China and the Global Reach of Human Rights
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Abstract
This article examines the complex dialogical relationship between China and the global reach of human rights. It charts the transformation of China from a human rights exception and a human rights pariah state to an active participant in, and shaper of, global human rights governance. It looks at such transformation as dynamic social and political processes full of contradictions and the negotiated outcome of China’s communicative engagement with “moral globalization” in a world morally divided on the meaning of human rights. It contends that the global reach of human rights understood as advancing rather than perfecting global justice will always remain contentious, as it is contingent on the possibility of open public reasoning across cultures and national boundaries in a global moral conversation. It also argues that China has resourcefully used the idiom of human rights for two specific purposes. One is to justify and rationalize its “developmental relativism” as an excuse for practices that condone continued political repression in China; the other is to internalize politics of contestation within the institutions of global human rights governance by shifting the centre of gravity of both the normative debate and the practical application of human rights.

Keywords: China; global reach of human rights; moral globalization; global human rights governance; norm contestation; political legitimation

It is generally acknowledged that China has had a difficult, strained and often contentious relationship with the global governance of human rights. A key factor in this is its generally poor, and now deteriorating, human rights record in domestic practices.¹ Yet, it is also increasingly accepted that China is no longer just a norm taker; it has become increasingly influential and even assertive in shaping the global normative order of human rights to ensure a better fit with...
China’s own domestic and international preferences. There is a further 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 human rights rhetoric is omnipresent in Chinese official discourse. On the other, such omnipresence has not been matched by an improved record of political and civil rights in China. Ratifications of international treaties seem to have had only a limited, if not entirely negligible, impact on human rights practices within China.

This article grapples with this contentious and paradoxical relationship between China and the global governance of human rights. It offers a different analytical perspective, which is not principally focussed either on measuring any progress in terms of China’s compliance using such metrics as state ratification of conventions, or on evaluating China’s compliance to human rights treaty obligations through norm diffusion/cascade 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 normative and institutional dynamic.

The critical question to be addressed in this article is, accordingly, why and how China matters in the ongoing “moral globalization” in a world morally divided on the meaning of human rights. This entails getting beyond the omnipresence of human rights rhetoric to examine China’s communicative engagement with human rights both as social and political processes of legitimation and as moral concerns on a global scale. For this purpose, this article charts the transformation of China from a human rights exception and an outright human rights pariah state to a human rights outlier first and then an active participant in global human rights governance. It looks at this transformation as both the dynamic processes and the negotiated outcome of such communicative engagement. It also contends that China has resourcefully used the idiom of human rights to internalize politics of contestation within the institutions of global human rights governance by shifting the centre of gravity of both the normative debate and the practical application of human rights. It argues that the global reach of human rights understood as advancing rather than perfecting global justice will always remain contentious, as it is contingent on the possibility of open public reasoning across cultures and national boundaries in a global moral conversation.

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, or because of a materialist

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2 See Nathan and Scobell 2009; Sceat with Breslin 2012; Kinzelbach 2014; Foot and Iboden 2016; Worden 2017.
3 Kent 1999; Cohen, Jerome, and Gwertzman 2009; Ahl 2015.
5 Subedi 2015.
link between level of development and human rights.⁶ We also offer this article as an empirical contribution to both constructivist work on norm diffusion⁷ 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.⁸

**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” in the second half of the 20th century.⁹ Although the UDHR embodies only “an ethical assertion – not a proposition about what is already legally guaranteed,”¹⁰ it did outline a “common standard of achievement” for the future of human rights, which has provided “the cornerstone of a burgeoning international human rights regime.”¹¹ As Jack Donnelly states, “The decades following the Second World War 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.”¹²

This “extensive body” includes, among others, the International Bill of Human Rights, which comprises the UDHR in 1948, the International Covenant of Political and Civil Rights (ICPCR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR), both in 1966. The global institutionalization of human rights, a recent study argues, “signals a fundamental shift in the structure of international society.”¹³ 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.”¹⁴

