political struggle against imperialism and colonialism. Human rights in this fashion provided moral resources for the

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<sup>11</sup> Doyle and Gardner 2003, 2.

<sup>12</sup> Donnelly 1998, 13.

<sup>13</sup> Hafner-Burton and Tsutsui 2005, 1373-1411.

<sup>14</sup> Wight 1977, 153.

<sup>15</sup> Bull 1984.

delegitimation of colonialism and imperialism as primary institutions in the classical European international society and for the construction of a global sovereign order based on the principle of self-determination.<sup>16</sup> It is the presence of newly independent post-colonial states in the UN that 'ensured the votes necessary to bring about the implementation of the two covenants in 1976 and to launch a new discourse on "third-generation" rights, such as the right to development'.<sup>17</sup> The revolt against the West both in normative terms and in the political struggles for national independence is in this important sense constitutive of the global reach of human rights 1.0 in a pluralistic global sovereign order.

The Cold War as a systemic factor had a paradoxical impact on the global reach of human rights 1.0. On the one hand, global rivalry between the United States and the former Soviet Union overshadowed and politicized human rights issues. Their preoccupation with ideological conflict and national security state practices contributed to extensive violations of human rights enunciated in UDHR, making the call for states to live up to respecting universal rights no more than 'organized hypocrisy'.<sup>18</sup> This is best illustrated by the most egregious violations of human rights during the Cold War, the Cambodian genocide, when approximately 1.7 million Cambodians perished. On the other hand, the legalization of human rights norms took a decisive step forward in 1976, when the two international human rights covenants—ICCPR and ICESCR—came into force. The idea of rights and a critical discourse of human rights were sustained otherwise by the emergence of human rights INGOs such as Amnesty International in 1961. Burgeoning human rights advocacy and activism found further momentum in the negotiation and conclusion of the Helsinki Final Act in 1975. Coupled with the introduction of human rights into U.S. foreign policy in the late 1970s, human rights became integral to and instrumental in foreign policy of Western states.<sup>19</sup>

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<sup>16</sup> Reus-Smit 2011.

<sup>17</sup> Foot 2010.

<sup>18</sup> Dunne and Hanson 2016, 47.

<sup>19</sup> Foot 2010; Snyder 2011.

China had rather tenuous relations with the global reach of human rights 1.0. It is widely noted that P. C. Chang (also known as Zhang Pengchun), a representative of the Republic of China, served as Vice-Chairman of the UN Human Rights Commission and was one of 'the two intellectual giants of the Commission' responsible for the drafting of the UDHR.<sup>20</sup> Given its self-perception as the longstanding centre of civilization, China had stronger reasons than other non-white peoples to resent the insults of Western and Japanese racism. It is also true that in as much as human rights was instrumental in the deconstruction of colonialism and racism, China, as a revolutionary power, provided moral and material support for 'the revolt against the West' by the colonial peoples to assert their rights of self-determination in the 1950s and the 1960s. China also vocally supported the struggle of the South African people against the 'most barbarous colonialist and racist rule' of the apartheid regime.<sup>21</sup> One of the best examples of China's human rights advocacy in the 1960s is no other than a statement issued by Chairman Mao Zedong shortly after his meeting with American civil rights leader Robert Williams in Beijing in August 1963 in which Mao called upon

the workers, peasants, revolutionary intellectuals, enlightened elements of the bourgeoisie, and other enlightened personages of all colours in the world, white, black, yellow, brown, etc., to unite to oppose the racial discrimination practiced by U.S. imperialism and to support the American blacks in their struggle against racial discrimination.<sup>22</sup>

China remained, nevertheless, marginal at best to the global reach of human rights 1.0 for at least three good reasons. First, the People's Republic was not a member of the United Nations until 1971. It was therefore not party to the two-decade's article-by-article negotiations in the making of two important international covenants concluded in 1966. Second, even though China's UN membership in 1971 committed the People's Republic to UDHR and compelled its participation in human rights governance at the UN, China's active engagement with the UNCHR came only in 1982, well after China's launch of

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<sup>20</sup> Krumbein 2015, 334.

<sup>21</sup> Nathan 1994, 614-25.

