The Rise of China and International Human Rights Law

*Björn Ahl*

**Abstract:** This study focuses on the Universal Periodic Review of the United Nations Human Rights Council in order to investigate the impact of China’s official human rights position on international human rights discourses. China’s Review, including its National Report, the Chinese Government’s reactions to statements and recommendations on its domestic human rights situation as well as its statements and recommendations on other states under review are investigated in order to find out whether China is able to project successfully its official human rights view on the international arena.

**A. Introduction**

This study takes the People’s Republic of China (‘PRC’) as an example of a ‘new’ player in international relations and investigates the impact of China’s rise on international human rights law. Though the PRC is not new to the international community, it has taken on a new role due to its economical rise and gaining in international power. During the past decade, China’s participation in international regimes has increased significantly. The accession to the WTO in 2001 marked the beginning of a continuous engagement in the field of international trade. China is now a member of 25 human rights treaties, including six core human rights instruments. It participates in the international human rights regime by submitting reports,

---

1 Dr. iur. (Heidelberg), Associate Professor of Chinese Legal Culture, Institute of East Asian Studies, Cologne University. I would like to thank Pilar Czoske for valuable research assistance.


drafting new instruments and engaging in various bilateral human rights dialogues. In the post-Tiananmen period China faced UN censure, Western government sanctions, suspension of co-operation and freezing of loans. In the UN Human Rights Commission, China defeated resolutions by no-action motions but the annual fight over resolutions were an embarrassment for the Chinese Government. This led to a more proactive approach to international human rights in order to eliminate country-specific resolutions, ‘confrontation’ as well as ‘naming and shaming’. China co-operated with other developing countries and formed the Like-Minded Group to propose reforms of human rights monitoring. In general, Beijing’s response to Western human rights criticism was largely successful.

China is not only imagined as the ‘other’ in orientalist and essentializing discourses; as an economically successful and flexible authoritarian state it also constitutes an alternative model of a political system that is fundamentally different from liberal democracies. The development model of the ‘Beijing consensus’ appeals to many developing countries, particularly after the global financial crisis appears to have discredited rule-of-law systems.

As China’s authoritarian political system is built on non-liberal values, there is an intrinsic tension between such a political system and the international human rights regime that assumes a liberal framework.

There is no consensus in international relations studies on the future role of China in the international community. Whereas it is generally believed that an increasingly integrated and institutionalized international order can socialize norm-violating states, China’s behaviour towards the international human rights system has been described in terms of ‘tactical learning’ rather than socialization into international standards. Other authors emphasized the Chinese Government’s ability to impede international human rights scrutiny. It is argued that China resists the normative influence of the international human rights regime by attempting to diminish international human rights pressure or by only erratically making

---

4 R. Peerenboom, China Modernizes: Threat to the West or Model for the Rest?, at 83 (2007).
10 Peerenboom (note 4) at 86.
concessions. Moreover, China is regarded as applying economic and political leverage to reshape international human rights institutions in order to make them suit its own interests.\textsuperscript{14} A recent study has analysed China’s statements on human rights at the United Nations in order to find out whether and how a powerful People’s Republic challenges international human rights norms.\textsuperscript{15} It is found that the Chinese Government manages a consistent counter-discourse on international human rights that focuses on contesting implications of human rights rather than challenging the rights themselves. Though China’s official statements are regarded as being dominated by a self-defensive approach, it is argued that firm and repeated opposition to important implications of human rights will lead to a gradual erosion and dilution of core concepts of international human rights.\textsuperscript{16}

This study focuses on the Universal Periodic Review (‘UPR’) of the United Nations Human Rights Council (‘HRC’) in order to investigate the impact of China’s official human rights position on international human rights discourses. China’s Review, including its National Report, the Chinese Government’s reactions to statements and recommendations on its domestic human rights situation as well as its statements and recommendations on other states under review may reveal whether China is able to project successfully its official human rights view on the international arena by articulating its preferential interpretation of international human rights. The investigation may also discover whether other states support Chinese human rights approaches.

Against the background of doctrinal and sociologically informed models of China’s interaction with international law, the UPR is introduced and its significance for measuring China’s impact on international human rights discussed. Then the study turns to the legal relevance of the UPR and analyses the National Report, statements and recommendations of the PRC Government as well as other activities of China with regard to the development of international human rights.

**B. Models of China’s Interaction with International Law**

China’s normative engagement in international human rights law is closely interconnected with the processes of international law reception, in particular the application of international treaties in municipal law. The PRC Government’s motivation to challenge the liberal human rights order originates primarily in domestic resistance to assimilation of local practices and institutions.

\textsuperscript{14} Inboden/Chen (note 6), at 55.