There is a revolutionary dimension of the global reach of human rights 1.0. The potent force of the “rights revolution” for the transformation of post-war international society was most compellingly demonstrated and exploited by “the revolt against the West.”¹⁵ Not only did the acknowledgement and acceptance of human and racial equality discredit the old standard of

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⁶ Peerenboom 2005.
⁷ Risse and Sikkink 1999; Reus-Smit 2011.
⁹ Sunstein 1990.
¹⁰ Sen 2009, 359.
¹¹ Doyle and Gardner 2003, 2.
¹³ Hafner-Burton and Tsutsui 2005, 1374.
¹⁴ Wight 1977, 153.
“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 therefore provided moral resources for the construction of a global sovereign order based on the principles of self-determination and sovereign equality. It was 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.” The revolt against the West in both normative and political terms is constitutive of the global reach of human rights 1.0 in a pluralist global sovereign order.

The Cold War as a systemic factor had a paradoxical impact on the global reach of human rights 1.0. Global rivalry between the United States and the former Soviet Union overshadowed and politicized human rights issues. Their pre-occupation with ideological conflict and national security state practices contributed to extensive violations of human rights, making the call for states to live up to respecting universal rights no more than an “organized hypocrisy.” At the same time, the legalization of human rights norms took a decisive step forward in 1976, when the two international human rights covenants – the ICCPR and the ICESCR, which codify the content of the UDHR – came into force. A critical discourse of human rights was sustained otherwise by the emergence of human rights international non-governmental organizations 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 its introduction into US foreign policy in the late 1970s, human rights became integral to and instrumental in the foreign policy of Western states.

China had rather tenuous relations with the global reach of human rights 1.0. It is widely noted that P.C. Chang, a representative of the Republic of China, was one of “the two intellectual giants of the [UN Human Rights] Commission” responsible for the drafting of the UDHR. 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. In as much as human rights was instrumental in the deconstruction of

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16 Reus-Smit 2011.
17 Foot 2010, 455.
18 Dunne and Hanson 2016, 47.
19 Foot 2010; Snyder 2011.
20 Forsythe 2012, 317.
21 Krumbein 2015, 334.
colonialism and racism, Revolutionary China provided moral and material support for “the revolt against the West” by the colonial peoples to assert their rights of self-determination and for national independence 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.\textsuperscript{22} China’s human rights advocacy in the 1960s is probably best exemplified by a statement issued by Chairman Mao Zedong 毛泽东 shortly after his meeting with American civil rights leader Robert Williams in Beijing in August 1963, when 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 practised by US imperialism and to support the American negroes in their struggle against racial discrimination.\textsuperscript{23}

China remained, nevertheless, marginal at best to the global reach of human rights 1.0 for three good reasons. First, the People’s Republic of China (PRC) was not a member of the United Nations until 1971. It was therefore not party to the decades-long 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 PRC to the UDHR and compelled its participation in human rights governance at the UN, China’s active engagement with the United Nations Commission on Human Rights (UNCHR) came only in 1982, well after China’s launch of economic reform and opening. This engagement, it is worth noting, did lead China to signing and ratifying seven UN human rights conventions, including the Convention against Torture. Third, even in the 1980s, China continued to “enjoy an inexplicable immunity” from close international scrutiny and condemnation of its human rights policies, in spite of international awareness of the human rights atrocities committed during the Cultural Revolution.\textsuperscript{24} It “remained conspicuously absent from the debates in the United States and Europe which led to the incorporation of human rights concerns in foreign policy,” notwithstanding the West’s full knowledge of Beijing’s suppression of the “democracy wall” movement in 1979.\textsuperscript{25} The People’s Republic was deemed the “human rights exception.”\textsuperscript{26}

\textbf{China and the Global Reach of Human Rights 2.0}

The crumbling of the social and political structure of the Cold War and the collapse of Soviet power in the early 1990s saw a historically unprecedented convergence of liberal power and principle. It was 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

\begin{thebibliography}{9}
\bibitem{Nathan} Nathan 1994, 624–25.
\bibitem{Mao} Mao 1963.
\bibitem{Cohen} Cohen, Roberta 1987, 450
\bibitem{Ibid.} Ibid., 472.
\bibitem{Ibid} Ibid.
\end{thebibliography}
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.”