<sup>22</sup> Mao (check details of citation)

economic reform and opening. Third, the 1980s did see China signing and ratifying seven UN human rights conventions. By ratifying the Convention against Torture, China was said to have ‘cross[ed] the Rubicon’ conceptually and legally in committing itself to the protection of individual rights.<sup>23</sup> In a very important sense, though, China remained the ‘human rights exception’.<sup>24</sup> In spite of the international awareness of the human rights atrocities committed during the Cultural Revolution and of the West’s full knowledge of Beijing’s suppression of the democracy wall movement in 1979, China continued to ‘enjoy an inexplicable immunity’ from the close international scrutiny and condemnation of its human rights policies and ‘remained conspicuously absent from the debates in the United States and Europe which led to the incorporation of human rights concerns in foreign policy’.<sup>25</sup>

### **China and the Global Reach of Human Rights 2.0**

The collapse of the Soviet power and the crumble of social and political structure of the Cold War in the early 1990s saw a historically unprecedented convergence of liberal power and principle. It is this convergence that brought the discourse and practice of human rights to the centre stage of international politics. The arrival of what Louis Henkin called ‘the Age of Rights’ in the post-Cold War period was marked by the dramatic rebirth of the South African state following the collapse of the apartheid regime, ‘arguably the most historic event in the human rights movement since its emergence some fifty years ago’.<sup>26</sup> Emblematic of the global reach of human rights 2.0 are also explicit claims that universal human rights has become a new standard of ‘civilization’ in post-Cold War international society;<sup>27</sup> and that ‘from the early 1990s on, the logics and expectations of human rights coalesced into what might be called the world’s only supernormativity’.<sup>28</sup>

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<sup>23</sup> Dittmer and Kim 1993, 262.

<sup>24</sup> Cohen 1987.

<sup>25</sup> Cohen 1987, 4, 25.

<sup>26</sup> Makau Mutua as quoted in Goodale 2014, 5.

<sup>27</sup> Donnelly 1998; Jackson 2000, 287–93; Gong 2002.

<sup>28</sup> Goodale 2014, 6.

The global reach of human rights 2.0 is otherwise marked by ‘a new, emerging global logic of legitimacy’,<sup>29</sup> as international human rights norms were interwoven into particular conceptions of legitimate statehood and rightful state action in two important ways. One is that international human rights norms are increasingly socialized and internalized in domestic practice.<sup>30</sup> Human rights plays, Charles Beitz asserts,

the role of a moral touchstone—a standard of assessment and criticism for domestic institutions, a standard of aspiration for their reform, and increasingly a standard for evaluation for the politics and practices of international economic and political institutions.<sup>31</sup>

Human rights discourse is said to ‘link national and international legitimacy to an inclusive, positive model of civilized behaviour’.<sup>32</sup>

The other is that this new global logic of legitimacy has changed what is understood by the term ‘state sovereignty’. There has been growing global consensus that a state’s exercise of sovereignty is conditional upon whether it treats its citizens humanely and justly, and consequently the recognition of sovereignty no longer has to embody ‘a conspiracy of silence entered into by governments about the rights and duties of their respective citizens’.<sup>33</sup> Human rights has therefore legitimized, or has been used to legitimize with greater intensity, a range of coercive intervention activities as enforcement of human rights, although ‘an uneasy juxtaposition of state sovereignty with ideas of a universal moral order’ continues unabated.<sup>34</sup>

One particular thrust of the global reach of human rights 2.0 has been generally and regrettably neglected in the existing literature, however. The rights revolution since 1948 has gradually changed the rules of moral standing and created the norm of equal voice. The ongoing battles for racial, gender, and sexuality-based equality across the globe aims at creating a rule of equal moral

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<sup>29</sup> Donnelly 1998, 15.

<sup>30</sup> Risse and Sikink 1999.

<sup>31</sup> Beitz 2001, 269.

<sup>32</sup> Donnelly 1998, 20.

<sup>33</sup> Bull 1977, 80.

<sup>34</sup> Dunne and Hanson 2016, 44.



standing as the default setting for every global conversation conducted on ethical matters.<sup>35</sup> In international politics, the creation of a morally flat world starts with the democratic revolution enforcing the principle of self-determination and the practice of the UN, which accords the same sovereign quality to states small and large, weak and powerful, North and South, irrespective of regime types. Such democratic norm of equality, Ignatieff asserts, 'also governs moral conversation when individuals, faiths, culture and nations that are nondemocratic step into the same room to talk'. In a morally flat world based on equality of respect, 'everyone has the right to speak and to be heard'.<sup>36</sup>

There is considerable irony in the fact that China's human rights record was increasingly subject to international criticism when China's opening and reform put the domestic legal reform at the top of its agenda. It is, however, Chinese government's violent crackdown on pro-democracy demonstrators on the Tiananmen Square in June 1989 that makes China a target of the new liberal standard of 'civilization' campaign in the 1990s. The changing political and moral contexts for China's encounters with the global reach of human rights 2.0 were marked by liberal hubris demonstrated by such claims as 'the end of history' and the pending clash of civilizations and by the emerging unipolarity. China was, not surprisingly, regarded a crucial missing piece in the global reach of human rights.