\textsuperscript{16} Ibid. 331-332.
On a doctrinal level, China’s reception of international law is dealt with a high degree of flexibility. The abstract relationship between international law and municipal law is neither explained in terms of monism nor dualism. Instead, Chinese scholars follow a dialectical model according to which international law and municipal law are separate systems that are infiltrating and supplementing each other rather than conflicting with each other. The Chinese Constitution is silent on the status of public international law in the national legal system. Art 67 (14) of the Constitution provides that the National People’s Congress (‘NPC’) Standing Committee decides on the ratification of international treaties, which implies that treaties have the same rank in domestic law as statutes adopted by the NPC Standing Committee. However, the NPC Standing Committee’s decision and the subsequent publication of the treaty text in the Official Gazette do not have the capacity to allow the administration and the courts to apply treaty provisions directly. Direct application requires either a statutory reference norm or a judicial interpretation of the Supreme People’s Court referring to the relevant international treaty. Reference norms are statutory provisions that provide for the application of specific international treaties within municipal law if certain conditions are fulfilled, e.g. national law contravenes an international treaty obligation. Interpretations of the Supreme People’s Court supplement or adjust statutory reference norms. Apart from explicit references to international law, the domestic legal system is harmonized with international treaties by amending existing laws and regulations or by adopting new legislation. Official statements set out that international treaties can either be implemented by amending and adopting existing laws, enacting new laws or in some cases by directly applying international norms, depending on the area to which they belong. The complex mechanism that controls the application of treaties in China enables state organs to limit the effectiveness of domestic treaty implementation. If, for example, the NPC Standing Committee were to avoid publication of the treaty text in the Official Gazette, the treaty

19 Ahl (note 17), 747-748.
20 Art 142 (2) General Principles of Civil Law of 4 December 1986 as amended by 27 August 2009: “If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.”
would fail to become valid in domestic law. Published treaties would be of no effect at all if no statutory reference provisions were adopted that refer to the treaty and enable direct application of it. Even if there were a reference norm that refers to a treaty, a legally binding judicial interpretation could prevent a court from referring to a treaty. Moreover, reference provisions grant courts wide discretionary power, particularly those that make the prior application of a treaty subject to the condition of a conflict of domestic and international provisions or a loophole in national law.23

The enormous flexibility that is inherent in this approach enables the PRC Government to prove, in relation to other states and international organizations, the domestic implementation of treaty obligations by way of publication of the treaty and reference norms. In case the PRC Government faces criticism of improper implementing an international human rights treaty, it may either argue that the treaty has already automatically become part of the domestic legal system or point to the published treaty text in the Official Gazette or to a reference norm. On the other hand, if a claim is based on an international human rights treaty before a domestic Chinese court, the court can either argue that the preconditions for the application of a reference norm are not fulfilled or that the treaty had already been transformed into domestic law and that only the relevant domestic law provision should apply.24 Judicial and administrative practice is left enough latitude to be able to continue ignoring international obligations. The legal mechanism of international law reception in China suggests that there are local variations and deviation from international standards and practices alongside the general tendency of global convergence in international law. Particularly in the field of human rights, the combination of resistance on the domestic level with efforts to increase the appearance of international human rights compliance on the international level is most evident.25

A sociologically informed perspective has termed this process ‘selective adaptation’ which describes how the interpretation of international rule regimes is mediated by local norms:26 “interpretive communities selectively adapt non-local standards for local application in light

---

23 Ahl (note 17), at 752.
of their own normative perspectives”.

According to this view, the process of selective adaptation is composed of elements of perception, complementarity and legitimacy. Perception of international law determines how local communities interpret and apply international law in the domestic context.

China’s perception of international human rights is related to factors such as historical process, domestic political culture, the one-party system, the concept of international law and international power politics. It is argued that China’s selective compliance with international human rights is based both on domestic and international factors. The Government’s official human rights concept exercises considerable influence on the perception of international human rights in China. Main features of the Chinese human rights concept are the privileging of collective over individual rights, intrinsic hierarchy of rights, subordination of civil and political rights to socio-economic development, contingency of rights on local conditions, primacy of economic growth by stressing subsistence and self-determination as the basic rights upon which all other rights depend.

On a theoretical level, the official state-centred human rights concept is still dominated by Marxist-Leninist ideology. According to the basis-superstructure model, the legislative monopoly of the State, and the instrumental character of law, human rights are not understood as inherent and inalienable rights based on human dignity but as being derived from and granted by the state as well as restricted by the level of economic development.

Complementarity refers to a state’s appearance, intention and capacity to be in compliance with international legal standards; specifically, if and how a state handles discrepancy between non-local and local rules with regard to its structural organization and institutional capacity. In political science literature, China is described as a ‘fragmented’ authoritarian state. Socialist ideology is no longer a defining element, however, the party-state is organised according to Leninist principles of a centralised socialist party dictatorship, a central hierarchy of party organs with strict relations of subordination in all areas of

---

29 P. Potter 2011 (note 26), 57-58.
33 Biukovic (note 26), at 167.
administration, police, judiciary, military, economy and society. The nomenclature system enables the party to control access to all senior leadership positions in state and society, the party system of internal discipline control provides senior party members with de facto immunity from the judicial organs of the state and effective control and manipulation of media contents silences dissent.\textsuperscript{35} This structure of the party-state poses significant limits on certain civil and political rights. For example, there are severe restrictions of freedom of speech. The single-party system must rely for its survival on the manipulation of public opinion in order to silence public dissent from policy decisions of the party leadership, which may otherwise develop into criticism of the system itself. With regard to personal integrity rights such as the right to life, liberty of the person, prohibition of arbitrary detention and torture, the state has a general interest in safeguarding such rights. However, unlawful detention and torture is used as an instrument to discipline dissidents or human rights lawyers.\textsuperscript{36} The party-state will not respect the right to a fair trial in ‘sensitive’ or ‘political’ cases, where the outcomes are predetermined by party organs and then implemented by courts.\textsuperscript{37} Fundamental attributes of China’s political system are only partially compatible with international human rights norms. Hence, China endorses only such human rights that are consistent with its state-centred view on human rights and the international community’s efforts to socialize China into accepting human rights were only successful in those areas, where rights acknowledge the power of the party-state.