Emblematic of the global reach of human rights 2.0 is the claim that “from the early 1990s on, the logics and expectations of human rights coalesced into what might be called the world’s only supernormativity.”

Also emblematic are provocative claims that universal human rights has become a new standard of “civilization” in post-Cold War international society. The revival of that colonial-era term suggests that human rights is a standard generated by the Western core, and imposed on the periphery.

The global reach of human rights 2.0 is otherwise marked by “a new, emerging global logic of legitimacy,” albeit contested, in two important ways. One is that international human rights norms are increasingly socialized and internalized in domestic practice, which “link[s] national and international legitimacy to an inclusive, positive model of civilized behaviour.” Human rights, Charles Beitz asserts, plays “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.”

The other is that this new global logic of legitimacy has changed what is understood by the term “state sovereignty.” A state’s exercise of sovereignty is increasingly seen as 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.” Human rights has therefore legitimized, or has been used to legitimize, a range of coercive intervention activities, although “an uneasy juxtaposition of state sovereignty with ideas of a universal moral order” continues unabated.

The global reach of human rights 2.0 has a notable thrust, which has been regrettably neglected in the existing literature. The rights revolution since 1948 has gradually created the norm of equal voice. In international politics, the creation of a morally flat world starts with the democratic revolution enforcing the principle of self-determination, which accords the same sovereign and moral quality to states, small and large, weak and powerful, North and South, irrespective of regime types. The ongoing battles for racial, gender and sexuality-based

27 Henkin 1990.
28 Makau Mutua, as quoted in Goodale 2014, 5.
29 Goodale 2014, 6.
32 Risse and Sikkink 1999.
34 Beitz 2001, 269.
35 Bull 1977, 80.
36 Dunne and Hanson 2016, 44.
equality across the globe aim at creating a rule of equal moral standing as the
default setting for every global conversation conducted on ethical matters.\footnote{Ignatieff 2017, 5–6.}
Such a democratic norm of equality, Michael Ignatieff asserts, “also governs
moral conversation when individuals, faiths, culture and nations that are nonde-
mocratic 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.”\footnote{Ibid., 12.}

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
in 1978 put domestic legal reform at the top of its agenda. It was, however, the
Chinese government’s violent crackdown on pro-democracy demonstrators on
\textbf{Tiananmen Square in June 1989} that made China a target of the new liberal
standard of “civilization” campaign in the 1990s. \textcolor{red}{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 unsurprisingly seen as a crucial missing piece in the global reach of human rights 2.0.}

In the wake of the Tiananmen military crackdown, the Chinese government
developed a sophisticated strategy and devoted considerable diplomatic resources
to countering attempts at stigmatizing China as a human rights pariah state 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 the UNCHR. \textcolor{red}{The aim was to prevent \textbf{the UNCHR from passing, or even voting on, Western-sponsored resolutions to single out the PRC for censure as part of a naming and shaming strategy.}\footnote{Nathan and Scobell 2009.} In addition to the hard battle fought in Geneva, Beijing issued its first ever \textbf{White Paper on human rights in 1991} as part of its public diplomacy. This was Beijing’s first substantive communicative engagement with the global reach of human rights 2.0. Intriguingly, the White Paper affirms that “It has been a long-
cherished ideal of mankind to enjoy human rights in the full sense of the term.” It
also states explicitly that Beijing 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.”\footnote{State Council Information Office 1991.}