With its legitimacy crisis in the wake of the Tiananmen crackdown, the Chinese government developed a sophisticated strategy and devoted considerable diplomatic resources to countering attempts at stigmatizing China as a human rights 'pariah' in the reconstruction of post-Cold War international society. Between 1992 and 2001, Chinese diplomats at the UN worked hard to put together 'the Like-Minded Group' (LMG) within the membership of UNCHR. The aim was to prevent the UNCHR from passing, or even voting on, Western-sponsored resolutions to single out the PRC for criticism as part of a naming and shaming strategy.<sup>37</sup>

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<sup>35</sup> Ignatieff 2017, 5-6.

<sup>36</sup> Ignatieff 2017, 12.

<sup>37</sup> Nathan and Scobell 2009.

In addition to the hard battle fought in Geneva, the Chinese government issued its first ever white paper on human rights in 1991 as part of its public diplomacy. With the hindsight today, the value of the 1991 white paper is found principally as Beijing's first substantive communicative engagement with the global reach of human rights 2.0. Interestingly, the white paper affirms that China 'has been long cherished ideal of mankind to enjoy human rights in the full sense of the term'. It also states explicitly that the Chinese government considers the UDHR 'the first international human rights document that has laid the foundation for the practice of human rights in the world arena' and that 'China appreciates and supports the efforts of the UN in promoting universal respect of human rights and fundamental freedom'.<sup>38</sup>

The white paper also establishes a hierarchy of human rights. The right to subsistence, it asserts, 'is the most important of all human rights, without which other rights are out of the question'. This echoes the distinction between civil and political rights, on the one hand, and economic, social and cultural rights on the other, that was laid down in the 1966 Covenants.<sup>39</sup> One of the 'important innovations' in the Chinese arguments is to link human rights to development.<sup>40</sup> The white paper further contends that 'the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic and cultural conditions of various nations, and involves a process of historical development'.<sup>41</sup> China's human rights action plans published more recently demonstrate that Beijing has hardly changed such a developmental view in realizing human rights.<sup>42</sup>

China's multidimensional communicative engagement with the global reach of human rights has two other notable instances that are worth mentioning. One is that China gained broad support of Asian countries represented at the Regional Meeting for Asia of the World Conference on Human Rights in Bangkok in 1993 for its principled position on human rights at the UN. Such principles include national sovereignty and non-interference of internal affairs, non-selectivity,

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<sup>38</sup> State Council Information Office 1991.

<sup>39</sup> Subedi 2015, 438-9. See also Foot 2010.

<sup>40</sup> Kent 1999.

<sup>41</sup> State Council Information Office 1991; Zhang 1998, 181-183.

<sup>42</sup> State Council Information Office 2012; 2016a; 2016b.

cultural particularism, and the priority of economic and social rights over civil and political rights. These principles subsequently found their way into the Vienna Declaration and Program of Action of the World Conference on Human Rights in 1993. For this reason, China was said to be ‘a big winner’ at the Vienna Conference.<sup>43</sup> The other is that as part of China’s counter-stigmatization strategy, Beijing began in 1998 to issue regularly *The Human Rights Record of the United States* as a counter-attack on the United States for singling out China for censure in its annual Country Reports on Human Rights Practices.<sup>44</sup> *The Human Rights Record of the United States, 2001*, for example, accused the United States of assuming the role of ‘a world judge of human rights’ and applying double standards in its Human Rights report, which ‘distorted human rights conditions in many countries and regions in the world, including China’, while ‘turning a blind eye to its own human rights–related problems’.<sup>45</sup>

In the mid-1990s, the Chinese government entered into bilateral human rights dialogues with leading Western governments critical of China’s human rights policies.<sup>46</sup> It aimed at promoting an image of a cooperative Chinese government concerned about improving human rights conditions in China. These bilateral human rights dialogues became so important in Chinese foreign policy that the Department of International Organizations and Conferences of the Chinese Ministry of Foreign Affairs was once dubbed ‘the Department of Human Rights Dialogues’.<sup>47</sup> A climactic moment of this bilateral communicative engagement is the unrehearsed televised public debates between President Bill Clinton and President Jiang Zemin at a 70-minutes press conference in Beijing in June 1998, when President Clinton condemned the violent crackdown on the Tiananmen Square and when two leaders exchanged their views on Tibet and the Dalai Lama, and on individual freedom.<sup>48</sup>

The global reach of human rights 2.0 can boast two triumphant moments in China. The first is when the Chinese government moved to sign and ratify two

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<sup>43</sup> Nathan 1994; Kim 2015.