Legitimacy relates to the acceptance of international law by local communities and the acceptance of China within the international community.\textsuperscript{38} Legitimacy concerns towards the international community are evident in the PRC Government’s statements that expressly recognize the universality of human rights and present domestic practice as in conformity with international human rights standards.\textsuperscript{39} The yearly publication of China’s ‘Human Rights Record of the United States’ in response to the United States State Department’s Human Rights Report is directed towards both an international and local audience in order to balance human rights criticism that is directed against the PRC.\textsuperscript{40}

\textsuperscript{35} S. Heilmann, Das politische System der Volksrepublik China, at 66 (2004).
\textsuperscript{37} Peerenboom (note 4), 90-99.
\textsuperscript{38} Potter (Note 27), at 160.
C. Universal Periodic Review as an Indicator of China’s Impact on International Human Rights

The Human Rights Council replaced the Human Rights Commission in 2006, after it had been criticised for politicization and selectivity with which it allegedly monitored human rights. The periodic review mechanism, which evaluates regularly the human rights performance of all states, is the most significant change that was introduced to the mandate of the Human Rights Council. The UPR is a peer-based assessment of human rights performance that aims at improving adherence to shared norms, where states give policy recommendations to each other. The Resolution authorizing the establishment of the UPR points out that the review should ensure equal treatment with respect to all states and should be conducted in a co-operative, constructive, non-confrontational and non-politicized manner.

The benchmarks that are used as a basis of the review are a combination of universal and country-specific standards. They include the UN Charter, the Universal Declaration of Human Rights, human rights instruments to which the relevant state is a party, voluntary commitments made by states; international humanitarian law, as far as it is applicable, will be taken into account. The first step in the process of the UPR is the interactive dialogue in the Working Group, during which the state under review presents its national human rights report, replies to questions raised by other states and offers concluding remarks. Before the Working Group session, the national report of the state under review is issued together with a compilation of information contained in the reports of treaty bodies, special procedures and other UN official documents and a summary of other reliable information provided by relevant stakeholders such as NGOs and national human rights institutions. The Working Group adopts a report that is factual and based on the proceedings, reflecting the recommendations of the delegations during the interactive dialogue. States under review will communicate to the Council whether they accept or reject a recommendation. The report of the Working Group is then adopted at the plenary session of the Council. The review process

---

is followed by an implementation phase during which the commitments made by the states and accepted recommendations are implemented. The following review is then used to assess the progress between the two reviews. The first cycle of the UPR was completed in October 2011. About 73 per cent of over 21,350 recommendations made in the first twelve sessions of the UPR were accepted by the states under review, about 15 per cent were rejected and about 12 per cent received an ambiguous answer.\footnote{Statistics available at: http://www.upr-info.org/database/statistics/index.php?cycle=1.}

In the initial discussions on the establishment of the HRC, China was not very active due to its earlier success in diminishing human rights pressure in the Human Rights Commission. Beijing entered the negotiations in order to object membership criteria that held states to particular standards, country-specific approaches to human rights, strong NGO participation and binding follow-up action in the UPR. The Chinese Government attempted to gain control over UN Special Procedures, restricting the human rights advisory body and confidential complaints procedure and supported a redistribution of seats in favour of Asian and African states. China also tried, however unsuccessfully, to introduce a rule that required country-specific resolutions to be sponsored by one third of the HRC and passed by two thirds.

In co-operation with states that share its human rights views, the PRC was successful in resisting the proposal to elect members of the HRC by two thirds of the General Assembly and to have specific membership criteria.\footnote{Inboden/Chen (note 6), at 54.}

The global intergovernmental peer review of the UPR is particular suitable to serve as an indicator measuring the impact of China’s official human rights position on the international human rights order. This is due to the evolutionary, dynamic, open and consensual approach of the review mechanism that relies on positive reinforcements and inducements.\footnote{McMahon/Ascherio (note 43), at 234.} Compared to reporting procedures before human rights treaty bodies, the UPR possesses a stronger interactive element and has more political weight than review by an expert’s body.\footnote{C. Tomuschat, Universal Periodic Review: A New System of International Law with Specific Ground Rules, U. Fastenrath et al. (eds.), From Bilateralism to Community Interest: Essays in Honour of Bruno Simma 610, at 616 (2011).} The open structure of the UPR allows states under review to promote their peculiar interpretations of human rights. States receive immediate feedback from the international community in the form of comments and recommendations, which in turn indicates indifference, support of or opposition to certain interpretations of human rights. Moreover, the response to statements and recommendations of the state under review or the statements and recommendations that the relevant state makes, when other states are under review, are also important indicators.
Such reactions of the state under review can indicate whether a state follows a power-oriented approach that is mainly concerned with avoiding criticism of its own human rights situation. On the other hand, the responses can display a norm-oriented approach that applies a consistent interpretation of human rights or a combination of power-oriented and norm-oriented behaviour.