The White Paper also establishes a hierarchy of human rights. \textcolor{red}{The right to subs-
sistence, 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

\begin{thebibliography}{9}
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\item Ignatieff 2017, 5–6.
\item Ibid., 12.
\item Nathan and Scobell 2009.
\item State Council Information Office 1991.
\end{thebibliography}
on the other, that is embedded in the 1966 Covenants. 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.” One of the “important innovations” in this argument is to link human rights to development. This Chinese “developmental relativism” skilfully exploits the dichotomy embedded in the two keystone international covenants of human rights. It has been readily used ever since by Beijing to justify its denial of civil and political rights in the name of long-term developmental imperatives.

China’s multidimensional communicative engagement with the global reach of human rights has otherwise two additional notable features. One is that starting in the 1990s, the Chinese government entered into bilateral human rights dialogues with leading Western governments critical of China’s human rights policies. These dialogues aimed at fending off international criticisms and promoting an image of a cooperative Chinese government concerned about improving human rights in China. They became so important in Chinese foreign policy that the Department of International Organizations and Conferences of the Ministry of Foreign Affairs was once dubbed the “Department of Human Rights Dialogues.” A climactic moment of this bilateral communicative engagement was the unrehearsed public debates between President Bill Clinton and President Jiang Zemin during a 70-minute long press conference in Beijing which was televised live in June 1998. During the conference, President Clinton condemned the violent crackdown on Tiananmen Square and the two leaders exchanged views on Tibet and the Dalai Lama, and on individual freedom.

The other is that in 1998, as part of China’s counter-stigmatization strategy, Beijing began to publish “The human rights record of the United States” regularly as a counter-attack on the United States for singling out China for censure in its annual “Country reports on human rights practices.” “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 country reports, 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.”

The Chinese government also made an attempt to shape the agenda of the UN-sponsored World Conference on Human Rights that was to take place in

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41 Subedi 2015, 438–39. See also Foot 2010.
43 Kent 1999.
44 See, e.g., State Council Information Office 2016.
46 Kinzelbach 2014, 11.
47 Poole 1998; Broder 1998.
Vienna in June 1993. It managed to gain broad support from the Asian countries represented at the regional preparatory meeting in Bangkok for its principled position on human rights. Such principles included national sovereignty and non-interference of internal affairs, non-selectivity, cultural particularism, and the priority of economic and social rights over civil and political rights encompassed in the notion of a right to development. These principles subsequently found their way into the Vienna Declaration and Program of Action of the World Conference on Human Rights in 1993. It is worth noting that the Vienna Declaration and Programme of Action reaffirmed that “all human rights are universal, indivisible and interdependent and interrelated,” and “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

Beijing’s championing of the second and third generation of rights in the 1990s coincided with, contributed to, and arguably also constituted, what Mary Robinson and Paul Hunt call “a quiet revolution” in the global reach of human rights 2.0, which largely ends the debates about the hierarchy of human rights. As Robinson and Hunt argue, “The traditional focus on civil and political rights – the prohibition of torture, the right to a fair trial, freedom of speech – has been broadened to include economic, social and cultural rights, such as the human rights to education, food, shelter, and the highest attainable standard of health.”

The global reach of human rights 2.0 can boast two triumphant moments domestically in China. The first came when the Chinese government moved to sign and ratify two key components of the International Bill of Human Rights. Beijing signed the ICESCR in 1997 and ratified it in 2001; it signed the ICPCR in 1998, although this has yet to be ratified. 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. The second moment was in September 1997, when “respecting and protecting human rights” appeared for the first time as one of the tasks of China’s political reform announced by Jiang Zemin in his report to the Chinese Communist Party (CCP) Congress. This led to the “constitutionalization” of human rights in China in 2004, with the amendment to Article 33 of the Chinese Constitution which stipulates unequivocally that “The State respects and safeguards human rights.”