<sup>44</sup> Sun 2010.

<sup>45</sup> State Council Information Office 2002.

<sup>46</sup> Sceat with Breslin 2012, 5; Kinzelbach 2014, 25-45.

<sup>47</sup> Kinzelbach 2014, 11.

<sup>48</sup> Poole 1998; Broder 1998

key components of the International Bill of Human Rights. Beijing signed the ICECR in 1997 and ratified it in 2001; and it signed the ICCPR in 1998, which is yet to be ratified.<sup>49</sup> The signing of these two covenants not only moved China closer to accepting the universality of human rights, but also legitimized political and legal debates on human rights and judicial reform in China.<sup>50</sup> The second, and arguably more significant, is when ‘respecting and protecting human rights’ appeared for the first time as one of the tasks of political reform in General Secretary Jiang Zemin’s report to the CCP Party Congress in September 1997. This legitimized China’s domestic human rights discourses. ‘Respecting and protecting human rights’ subsequently found its way into China’s Five-Year Plan for the first time in 2001, and has been embedded in those plans ever since.<sup>51</sup> This led to the ‘constitutionalization’ of human rights in China. The 2004 amendment to Article 33 of the Chinese Constitution stipulates unequivocally that ‘The State respects and safeguards human rights’.<sup>52</sup> In so doing, Beijing moved appreciably from what Reus-Smit calls a ‘cultural particularist’ understanding of international human rights norms to a ‘negotiated universalist’ position.<sup>53</sup> Human rights was doubly ‘constitutionalized’, when it was written into the Constitution of the Chinese Communist Party (CCP) at the 17th Party Congress in 2007. The amended constitution specifies not only that the CCP ‘takes effective measures to protect the people’s right to manage state and social affairs as well as economic and cultural programs’, but also that the CCP ‘respects and protects human rights’.<sup>54</sup>

This double ‘constitutionalization’ of human rights may have resulted from China’s engagement in the politics of international legitimation. The symbolic and normative significance of this double ‘constitutionalization’ of human rights, however, should not be underestimated, as both ethical claims and moral propositions embodied in human rights have now constitutionally recognized. It is also momentous politically and legally, as the double constitutionalization

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<sup>49</sup> China also entered into a dialogue with the newly established Office of the United Nations High Commissioner for Human Rights (OHCHR) in 1998.

<sup>50</sup> Saich 2000, 216.

<sup>51</sup> Zhang 2014.

<sup>52</sup> The Constitution of the People’s Republic of China with 2004 Amendments.

<sup>53</sup> Reus-Smit 2011, 1205-1208.

<sup>54</sup> The Constitution of the Chinese Communist Party with 2007 Amendments.

legitimizes judicial reforms and serves as grounds for legislation.<sup>55</sup> Beijing has since embarked on a legalization route of human rights protection in China and actively promoted what it calls the ‘legal protection of human rights’. Most recent white paper, *New Progress in the Legal Protection of Human Rights in China*, boasts that China ‘has improved legislation to better protect the civil and political rights of its people. It revised the Criminal Law, abolishing nine death penalty charges and raising the bar on executing convicts that have received a death sentence with a two-year reprieve’; and has even ‘enacted the Anti-Domestic Violence Law’.<sup>56</sup> Human rights, in other words, have moved in part from ethical claims to legally guaranteed rights in China, as the language of international treaties are transplanted into domestic legislation.

There is an apparent and cruel paradox, however. For the most part, particularly with regard to civil and political rights, the double constitutionalization of human rights in China remains an empty promise. Human rights violations is still epidemic in China.<sup>57</sup> A report of Human Rights in China, for example, pointed to ‘ongoing crackdowns on human rights defenders and their families, arbitrary detentions, forced disappearances, criminalization of the peaceful exercise of fundamental rights and freedoms, and overall tightening of the legal and political noose on civil society space’.<sup>58</sup> Why does China’s progressive commitment to international human rights regime and law often appear to be associated with worse human rights practices at home than otherwise expected?

One can find an explanation that is largely based on the efficacy of international law. International lawyers have long observed that human rights law stands out as an area of international law in which countries have little incentive to police noncompliance with treaties or norms. There is little prospect that international human rights treaties will be enforced against the noncompliance state. There is another explanation. As Oona Hathaway argues, international human rights treaties play the dual roles, namely, the instrumental role and the expressive role. The former creates binding law, whereas the latter is more about ‘position

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<sup>55</sup> Zhang 2014; State Council Information Office 2012.

<sup>56</sup> Xinhua 2017; State Council Information Office 2017.