**D. Legal Relevance of Universal Periodic Review**

As long as China is not in a position to translate its human rights preferences into customary international law or treaty law, it can only continue using international fora to voice its dissenting human rights views. What are possible legal effects of China’s official statements in the UPR framework that challenge the established interpretation of international human rights? The UPR as a non-confrontational mechanism appears to be purely political in nature and it is not clear what legal effects the review can produce. It is argued that when a state accepts a recommendation under the UPR, the relevant state agrees to be assessed on the implementation of the accepted recommendation.\(^5\) On the other hand it is feared that states would undermine their international human rights obligations when they reject recommendations.\(^5\) However, the rejection of a recommendation in the UPR mechanism cannot be interpreted as a withdrawal from the obligation of an international treaty. The rejection of a recommendation only constitutes the objection to the monitoring of a certain obligation under the UPR mechanism.\(^5\) However, China’s permanent and consistent illiberal counter discourse towards established human rights may diminish the possibility that such human rights develop into *jus cogens*.\(^5\)

Given that almost all states participate in the UPR and are represented at ministerial level, documents such as a state’s national report can be treated as evidence of a state’s *opinio juris* on human rights.\(^5\) If the precondition is accepted that clear evidence of *opinio juris* minimizes the requirement of consistent state practice,\(^5\) then the UPR could accelerate the

---


\(^5\) Dominguez-Redondo (note 50), at 703.

\(^5\) Kinzelbach (note 15) 331-332; Potter (note 25), at 711; D. Shelton, Normative Hierarchy in International Law, 100 American Journal of International Law 291 (2006).


forming of new customary law.\textsuperscript{56} If a state accepts a recommendation though there is no corresponding obligation under public international law, the acceptance may be interpreted as a binding unilateral act, which establishes an autonomous obligation of the relevant state.\textsuperscript{57} Since China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), it could be argued that the PRC Government enters into new binding human rights commitments via the UPR if it accepts recommendations that correspond to rights under the ICCPR.

**E. China’s Statements in the Universal Periodic Review**

The review of China was held on 9 February 2009 and the outcome of the review was adopted by the HRC on 11 June 2009. The HRC selected Canada, India and Nigeria as the group of rapporteurs (troika) to facilitate the review of China.\textsuperscript{58} 115 states expressed their intention to participate in the interactive dialog. Whereas the representatives of 60 states could participate in person, 55 states submitted comments and questions via the extranet.\textsuperscript{59}

**I. China’s National Report**

The National Report is the first step in the interactive process. The drafting of the Report is fully under the control of the state under review. On China’s basic position on human rights, the Report noted: “China respects the principle of the universality of human rights and considers that all countries have an obligation to adopt measures continuously to promote and protect human rights in accordance with the purposes and principles of the Charter of the United Nations and the relevant provisions of international human rights instruments, and in the light of their national realities. The international community should respect the principle of the indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development. Given differences in political systems, levels of development and historical and cultural backgrounds, it is natural for countries to have different views on the question of human rights. It is therefore important that countries engage in dialogue and cooperation based on equality and mutual respect in their common endeavour to promote and protect human rights.”\textsuperscript{60} It was further


\textsuperscript{57} Dominguez-Redondo (note 50), at 704.


stated that recommendations by human rights treaty bodies are accepted and implemented “in the light of China’s national realities”. Though these statements accept the universality of rights on an abstract level, they emphasise a relativist position when it comes to the concrete implementation of human rights standards on the domestic level.

The progress in the enjoyment of human rights after China embarked on its reform path in 1978 is linked to economic growth and the achievement of a level of ‘relative prosperity’. With regard to the pending ratification of the ICCPR, which China signed in 1998, it was said that legislative, judicial and administrative reforms are underway to “create the conditions for the early ratification”. In accordance with a Marxist perception of rights, these statements link the level of protection of individual rights to the level of economic development. Further, these statements imply a justification for denying or restricting individual rights.

The presentation of China’s institutional safeguards for human rights was drafted in very general terms. It attempts to give the impression of a multiparty democratic system with independent courts and regional autonomy of ethnic minorities. This section of the National Report elaborated on the system of people’s congresses with competitive elections and direct elections at county and township levels. However, it does not mention that elections at higher levels are indirect elections and that electoral lists are prepared under tight control of the Communist Party. This part of the National Report was drafted in such an unspecific and selective manner that the uninformed reader assumes compliance with international standards of governance. Presenting the constitutional system as complying with universal standards of good governance is aimed at legitimacy building on the international level.

The National Report then turned to economic, social and cultural rights. It stated that the government gives top priority to realizing the rights to subsistence and development. Economic growth and poverty alleviation that meets the poverty reduction target set in the UN Millennium Development Goals (‘MDG’) form the centre of this part. The subsequent section described developments in the areas of the right to work, social security, housing, education and health by referring to new legislation, statistics, policies, plans and strategies that give a very positive account of achievements in those areas. This positive account was complemented by and contrasted with the section on ‘Difficulties and Challenges’, which

61 Ibid, para. 11.
62 Ibid, para. 7.
64 National Report (note 60), para. 13-18.
65 Ibid, para. 19-41.
emphasised imbalances in the development between urban and rural areas, unemployment, underdeveloped social security systems and public health services as well as the shortcomings in the fields of environmental protection, work and food safety. Under the heading ‘Future Objectives’ the PRC Government introduced its National Human Rights Action Plan for 2009-2010 and other programmes and development plans to tackle problems in the areas of economic and social rights.