49 Quoted in Richardson 2015, 411–12.
50 For the controversy concerning an unofficial Chinese translation of the two covenants, which Beijing has allegedly embraced but which is said to differ substantively from the UNGA-approved document, see Seymour and Wong 2015.
51 Saich 2000, 216.
In 2007.\textsuperscript{53} In so doing, Beijing moved appreciably to a “negotiated universalist” position on human rights.\textsuperscript{54}

With such a double “constitutionalization” of human rights, both ethical claims and moral propositions embodied in human rights have now been constitutionally recognized in China. Politically and legally, the double constitutionalization legitimizes judicial reforms and serves as grounds for legislation.\textsuperscript{55} Beijing has since embarked on a legalization route of human rights protection in China. A recent White Paper published in 2017, “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”; it has even “enacted the Anti-Domestic Violence Law.”\textsuperscript{56} Human rights, in other words, have moved in part from ethical claims to legally guaranteed rights in China, as the language of international treaties is 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 are still prevalent in China.\textsuperscript{57} A report by Human Rights in China, for example, points 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.”\textsuperscript{58} Mass arbitrary detention of more than one million Uyghurs and other Muslims in Xinjiang has drawn international condemnation.\textsuperscript{59} Why does China’s seemingly progressive commitment to international human rights regimes and law often appear to be associated with worse human rights practices at home than otherwise expected?

One explanation is 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. Additionally, as Oona Hathaway argues, international human rights treaties play both instrumental and expressive roles.\textsuperscript{60} The former creates
binding law, whereas the latter is more about “position 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.”

For political scientists, the explanation is to be found in different national agendas for international political legitimation through human rights treaty ratification. 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 to monitor and enforce 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 behaviour after ratification, as human rights legal regimes remain powerless to stop them.

There are undoubtedly severe limits to the “civilizing effect” of international human rights regimes on China’s human rights policies and behaviour. Beijing has clearly exploited to its advantage the expressive role of international human rights treaty ratification for the purpose of international legitimation. It is normatively significant, however, that domestic human rights discourses have been entrenched in China by the double constitutionalization of human rights, as the global reach of human rights 2.0 has 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 enabled China to position itself as an equal member in the open public reasoning 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. Similarly, recent literature has increasingly noted the reverse flow of China’s influence and impact on the global governance of human rights and the UN institutions that undertake to defend

63 Sceat with Breslin 2012, 2.
and safeguard them. A Chinese assessment contends, for example, that China has moved towards proactive cooperation at the UN in promoting the institutional reform of the UNCHR and the establishment of Universal Periodical Review (UPR). A recent study claims that China has been actively “remolding the international human rights norms.”

This notable new activism by 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 human rights closely with China’s dominant social and political norms and strategic and economic priorities. The Chinese government is, in other words, actively “seeking global argumentative encounters,” to borrow from Amartya Sen, in shaping the normative and institutional development of global human rights governance and in internalizing politics of contestation within the institution of human rights. China’s active participation in such public reasoning on human rights can best be illustrated by the two empirical cases discussed below.

United Nations Human Rights Council (UNHRC)

The protracted and sometimes heated debates in the negotiations leading to the creation of the new 47-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 at shaping the development of the agenda and rules of procedure of the UNHRC. The negotiated outcome in regard to the composition of the Council, including no strict 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. 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 NGO participation in its proceedings, clearly reflects 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 the LMG 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. The General Assembly Resolution 60/251 also affirms in particular that
the UPR “must be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, 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.”

This activism, though, is markedly different from China’s earlier approach to human rights diplomacy at the UN in several important aspects. In the complicated negotiations for establishing the UNHRC, China engaged in the politics of contention, contestation, cooperation and compromise in an attempt to “shape its institutions so that they are deferential to states, and shade the norms to fit Chinese priorities.” There was, however, no so-called “hostage politique” to influence the votes of other states. Neither was there any strategy of “rewards and punishments” in building up a like-minded coalition. 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,” as the Chinese diplomats can sign on to the vocal positions that other LMG countries often take and “have others play this game” in the UNHRC.