<sup>57</sup> Amnesty International 2017; Human Rights Watch 2017.

<sup>58</sup> Human Rights in China 2016.

taking'. As such treaties offer rewards for positions rather than for effects, the expressive aspect of treaties serves to relieve the international pressure for change. 'Consequently, treaty ratification may become a substitute for, rather than a spur to, real improvement in human rights practices'. It is such dual roles, Hathaway further argues, that help explain the 'paradoxical patterns of interaction between human rights treaty ratification and human rights practices'.<sup>59</sup>

For political scientists, different national agendas for international political legitimation through human rights treaty ratification matter. Accordingly, the global institutionalization of human rights may have compelled states to sign and ratify international human rights treaties as a matter of international legitimation. However, because of the weak institutional mechanisms provided by international human rights treaties to monitor and enforce the implementation, many governments sign and ratify international human rights treaties not as a serious commitment to universal human rights in practice but rather as a matter of window-dressing. The international legitimacy conferred by treaty ratification often provides a convenient shield for governments to continue their repressive human rights behavior after ratification, as human rights legal regimes remain powerless to stop them.<sup>60</sup>

There are clearly severe limits of the 'civilizing effect' of international human rights regimes on China's human rights policies and behavior. China can claim at best 'a mixed record' of its human rights record.<sup>61</sup> Social and democratic changes are needed to make the acknowledged civil and political rights fully realizable and actually realized in China. It is indisputable, however, that the dialogical relationship between China and the global reach of human rights has demonstrated significantly different dynamics at work. This is not only seen in China's intensified socialization in international human rights discourses and governance through various communicative engagement and in the norm diffusion and internalization in terms of China's grudging acceptance of the universality of human rights. It should also be seen in the entrenched domestic

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<sup>59</sup> Hathaway 2002, 2002-2020.

<sup>60</sup> Hafner-Burton and Tsutsui 2005, 1373-1411; Posner 2014.

<sup>61</sup> Cohen 2009.

human rights discourses as reflected especially in the double constitutionalization of human rights, which has led to wide-ranging judicial and legal reforms. The global reach of human rights 2.0 has therefore inexorably engaged China in the global moral conversation about human rights. In so doing, it has transformed China from an outright pariah state to a visible outlier in global human rights governance. In a morally flat society of states, this transformation has increasingly enabled China to position itself as a morally equal member in the global moral debates on human rights governance issues.

### **China and Human Rights Governance at the UN: Towards the Global Reach 3.0?**

A recent Chatham House report suggests that China is no longer a passive norm-taker in the evolving international human rights norms and institutions. China has firmly and assertively prioritized collective socio-economic or ‘survival’ rights over individual civil and political rights.<sup>62</sup> Similarly, recent literature has increasingly noted the reverse flow of China’s impact on the global governance of human rights and the UN institutions that undertake to defend and safeguard them.<sup>63</sup> A Chinese assessment also claims that China has moved to proactive cooperation at the UN in promoting the institutional reform of the UNCHR and the establishment of the UPR (Universal Periodical Review) under the auspices of the UNHRC.<sup>64</sup> As an enthusiastic supporter of the UN Declaration of the Right to Development in 1986, the Chinese government has more recently used the discourse of human rights linked to development to contest the liberal claims of democracy as a human right.<sup>65</sup>

This notable new activism of China in global human rights governance can hardly be explained by norm diffusion and internalization. Nor is it simply norm contestation or containment. It provides, rather, compelling evidence that Beijing is taking advantage of a common moral language in a global moral conversation to align the interpretation and understanding of international

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<sup>62</sup> Sceat with Breslin 2012, 2.

<sup>63</sup> Luo 2014a; Nathan and Scobell 2009; Sceat with Breslin 2012.

<sup>64</sup> Duan 2010.

<sup>65</sup> State Council Information Office 2016a. For argument of democracy as a human right, see Franck 1992.

human rights closely with China's dominant social and political norms and strategic and economic priorities. The Chinese government is therefore actively 'seeking global argumentative encounters', to borrow Amartya Sen, in shaping the normative and institutional development of global human rights governance.<sup>66</sup> This can best be illustrated by the two empirical cases discussed below.