The section on civil and political rights focused on personal integrity rights such as the right to life, freedom of the person, prohibition of torture and the right to fair trial. It also commented on the freedom of religious belief and the freedom of speech and the ‘information media.’ With regard to the right to life it was highlighted that China controls the application of the death penalty strictly by means of a Supreme People’s Court mandatory review procedure of death penalty cases. The new policy of ‘kill fewer, kill cautiously’ has indeed led to better supervision of death penalty trials and most probably also to a reduction of the number of death sentences. On freedom of the person and prohibition of torture the Report listed new and amended legislation and made very general statements such as that a certain “mechanism of checks and balances can effectively supervise and restrict the exercise of such power” or that the “total number of cases involving the extortion of confession by torture … is on the decline in China”. The report on freedom of religion and freedom of expression only included very general statistical data such as how many followers of different faiths there are in China or how many copies of the Bible have been published. The Report referred only vaguely to political reform, when it mentioned “more extensive citizen participation” or “democracy and the rule of law”. The Report listed the fundamental rights that are enshrined in the Chinese Constitution and referred to “250 laws relating to the protection of human rights” that were enacted by the NPC and its Standing Committee. The only paragraphs that admitted problems in the area of civil and political rights criticised a low level of human rights awareness of local government officials, negligent law enforcement and

---

66 Ibid, para. 80-89.
68 National Report (note 60), para. 90-100.
69 Ibid, para. 42-54.
70 Ibid, para. 55-62.
72 National Report (note 60), para. 46.
73 Ibid, para. 50.
74 Ibid, para. 57 and 58.
75 Ibid, para. 7.
76 Ibid, para. 10.
cases of miscarriage of justice. The PRC Government also made a subsequent statement during the interactive dialogue that expressly linked the guarantee of civil and political rights to democracy, institution building and the rule of law. However, this statement is rather an exception of the approach that generally links infringements of rights to a lack of ‘awareness’ or ‘improper education’ of government officials. Moreover, the report devoted a chapter to the protection of the rights of special groups such as women, children, persons with disabilities and ethnic minorities.

II. China’s Reactions to Recommendations

During the interactive dialogue, 60 states made statements and most of them gave specific recommendations. Whereas ‘Western’ states recognized the overall progress in China’s human rights situation, they also made specific recommendations in areas such as death penalty, torture, administrative and legal reform, enforced disappearances, rights of women and children, rights of ethnic minorities, rights of persons with disabilities, non-discrimination, freedom of expression, media regulations, freedom of religion, trade unions and UN Special procedures. Other states, mainly from the Asian and African regions commended the Chinese Government’s efforts and took a soft approach in their recommendations by either just requesting the continuation of certain policies or the sharing of information.

China issued its first national human rights plan (2009-2010) on 13 April 2009 elaborating on the domestic implementation of international human rights obligations. With regard to civil and political rights, China accepted the recommendation to “create conditions for the early ratification of the ICCPR”, “in accordance with its national realities to proceed with legislative, judicial and administrative reform to create conditions permitting ratification of the ICCPR”, and “analyse the possibility of ratifying the ICCPR”. However, the following recommendations were rejected: to ratify the ICCPR “as quickly as possible and with minimal reservations,” to “state a precise calendar for ratification and adoption of necessary measures,” to ratify the ICCPR “as soon as possible and bring legislation into

77 Ibid, para. 89.
79 Ibid, para. 63-76.
81 Information Office of the State Council of the People’s Republic of China, (note 67).
83 Ibid, (Argentina).
84 Ibid, (Argentina, Brazil, Austria).
85 Ibid, para. 117, 27 (e) (Australia).
86 Ibid, para. 117, 56 (b) (France).
line with its provisions,”“reflect concrete steps towards ratification” or to “release a clear timetable for work towards ICCPR ratification”. With regard to right to life, China accepted the recommendation to “continue to implement the policy of strictly controlling and applying the death penalty in the light of its national realities.” The recommendations by various countries to abolish the death penalty, to reduce the number of crimes to which the death penalty can be imposed and to publish figures on executions, death sentences and the Supreme People’s Court review procedure were all rejected. Yet it is interesting to note, that the PRC Government accepted a recommendation on handling the death penalty although China has not assumed any legal obligations under public international law with respect to the death penalty. China only accepted recommendations that fit into its ‘sequencing argument’ namely that civil and political rights are granted by the state once a certain level of economic development is achieved. All recommendations were rejected that did not express respect for the requirement that the state has to provide those conditions before civil and political rights can be granted.

China accepted the recommendation to “push forward reform of re-education through labour according to its national realities” whereas it rejected all recommendations that requested to abolish re-education through labour. Again, the acceptance depends on whether the recommendation describes the relevant right as conditioned by “natural realities” and gives the Chinese state enough leeway to determine the specific contents of the suggested reform. All other recommendations regarding civil and political rights such as freedom of expression, media regulations, and freedom of religion were rejected. Where China faced severe criticism in the area of political rights, it rejected criticism as ‘politicised’ and attempted to marginalize such states as belonging to a group of ‘few countries that make ill-founded allegations’. However, recommendations on human rights awareness campaigns, technical assistance and advisory services in the field of human rights, training programmes in human

---

87 Ibid, para. 117, 30 (b) (Netherlands).
88 Ibid, para. 117, 83 (g) (New Zealand).
89 Ibid, para. 117, 42 (a) (United Kingdom and Northern Ireland).
90 Ibid, para. 117, No. 30 (Egypt).
91 Ibid, para. 117, 27 (b) (Australia), 86 (b) (Austria), 95 (d) (Brazil), 28 (c) (Canada), 56 (c) (France), 43 (e) (Germany), 96 (a) (Italy), 38 (b) (Mexico), 83 (c) (New Zealand), 31 (b) (c) (Switzerland), 42 (b) (United Kingdom and Northern Ireland).
93 Report of the Working Group (note 58), para. 117, No. 31 (Sudan).
94 Ibid, para. 117, 28 (d) (Canada), 43 (a) (Germany), 82 (e) (Czech Republic).
95 Ibid, para. 117, 27 (d), (e) (Australia), 82 (b) (Czech Republic), 97 (Hungary), 92 (b) (Sweden), 56 (a) (France), 43 (g), (h) (Germany), 96 (b) (Italy).
96 Ibid, para. 60 and 113.
rights for judges, lawyers and prison personnel were accepted.\textsuperscript{97} The acceptance of such recommendations is in line with the tradition of connecting violations of civil and political rights to a low level of ‘human rights awareness’ among government officials and to counter abusive human rights practices by ‘educational measures’ rather than by structural reforms.