China actively campaigned for a seat on the Council at the General Assembly and was duly elected in 2006–2012, and again in 2016. Once on the Council, China’s voting alignment with the Afro-Asian majority on human rights in the early years of the UNHRC (2007–2008) was consistently above 70 per cent, in comparison to 48 per cent to 55 per cent for the EU, and less than 30 per cent for the US. China abstained six times from the votes that passed 126 resolutions adopted by the UNHRC between 2005 and 2012, but was on the winning side of 102 out of another 120 resolutions voted upon, which is 85 per cent. It is also noted that there is a pattern of high coincidence in voting between China and other rising powers of the BRICS, three of which, Brazil, India and South Africa, are “swing voters” in the UNHRC. A 2017 Human Rights Watch report notes in particular that, “At the June 2017 session of UNHRC, China proposed a resolution asserting the importance of development in human rights; it was adopted by a vote of 30 to 13.” In contrast, the American representative was noted to have “sat in the back taking notes.”

Responsibility to protect (R2P)

China participated fully in the debate and deliberations at both the United Nations Security Council (UNSC) and the General Assembly leading to the

70 Ibid.
71 Nathan and Scobell 2009.
72 Gaer 2010.
73 Sceat with Breslin 2012, 5; Nathan and Scobell 2009.
75 Gowan and Brantner 2008, 4.
76 Sceat with Breslin 2012, 22–24; Gowan and Brantner 2008, 3, 27.
77 Human Rights Watch 2017b.
78 Cohen, Jerome, and Gwertzman 2009.
production of the World Summit Outcome Document in 2005 with references to R2P in paragraphs 138 and 139. Former Chinese vice-premier, Qian Qichen 钱其琛, dubbed China’s “diplomatic godfather,” was a member of the UN High-Level Panel on Threats, Challenges and Change appointed by Secretary-General Kofi Annan in November 2003. China’s quick adoption of the World Summit Outcome Document and its qualified endorsement of R2P were sometimes attributed in part to his influence.79 China’s commitment to R2P was reaffirmed when it voted for Security Council Resolution 1674 on the protection of civilians in armed conflict. Although there remains scepticism on the part of China that R2P may be “old neo-interventionist wine in a new bottle,” particularly because of its sanction of the use of military force against a sovereign state, officially, R2P is seen as a progressive concept because it is regarded as an effective delegitimation of the humanitarian intervention allegedly abused by Western powers.80 The Chinese government remains, nevertheless, wary of preventive humanitarian militarism or military humanitarianism, as practised by liberal internationalism in the 1990s.81 Not surprisingly, perhaps, as a cautious yet engaged state, China has been seen as conservative in its interpretation of R2P, as it “has been particularly vocal in placing emphasis on the preventive pillar 1, has sought to strictly limit the notion of R2P’s application to cases that can be identified as relating to the four crimes [i.e. genocide, war crimes, ethnic cleansing and crimes against humanity], and has worked hard to reinforce the idea that there must be host state or regional state consent.”82 Further, “Beijing is adamantly averse to non-consensual military intervention, even when state leaders abet or are themselves the perpetrators of mass atrocities.”83

China’s active participation in articulating and refining the concept/principle of R2P is sometimes regarded as “norm containment” tactics aimed at “deconstructing R2P to make it compatible with the normative core of its foreign policy”84 and “circumscribing the concept’s application.”85 These arguments are, however, problematic as they assume that R2P is already accepted as an institutionalized norm, rather than just as a principle that continues to be subject to a complex ongoing process of political legitimation; they also obscure the inherently contested nature of the application of R2P in practice. They cast China at best as an outlier in the normative debate about R2P and its political legitimation, and at worst, as a potential “spoiler” in the operationalization of R2P.