### ***UNHRC***

The protracted and sometimes heated debates in the negotiations leading to the creation of the the new forty-seven-member UNHRC by the General Assembly Resolution has been well documented. In these global argumentative encounters, China is noted to have worked hard with other like-minded states in shaping the development of the agenda and rules of procedure of the UNHRC.<sup>67</sup> The negotiated outcome in regard to the composition of the Council, including no membership criteria, election by simple majority vote at the General Assembly, size, and the new equitable geographical distribution of seats, aligned unmistakably with China's preferences.<sup>68</sup> The making of the UPR, the UNHRC's flagship mechanism, as a state-led, general, open-ended, and non-condemnatory process, which allows only very limited Non-Governmental Organization (NGO) participation in its proceedings, reflects clearly China's interests. The proposition that the UPR would be conducted in an 'objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner' apparently embodies a coincidence of interests of China and its like-minded states. Further, the agreement that the UPR would 'take into account the level of development and specificities of countries' without prejudice to a state's legal obligations bears evident hallmarks of Chinese influence.<sup>69</sup> The General Assembly Resolution 60/251 affirms in particular that the Universal Periodic Review (UPR)

Must be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation,

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<sup>66</sup> Sen 2009, 99.

<sup>67</sup> See Alston 2006; Luo 2014a.

<sup>68</sup> Foot and Inboden 2016, 241-43; Luo 2014a. See also Ministry of Foreign Affairs, 2005.

<sup>69</sup> UNHRC 2007



with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.<sup>70</sup>

This Chinese activism is markedly different from its earlier approach to human rights diplomacy at the UN in several important aspects. There was no so-called 'hostage politique'<sup>71</sup> to influence the votes of other states. Neither was there any strategy of 'rewards and punishments' in building up a like-minded coalition.<sup>72</sup> Most significantly, China seems to have 'eschewed leadership even on issues considered to be of importance to it, such as socio-economic rights and the right to development [in the newly established UNHCR]'.<sup>73</sup> In the complicated negotiations for establishing UNHCR, China engaged in the politics of contention, contestation, cooperation and compromise in an attempt to 'shape its [the UNHCR] institutions so that they are deferential to states, and shade the norms to fit Chinese priorities'.<sup>74</sup>

China actively campaigned for its election to the Council seat at the General Assembly and was elected to the Council in 2006-2012; and again 2016. Once on the Council, China's voting coincidence with the Afro-Asian majority on human rights at the General Assembly in the early years of the UNHRC (2007-2008) was consistently above 70% in comparison to 48% to 55% for the EU, and less than 30% for the US.<sup>75</sup> Of the 126 resolutions the UNHRC adopted after a vote between 2006 and 2012, China abstained 6 times, but was on the winning side of the vote in 102 of the other 120 resolutions voted upon, which is 85%. It is also noted that there is a pattern of high coincidence of votes between China and other rising powers of the BRICS, three of which, Brazil, India and South Africa, are the so-called 'swing voters' in the UNHRC.<sup>76</sup> At UNHRC, non-Western states

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<sup>70</sup> UNHRC 2007.

<sup>71</sup> Gaer 2010.

<sup>72</sup> Sceat with Breslin 2012, 5; Nathan and Scobell 2009.

<sup>73</sup> Sceat with Breslin 2012, 15.

<sup>74</sup> Nathan and Scobell 2009.

<sup>75</sup> Gowan and Brantner 2008, 4.

<sup>76</sup> Sceat with Breslin 2012, 22-24; Gowan and Brantner 2008, 3, 27;

were said to have ‘pulled their punches’ in questioning peers.<sup>77</sup> In contrast, American representative was noted to have ‘sat in the back taking notes’.<sup>78</sup> China has now participated in two cycles of the UPR in 2009 and 2013 respectively, subjecting China’s human rights policies to the close and critical scrutiny of UNHRC. In the 2013 UPR of China, it was noted that ‘member states submitted 252 recommendations; the PRC government accepted 204 of the recommendations and did not accept 48’.<sup>79</sup> These accepted recommendations cover a broad range of China’s human rights commitments, including those relating to economic, social, and cultural rights as well as civil and political rights. Of the 17 recommendations related to ICCPR ratification made by 29 governments during China’s second UPR in 2013, the Chinese government accepted ten recommendations, which urge Beijing to ‘consider’, ‘take early steps towards’, ‘move towards’, ‘accelerate’, or ‘continue to take steps towards’ ratifying ICCPR.<sup>80</sup> More specifically, Beijing abolished China’s notorious re-education through labor system at the end of 2013, and it pledged more recently that it ‘shall continue to advance related legal preparations and pave the way for ratification of the International Covenant on Civil and Political Rights’ [ICCPR].<sup>81</sup>

## **R2P**

China’s qualified endorsement of R2P can be traced back to the UN World Summit in 2005 and to the Security Council Resolution 1674 in 2006. This endorsement is based on three conditions: 1) That R2P has a narrow remit, which covers only four kinds of massive violations of HR, namely, genocide, war crimes, ethnic cleansing and crime against humanity as specified by the 2005 UN World Summit outcome document; 2) That the UNSC is the sole legitimate authority to sanction the use of military force in humanitarian intervention; and 3) That such intervention be subject to sovereign consent. This endorsement is, however, followed by China’s intensive global argumentative encounters with R2P as an emerging principle to reframe the debate over humanitarian

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<sup>77</sup> Council on Foreign Relations 2012.