In respect of UN Special Procedures, China rejected the recommendation to issue a standing invitation to UN Special Rapporteurs.\textsuperscript{98} However, the recommendation to invite Special Rapporteurs dealing with economic and social rights was accepted.\textsuperscript{99} More general recommendations to support and protect children, women and persons with disabilities were accepted.\textsuperscript{100} However, the recommendations to “analyse the possibility of ratifying the Protocol to Prevent, Suppress and Punish Trafficking of persons”, to adopt specific legislation on domestic violence and to withdraw the reservation to Art. 6 of the Convention on the Rights of the Child (right to life) were rejected.\textsuperscript{101} Recommendations on the rights of ethnic minorities, particular in Tibet, were also rejected.\textsuperscript{102} Recommendations on economic and social rights such as economic and social development in general, access to health and education, social security system, poverty alleviation were all accepted.\textsuperscript{103}

All in all, the PRC Government accepted 42 and rejected 50 recommendations.\textsuperscript{104} The rejected recommendations originated mostly from European or Latin American Governments as well as from Australia and New Zealand.\textsuperscript{105} No recommendations from Asian or African countries were rejected, which fits the general pattern that the acceptance rate between those groups of states are relatively high as they take a soft approach towards recommendations.\textsuperscript{106}

Given that across the board over 70% of recommendations were accepted in the first cycle, China appears to be an exception as it rejected a relatively large number of recommendations.

A large number of rejections could either indicate that the Chinese Government just does not care about the negative international image that is created by rejecting recommendations or

\textsuperscript{97} Ibid, para. 117, No. 7 (Germany, Jordan and United Arab Emirates).
\textsuperscript{98} Ibid, para. 117, 86 (e) (Austria), 27 (d) (Australia), 28 (h) (Canada), 96 (c) (Italy), 81 (b) (Latvia), 30 (c) (Netherlands), 42 (c) (United Kingdom and Northern Ireland).
\textsuperscript{99} Ibid, para. 117, No. 9 (Saudi Arabia).
\textsuperscript{100} Ibid, para. 117, No. 13 (Qatar), No. 14 (Mozambique), No. 15 (Yemen).
\textsuperscript{101} Ibid, para. 117, 84 (a) (Argentina), 79 (c) Finland.
\textsuperscript{102} Ibid, para. 117, 82 (f) (Czech Republic), 83 (e) (New Zealand), 31 (d) (Switzerland).
\textsuperscript{103} Ibid, para. 117, No. 16 (New Zealand), No. 17 (Morocco), No. 18 (Philippines), No. 19 (Zimbabwe).
\textsuperscript{104} Ibid, para. 114 and 117.
\textsuperscript{105} Ibid, Argentina, para. 84 (a); Australia, para. 27 (b), (c), (d), (e), (f), (g); Austria, para. 86 (b), (e); Brazil, para. 95 (b), (c), (d); Canada, para. 28 (c), (d), (e), (f), (g), (h); Czech Republic, para. 82 (a), (b), (c), (d), (e), (f), (g), (h), (i); Finland, para. 79 (a), (c); France, para. 56 (a), (b), (c), (d); Germany, para. 43 (a), (b), (c), (e), (f), (g), (h); Hungary, para. 97 (a); Italy, para. 96 (a), (b), (c); Latvia, para. 81 (b); Mexico, para. 38 (a), (b); Netherlands, para. 30 (b), (c); New Zealand, para. 83 (a), (c), (d), (e), (f), (g); Portugal, para. 85 (b); Sweden, para. 92 (a), (b), (c), (d), (e), (f), (g); Switzerland, para. 31 (a), (b), (c), (d); United Kingdom, para. 42 (a), (b), (d), (c).
\textsuperscript{106} Over 80% of recommendations are accepted within Asia, McMahon/Ascherio at 242.
that it takes the consequences of accepting a recommendation seriously. This is inconsistent with the general trend that states want to be seen as accepting most recommendations.107 A recent study has analysed how states use the UPR by introducing various categories of action levels.108 The action level is indicated by the verbs contained in recommendations. Recommendations that are not directed towards the state under review, request assistance from other states, or require the state under review to share information demand the least effort form the relevant state. Recommendations pointing out continuity in actions or policies, or those that ask the state under review to consider certain changes increase the burden on the state under review. A high action level is linked to recommendations that request specific action and a lesser to those that require action that contains an attenuating or general element. In the first six sessions of the first cycle, over two thirds of recommendations were clearly action oriented.109 In contrast to the assumption that the UPR allows states to go beyond their regional affiliations, the study concludes that “clear regional patterns exist that continue to reflect the polarized nature of the contemporary international community”.110

With regard to action levels, the great majority of recommendations, which were rejected by the PRC Government required unconditional and specific action such as reducing the scope of application of the death penalty and publishing the number of executions.111 All recommendations with low action levels, which required the exchange of information or emphasized the continuity of policies, were accepted or received general responses. Moreover, all of the recommendations from Asian or African states were accepted. With regard to all states participating in the first cycle of the UPR, more than half of the rejections relate to recommendations with the highest action level and about 50% of such recommendations originated in Western European states.112 Insofar, recommendations towards China and China’s reactions to certain action levels of recommendations fit the overall pattern.