To the extent that the articulation and development of R2P “invites controversy during its institutionalization and implementation and contestation over

81 Liu 2012; Luo 2014b.
82 Foot 2016, 937. See also Liu 2015.
83 Teitt 2008, 18.
84 Prantl and Nakano 2011, 214
85 Chen 2016, 689.
its meaning,” China has proactively sought global argumentative encounters and public reasoning as an engaged actor rather than an outlier in this debate. Sovereignty as responsibility (an idea of sovereignty that emphasizes the protective duties of states), Chinese scholars argue, is not incompatible with Chinese tradition and culture. The idea of *jia tianxia* 家天下, for example, posits “that the whole world under the Heaven is a family with the Emperor at its centre, behaving like a father with the responsibility to protect his own people, the governed.” It is, therefore, perhaps not surprising that Beijing has always emphasized the first two pillars of the R2P mandate, i.e. the state’s responsibility to protect its own citizens and the responsibility of the international community to encourage and assist the state to fulfil that responsibility. Beijing further insists that “the best form of protection was prevention,” and “International society should assist the states concerned with developing requisite capacities and attach importance to conflict-prevention strategies.”

It is true that this focus on the preventive and state capacity-building aspects of R2P helps to reconcile the inherent contradictions between R2P and China’s traditional position on state sovereignty and non-interference in internal affairs, by emphasizing that the “government of a given state bears the primary responsibility for protecting its citizens.” Behind such an interpretation of R2P and public reasoning, however, lie deeply held beliefs in Beijing about “the relationship between state capacity, social stability, and humanitarian crises” and “a causal relationship between development and peace,” which find broad resonance among regional states in the Asia-Pacific and the UN membership. These beliefs, Rosemary Foot argues, “are sufficiently strong to sustain an approach to R2P that will overwhelmingly focus attention on economic, longer-term forms of preventive action rather than on the building of human rights-related institutions.”

The most illustrative of China’s global argumentative encounters with regard to R2P are perhaps found in Beijing’s seemingly inconsistent positions on the UNSC resolutions in regard to Libya and Syria. Beijing has always been deeply uneasy about the coercive intervention, with the use of military force against a sovereign state, implied in Pillar 3 of R2P, although it does not contest its principle. Beijing had a deep fear that the concept of R2P might be abused by the West behind a veil of moral responsibility in pursuit of its own interests, and in the case of Libya, for the purpose of regime change. In spite of such fear, Beijing voted for the UNSC Resolution 1970, explicitly invoking the R2P language, and abstained from the UNSC Resolution 1973, thus acquiescing in the UN-authorized military intervention in Libya in 2011. Whether China had “buyer’s remorse” when the NATO military intervention authorized by the

86 Foot 2016, 943.
87 Zhu 2013, 106.
88 Chen 2016, 689.
89 Foot 2016, 937.
90 Ibid., 941–42. See also Teitt 2016.
91 Foot 2016, 932.
UNSC turned into a regime change exercise is a moot point. Nevertheless, the sense of “deception and betrayal by Western countries,” Chinese scholars argue, “has tested Chinese officials and academics’ support for R2P.”92 Beijing stopped using the R2P language in its official discourse on the Syrian crisis and hardened its position on Syria. Beijing also floated the idea of “responsible protection” underpinned by four criteria, namely, legitimate intention, last resort, proportionality and balance of consequences, and with an emphasis on protectors’ responsibility for post-intervention and post-protection reconstruction of the state concerned.93 At the UNSC, Chinese representatives articulated strong opposition to “military intervention under the pretext of humanitarianism” and “externally imposed solution[s] aimed at forcing regime change.”94 Beijing did not hesitate to use its veto successively on draft resolutions on Syria to draw a firm line against non-consensual military intervention and to reframe regime change “as the illegitimate activity of a few powerful states against a weaker party,” rather than a positive goal, thus delegitimizing the R2P intervention purported to effect regime change.95 As is persuasively argued, “China does not seek to ‘rewrite the rules’ regarding intervention; however, it does seek to draw a line demarcating UN Security Council-authorized intervention from imposed regime change. This stance bolsters China’s position as a leading player among other developing states and rising powers, which share similar misgivings on this matter.”96