<sup>78</sup> Cohen 2009.

<sup>79</sup> Human Rights in China 2016, 2.

<sup>80</sup> Human Rights in China 2016, 16; National Human Rights Action Plan (2016-2020).

<sup>81</sup> State Council Information Office 2016, 24.

intervention at UNSC. It is noted that intense negotiations at the UNSC for resolutions 1706 and 1769 between China and other UNSC members were centred on the use of R2P language in the two resolutions. In the instance of Resolution 1706 on the expanded mandate of UN mission in Sudan, the 'state consent' was eventually included at China's insistence together with R2P. Resolution 1706 became the first resolution where the Security Council applied R2P to a specific country after its general endorsement in April 2006. In the instance of Resolution 1769 on Darfur in 2007, negotiations led to the dropping of explicit R2P language. It cited Resolution 1674 without specific reference to paragraphs 138 and 139 of the UN World Summit outcome document.<sup>82</sup>

Such global argumentative encounters are also found in Beijing's seemingly inconsistent positions at the UN Security Council in regard to resolutions on Libya and Syria. China's support for and acquiesce in the UN-authorized military intervention in Libya, some Chinese scholars and officials have contended, was not based on the invocation of the R2P principle. As the Chinese representative Li Baodong explained immediately after the vote, China cast a vote of abstention for Resolution 1973 in spite of the fact that 'China has serious difficulty with parts of the resolution', as China 'attaches great importance to the relevant position of the 22-member Arab League [and] to the position of African countries and the African Union'.<sup>83</sup> Beijing had had a deep fear that the concept of R2P would be abused by the West behind a veil of moral responsibility in pursuit of their own interests for the purpose of regime change. To Beijing, this fear was actualized, as it watched helplessly when the NATO military intervention authorized by UNSC Resolution 1973 turned into a regime change exercise. Its explicit warning in May 2011 that '[t]here must be no attempt at regime change under the guise of protecting civilians',<sup>84</sup> fell on deaf ears. This Libyan experience helps explain why the Chinese government hardened its position on Syria and stopped using R2P language in the discourse of the Syrian crisis in its official documents.

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<sup>82</sup> Gifkins 2015, 9-10.

<sup>83</sup> Cited in Chen 2016, 692. See also Luo 2014b.

<sup>84</sup> Cited in Chen 2016, 693.

The Libyan intervention and the Syrian crisis have otherwise stimulated China's domestic debate on R2P.<sup>85</sup> It is in 2012 that Ruan Zongze, Vice-President of the China Institute of International Studies, formally proposed, in response to what he calls 'the new interventionism' in Syria, a concept of 'Responsible Protection' as complimentary to the Brazilian proposed concept of 'Responsibility while Protecting'. Among Ruan's proposed criteria for 'responsible protection' are legitimate intention, last resort, proportionality and balance of consequences. Ruan is also firm in his proposal that 'the "protectors" should be responsible for the post-"intervention" and post-"protection" reconstruction of the state concerned'; and 'the United Nations should establish mechanisms of supervision, outcome evaluation and post factum accountability to ensure the means, process, scope and results of "protection"'.<sup>86</sup> A concept of 'creative intervention/participation' was also proposed by Wang Yizhou of Peking University as a guiding principle for new Chinese foreign policy as a rising power.<sup>87</sup>

It is worth mentioning that 'the Chinese government has voted in support of nearly all other R2P-related UN peacekeeping and humanitarian protection missions that contained no threat of regime change, such as those resolutions for Côte d'Ivoire, the Democratic Republic of the Congo and South Sudan'.<sup>88</sup> It is also important to note that R2P language continues to be regularly included in Security Council deliberations and resolutions, which 'demonstrates that R2P is a regular feature of the internal negotiations within the Council' and 'shows that Council members are considering their responses within the remit of R2P'.<sup>89</sup> China may have, perhaps purposively, promoted the securitization of human rights at the Security Council. The Chinese representative at the UNSC Liu Zhenmin urged that 'The Council must consider "R2P" in the broader context of maintaining international peace and security, and must guard against its abuse'.<sup>90</sup> That is to say that purely humanitarian considerations alone such as

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<sup>85</sup> Liu 2015.

<sup>86</sup> Ruan 2012; Garwood-Gower 2015; Chen 2016.