III. China’s Statements and Recommendations with regard to Other States under Review

China’s statements on the human rights performance of other countries focused nearly exclusively on economic and social rights and the protection of vulnerable groups as well as economic and social rights of vulnerable groups. In general, civil and political rights were just

107 Ibid, 240.
108 Ibid, 235-36. The first six HRC sessions including 8,116 recommendations under the UPR form the basis of this study.
109 McMahon/Ascherio (note 43), at 238.
110 Ibid, at 245.
112 McMahon/Ascherio (note 43), at 241.
ignored. In most cases, China did not give any recommendations. For example, Belgium was commended on its progress in eradicating poverty and ensuring the right to housing and education as well as on its efforts in promoting gender equality, ensuring rights of migrants and eradicating racial discrimination.\textsuperscript{113} China focused on Germany’s active measures of integration and its anti-discrimination policies.\textsuperscript{114} Estonia was commended on anti-discrimination laws and measures to promote the right to work, rights of children and the elderly. It was recommended to reduce the dropout rate of students.\textsuperscript{115} The PRC Government raised with Western countries gender and equality issues, rights of minorities, racism, intolerance, right to work and health of foreign migrants and minorities. Further, the PRC Government often combined issues of discrimination and economic and social rights such as the question on the access to work of disabled women in France.\textsuperscript{116} Australia is asked about its specific measures adopted to protect indigenous people, foreign immigrants and ethnic minorities from discrimination and against systematic racism in the media and the internet.\textsuperscript{117} Japan was reminded that the Special Rapporteur on contemporary forms of racism had requested the Japanese Government to eliminate racial discrimination and xenophobia.\textsuperscript{118} The PRC Government’s focus on discrimination and minority issues in liberal democracies fits a general pattern in the interactive dialogue between Asian and African countries on the one hand and European countries on the other. Across the board, about 40\% of recommendations to Western European countries related to migrants and over 20\% to minorities.\textsuperscript{119} Moreover, the Chinese Government has an interest to protect overseas Chinese who live in those countries and may be victims of discrimination and racism.

Generally, China welcomed and commented positively on human rights plans of European countries.\textsuperscript{120} National human rights action plans were a focus of interest because China uses its own human rights action plans in order to demonstrate its implementation activities. Moreover, such plans are mainly drafted to implement economic and social rights. China

\textsuperscript{119} McMahon/Ascherio (note 43), at 243.
sometimes recommended states under review to accede to international human rights conventions. Portugal was recommended to accede “as soon as possible” to the International Convention on the Rights of persons with Disabilities.\textsuperscript{121} China also criticised the United States for not accessing to a number of important human rights conventions.\textsuperscript{122} The PRC praised developing countries for their economic development strategies and plans to improve people’s livelihood and focused on gender equality and education issues. The overall tone towards developing countries was very positive. In general, China did not make statements on political rights and did not relate to rights in their function as individual entitlements that can be enforced against the state. In this aspect, Vietnam is an exception as it was recommended to “take active measures” to reduce income disparities and to “continue to help ethnic groups to increase awareness of their rights and responsibilities so that they can improve their living conditions and better enjoy their rights”.\textsuperscript{123} However, the recommendation referred in an unspecific matter to ‘rights’, only the context and the use of ‘rights’ together with ‘responsibilities’ and educational measures suggest that the Chinese Government related to political rights. Interestingly, certain states such as Cuba and Malawi were recommended to share their “experiences and good practices” with regard to the treatment of prisoners and prisons that serve the function of “human improvement centres”.\textsuperscript{124} It is assumed that China makes such recommendations in order to portrait its own ‘education through labour’ camps in a more positive light as forming part of an ‘international practice’.

In terms of action levels of recommendations China took a soft approach towards states regardless of the region the state belongs to. The PRC Government often just asked to share information or to elaborate on a certain aspect on the National Report of the state under review. For example, China asked Belgium “to elaborate on the specific measures for the right to housing and education to be enjoyed equally by the Roma and other minority groups”.\textsuperscript{125} The motivation for such an approach may be the assumption that China will be


\textsuperscript{125} Report of the Working Group, Belgium (note 113), para. 87.
treated equally when the relevant state assesses China’s human rights situation. Another reason is that states often try to make their recommendations easily acceptable for the state under review since a rejected recommendation has no effect at all.\textsuperscript{126} China’s behaviour fits that of other Asian states insofar as the number of recommendations is low compared to the number of recommendations given by the group of Western European states.\textsuperscript{127} One exception in terms of action levels is China’s recommendations to the United States. The PRC Government recommended to “modify the definition of the discrimination in the law to bring it in line with … international standards” and to “quickly close down Guantanamo prison”.\textsuperscript{128} This exception in China’s behaviour in the interactive dialogue of the UPR can be explained by the international factor of the perception of international human rights, namely the view that human rights criticism of China is driven by United States power politics.\textsuperscript{129} Hence, China’s recommendations are grounded in a power-oriented approach towards the United States and deviate from the prevailing norm-oriented behaviour that follows a soft approach on recommendations and emphasises economic and social rights.