Conclusion

China is no longer a missing piece in the global reach of human rights. 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 policymaking in China, the double constitutionalization of human rights has made human rights a foundational pillar of China as a post-revolutionary state. This is unlikely to be reversed even with the return of some human rights repression practices under the leadership of Xi Jinping 习近平. This momentous global reach of human rights would have been unimaginable in 1989, not to speak of in 1978. This inclusion of China in the “moral globalization” 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 the creation of a morally flat world, where the democratic norm and the norm of equal voice govern moral

92 Liu and Zhang 2014, 418.
93 Ruan 2012; Garwood-Gowers 2015.
94 Morris 2013, 1276.
95 Fung 2018, 693, 700.
96 Ibid., 705.
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.” China’s participation in and contribution to global argumentative encounters at the UNHRC and on the question of R2P at the UNSC are instructive examples of such deliberative and discursive exchange on the interpretation of and contestation to the idea of human rights – and its institutionalization. Such argumentative encounters should not be viewed as just a rearguard action designed to undermine global human rights governance, but rather, in the words of Gareth Evans, as “an effort to assume co-ownership of it.”

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.” 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. In such a conversation, critical engagement sans frontières by invoking distant and different perspectives is indispensable in checking the plausibility of any ethical claims in the name of human rights and in overcoming parochial reasoning. The global reach of human rights is unlikely to lead to full agreement in terms of global governance of human rights in this morally divided world. Yet, “the art of reasoning based on the concept of human rights, including the freedoms and obligations involved,” as Amatya Sen argues, “is itself … a contribution to a better world” as a practice of “government by discussion.”

The Chinese government has effectively exploited the distinction between the civil and political rights long favoured and promoted by the West, and the economic, social and cultural rights more favoured among authoritarian and developing countries. It has done this with a considerable degree of success, not only to defend itself but also to shift the centre of gravity of both the normative debate and the practical application of human rights. In this way, China has resourcefully used the idiom of human rights to justify and rationalize its “developmental relativism” as an excuse for practices that condone continued political repression in China. China and others have arguably reconfigured what Jack Donnelly calls the “legitimating logic” of internationally recognized human rights. Changing the centre of gravity of human rights in this way has internalized the politics of contestation within the institution of human rights itself. This has not only

98 Evans 2013.
100 Sen 2012, 99–100.
101 Ibid., 97.
102 Donnelly 1998.
advanced the institutionalization of human rights in China but also, arguably, strengthened the standing of human rights within global international society against the charge that it is just a new “standard of civilization” imposed by the West.

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摘要: 本文研究中国与人权全球拓展之间复杂互动的对话关系，探讨中国如何从一个人权例外国家和人权离弃国家转变为全球人权治理的积极参与者和塑造者。本文认为这一历史转变既是一个充满矛盾和活力的社会政治进程，同时也是中国在一个因人权含义而出现道德分化的当今世界不断同“道义全球化”反复沟通、应对的协商性结果。本文提出两个重要观点。第一，把人权的全球拓展理解为全球正义的进步而非完善将始终存有争议，因为这种拓展有赖于全球道德对话中跨文化与跨国界的开放性大众思辨。第二，中国巧妙地使用了人权习语以达到两个特定目的。一是利用人权习语将“发展相对主义”合理化，成为北京继续实行人权政治压迫的托辞；二是转移了人权规范的辩论及其实际运用的重心，从而把有关人权的政治论争内化于全球人权治理机制之中。

关键词: 中国; 人权全球拓展; 道义全球化; 全球人权治理; 规范争论; 政治合法性
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