<sup>87</sup> Wang 2011.

<sup>88</sup> Chen 2016, 696.

<sup>89</sup> Gifkins 2015, 4.

<sup>90</sup> Liu 2009.

famine and other natural disaster induced crisis do not necessarily provide sufficient justification to trigger R2P, particularly its third pillar.<sup>91</sup> The fact that R2P interventions endorsed by the Security Council have all been justified by invoking Chapter VII of the UN Charter indicates appreciable convergent thinking among Council members concerning its critical judgment that gross violations of human rights constitute threats to international peace and security.

### **Conclusions**

China has had a complex set of dialogical relationship with the global reach of human rights in the last seventy years. As a revolutionary power, the People's Republic had only tenuous connections with the post-war rights revolution. Beijing lent its moral and material support to the 'revolt against the West' to delegitimize colonialism and imperialism as primary institutions of the society of states in the political struggle of colonial peoples for national self-determination. Denied of membership of the United Nations, however, Beijing was not present at the negotiations for and the creation of two international covenants that constitute the core of the International Bill of Human Rights. Until the late 1980s, the global reach of the post-war human rights system remained latent in the case of China, which remained largely a 'human rights exception', enjoying inexplicable immunity from close international scrutiny of its domestic human rights policies and record.

China's intensive communicative engagement with international human rights regimes was prompted by the domestic crisis of the CCP legitimacy in the wake of its violent military crackdown of the pro-democracy demonstrators in 1989 and when the crumble of the Cold War political and social structures moved human rights to the centre stage of global politics. It is through such dynamic social processes of communicative engagement as socialization, persuasion, shaming and even coercion that human rights norm diffusion and internalization vs. norm disputation and resistance has happened in China. China's apparent commitment to human rights as an ideal is at the same time riddled with ambiguities, complexities and contradictions. A deep chasm exists conspicuously

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<sup>91</sup> Luo 2014b.

between the Chinese government's progressive commitment to international human rights regime and the deteriorating situation in regard to civil and political rights in China. However, such politics of contestation should not obscure a dialectic relationship between disputations of and contestations to the idea and content of human rights and the significant advance and institutionalization of the idea of human rights in China. To the extent that the idea of human rights is now embedded in, shapes, and is shaped by, the practice of human rights in law, politics, and policy making in China, the double constitutionalization of respecting and protecting human rights has made human rights a foundational pillar of the post-revolutionary state. This momentous global reach of human rights is unimaginable in 1989, not to speak of in 1978.

With the transformation of China from a human rights exception and human rights pariah state to an outlier of international human rights governance, China is no longer a missing piece in the global reach of human rights. This represents a significant enlargement of global moral audiences in regard to human rights. This is, however, only half of the story. China's active participation in open public reasoning in the global governance of human rights represents a significant deepening of China's dialogical relationship with the global reach of human rights. This has been made possible in part by China's transformation as 'positioning' discussed above. Equally importantly, it is the creation of a morally flat world, where democratic norm and the norm of equal voice govern moral conversation among states as well as individuals. Together with the emergence of a vibrant and increasingly diverse global public sphere of human rights debate and practice, this has created 'the unprecedented conditions for a new kind of deliberative exchange on some of the most important and contested questions about human rights'.<sup>92</sup> China's participation in and contribution to global argumentative encounters at the UNHRC and on the question of R2P at UNSC, as has been argued, are instructive examples of such deliberative and discursive exchange on the interpretation of and contestation to the idea of human rights, and its institutionalization.

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<sup>92</sup> Goodale 2014, 9.

Understanding and interpreting human rights is inherently contentious in a morally divided world, given that it is the shared understandings of human rights that constitute and delimit their meaning and because the interpretation of human rights 'remains subject to the altering logics of intranational politics and uncertain cultural expectations'.<sup>93</sup> The global reach of human rights understood as advancing rather than perfecting global justice is therefore contingent on the possibility of open public reasoning across cultures and national boundaries in a global moral conversation. Critical engagement 'sans frontières' by invoking distant perspectives is indispensable in checking the plausibility of any ethic claims in the name of human rights and in overcoming parochial reasoning.<sup>94</sup> The global reach of human rights is unlikely to lead to full agreement in terms of global governance of human rights. Yet, 'the art of reasoning based on the concept of human rights, including the freedoms and obligations involved', as Amartya Sen argues, 'is itself ... a contribution to a better world' as a practice of 'government by discussion'.<sup>95</sup>

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<sup>93</sup> Goodale 2014, 14.

<sup>94</sup> Sen 2012, 99-100.

<sup>95</sup> Sen 2012, 97.

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