**F. Other Activities with Relevance to Development of International Human Rights**

Apart from making statements in various international human rights mechanisms, China has actively participated in promoting the adoption of declarations that place emphasis on its human rights approach. The most prominent example is the Bangkok Declaration of 1993 that was adopted by Asian governments prior to the Vienna World Conference on Human Rights.\textsuperscript{130} China played a leading part in drafting the Declaration. The document presented an Asian interpretation of human rights that challenged the applicability of universal standards of human rights in Asia.\textsuperscript{131} The Declaration criticised the emphasis of civil and political rights, selectivity, politicisation, application of a double standard in human rights implementation and imposition of “incompatible values”. The right to development was regarded as “an

\textsuperscript{126} McMahon/Ascherio (note 43), at 239.
\textsuperscript{127} Ibid, at 237.
\textsuperscript{128} Report of the Working Group, United States (note 122), para. 92.63, 92.157.
\textsuperscript{129} Potter (note 25) at 160.
integral part of fundamental human rights” and economic and social progress as a precondition of democracy and human rights. Though the Declaration accepted the universality of human rights, it stated that human rights “must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds”.

The Chinese government also participated in the promotion of a Declaration on Human Social Responsibilities, the draft of which acknowledged that the “insistence on favouring the rights of the individual leads to conflicts, divisions and interminable disputes” and built on the indivisibility of rights and obligations. After a motion was introduced to the UN Commission on Human Rights in 1999, a UN study on human social responsibilities was undertaken and a Special Rapporteur appointed. The Special Rapporteur presented a pre-draft of a Declaration on Human Social Responsibilities in 2003 and comments of states were invited. The proposed Declaration was eventually rejected in 2005. The EU and other states opposed the Declaration because they saw it as an attempt to make human rights conditional on the performance of duties and responsibilities to the community or the state.

China’s active engagement in the process of the drafting of the Declaration can be seen as an attempt to challenge the central concept of unconditional entitlement to human rights. China is also participating in the resolution presented by the Russian Federation that promotes the respect of traditional values and human rights in the HRC. In the draft resolution of February 2012 it was held that “all international human rights agreements … must be based on, and not contradict, the traditional values of humankind. If this is not the case, they cannot be considered valid.” It is further said that human rights recognition arises from “responsible behaviour” by the individual. The latest resolution on this topic was adopted in September 2012, deciding to further study the possibility of recognition of traditional values within the HRC. The additional study on this subject, published by the elected Human Rights Advisory Committee in December 2012, was presented to the General Assembly.

---

132 Final Declaration of the Regional Meeting for Asia of the World Conference of Human Rights (note 130), para. 8.
136 K. Kinzelbach (Note 15), at 312.
emphasizing that against the background of the universal acceptance human rights traditional values have to be considered in order to promote human rights on a local level, while preventing any form of avoiding the implementation of human rights.\textsuperscript{139}

\textbf{G. Conclusion}

With regard to legal effects of China’s participation in the UPR it is found that rejections of recommendations do not affect the PRC’s legal obligations under human rights treaties. The great majority of rejections concerned areas where the PRC has not yet undertaken treaty obligations such as recommendations to reduce the number of crimes for which the death penalty can be imposed or to establish a moratorium on the death penalty. Yet it is interesting to note that China also accepted recommendations in such areas as the death penalty. This has the effect that in the next review cycle the progress on this accepted recommendation will be assessed. The possibility to accept new human rights standards under the UPR in an \textit{ad hoc} manner works in favour of the socialization in line with international norms. Although China’s move towards a tighter control of death sentences originates in a domestic policy change, linking it with the UPR will make it harder to reverse such domestic policies. On the other hand, insistence on specific interpretations of human rights such as the subordination of political rights to socio-economic development, which in turn is shared by a certain number of other states, may diminish the possibility that certain rights develop into \textit{jus cogens}.

The National Report clearly emphasises economic and social rights and largely ignores civil and political rights or subordinates them to socio-economic development. The Report is drafted along the lines of the official Chinese human rights concept and implicitly interprets international human rights in the sense of this approach. This ‘relativist’ interpretation is grounded in China’s particular perception of human rights and its distinct authoritarian political system. Simultaneously, the Report also meets the need of legitimacy building by pointing to the universality of human rights, international exchange and co-operation. It also gives a general account of institutional structures and practices, which appear to comply with international standards of good government. Considering the aspect of legitimacy, the PRC Government is also obliged to embrace a universalistic view and present the situation on the ground as complying with established international human rights standards. China’s influence is also reflected in the change of tone of most statements and recommendations. Most countries do not openly confront the Chinese Government on its interpretation of human rights.\textsuperscript{140} Some states even echo Chinese political concepts such as

\textsuperscript{139} UN Human Rights Council, 22nd session, Agenda Items 3 and 5, UN doc. A/HRC/22/71(2012).

\textsuperscript{140} Kinzelbach (Note 15), at 332.
that of a “harmonious society”. The fact that China faces less direct criticism enables it to build a coherent counter-discourse as a basis of challenging international human rights norms. Similar to the National Report, the interactive dialogue reflects the official state-centred human rights perspective that regards civil and political rights as conditioned on economic development.

China takes a soft approach in recommendations to other states under review regardless of the region the state belongs to. The PRC Government often just asks to share information or to elaborate on a certain issue. Statements and recommendations focus almost exclusively on economic and social rights. In general, China’s human rights criticism towards other states is guided by a norm-oriented approach that is consistent with its official human rights view. An exceptional case is the review of the United States, where China followed a power-oriented approach and made ‘hard’ recommendations at the highest action level.

---