

## International Human Rights Law

### Chinese Human Rights: Towards a Theory of Success

#### Introduction

In June 1993 a United Nations World Conference was held in Vienna to address the differences in national perceptions of international human rights.<sup>1</sup> The goal was to reach a mutual understanding and universal approach to human rights norms, fundamental freedoms and enforcement mechanisms

As a preliminary to this global gathering of nations, an Asian regional meeting was held in Bangkok, gathering together the respective governments. One premise was to challenge the idea of 'universal human rights standards', which the Vienna Conference sought to establish. To Asia, their language of human rights differed fundamentally to that defined by the international community of the United Nations, given their unique culture, history and economy. Their discussions culminated in the Bangkok Declaration, proposing a culturally relative approach in favour of globally applicable standards.<sup>2</sup>

In the aftermath of the Vienna Conference there appeared to be no resolution that appeased all parties. Ambassador Kausikan<sup>3</sup> summed this view up when he declared that the World Conference on Human Rights in Vienna, on June 1993 did not promote "a genuine and fruitful dialogue" between the West and East.<sup>4</sup>

The West went to Vienna accusing Asia of trying to undermine the ideal of universality and determined to blame Asia if the conference failed. Inevitably Asia resisted. The result after weeks of wrangling was a predictable diplomatic compromise ambiguous enough so that all could live with it, but settled very few things. There was no real dialogue between Asia and the West, no genuine attempt to address the issues or forge a meeting of minds. If anything, the Vienna Conference may have only hardened attitudes on both sides and increased the

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<sup>1</sup> United Nations World Conference on Human Rights, U.N. Doc. A/CONF.157/PC/59 (1993)

<sup>2</sup> The Bangkok Declaration, Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, March 29 to April 2, 1993) UN Doc. A/CONF.157/ASRM/. Paragraph 8 states: that while human rights are universal in nature, they 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.

<sup>3</sup> Singapore's permanent representative to the United Nations in New York. Formerly Ambassador to the Russian Federation and to Finland. Has served both as Director for Southeast Asia and Director for East Asia and the Pacific at Singapore's Ministry of Foreign Affairs.

<sup>4</sup> Bilahari Kausikan, "Asia's Different Standard," Foreign Policy 92 (Fall 1993), at 24-41.

deep scepticism which many Asian countries regard Western posturing on human rights<sup>5</sup>

Over a decade later the debate continues, aligning itself upon an East/West axis, with the Western world cultivating a vision of human rights with a core of civil and political rights shaped by a liberal western tradition, and the East challenging this view with cultural, political and economic dimensions.<sup>6</sup> Ultimately “What appears from the Western perspective, to be a noble campaign for universal rights is interpreted from the Asian perspective, as cultural imperialism”.<sup>7</sup>

China lies amid this opposing Eastern faction and although it has experienced enormous economic and social progress, political reform has lagged behind, and the repression of citizens seeking to exercise their internationally recognised fundamental freedoms continues to be problematic.

This paper seeks to understand China’s aversion to the application of international human rights principles by analyzing the main opposing arguments. Given the apparent reluctance of accedence to universal standards the focus will then turn to the International Community and their proposed mechanisms of improving the human rights dilemma. Within this the action taking by America, the European Union and the United Nations will be specifically noted. In addition the mechanisms that are currently in place to deal with the human rights problem by China itself will be looked to, to assess their capability of truly rectifying the problem.

### **China’s opposition to a universal standard of human rights**

As a full member of the United Nations<sup>8</sup> and a signatory to the Charter of the United Nations<sup>9</sup>, China have pledged themselves to co-operate with the international community to achieve universal respect for, and observance of human rights and fundamental freedoms, and to accept the jurisdiction of the UN in cases of human rights abuse.<sup>10</sup> Considering China’s apparent commitment to the international community, its opposition to a universal agreement on human rights calls for clarification.

### **Difference in culture and the conception of human rights**

It is the perception of western society and the majority of the international community that being human is reason enough to be attributed certain inalienable rights.<sup>11</sup> China asserts a

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<sup>5</sup> *Ibid.*

<sup>6</sup> Sharon K. Hom, “Commentary: Re-Positioning Human Rights Discourse on ‘Asian’ Perspectives” (1996) Buffalo Journal of International Law. Volume 3.

<sup>7</sup> Michael Freeman, “Human Rights: Asia and the West”, in Tang ed., *Human Rights and International Relations in the Asia Pacific* (James T.H., 1995) 14

<sup>8</sup> Hereafter referred to as the UN.

<sup>9</sup> Charter of the United Nations (1945) in *The United Nations and Human Rights 1945-1995*. Department of Public Information, United Nations, New York 10017, 1995.

<sup>10</sup> *Ibid.*, at article 55 and 56

<sup>11</sup> Human Rights theorist, Jack Donnelly states that “the idea that all human beings,

contrasting dogma whereby man is born only with social and political duties, which should be carried out in service to the community.<sup>12</sup> Rights are not derived from ones' status as a human being but rather they "flow from the state in the form of a gratuitous grant that can be subjected to conditions or abrogation by the unilateral decision of the state".<sup>13</sup>

These views stem from the Confucian tradition in China that humanity is not an innate quality but rather something which is achieved through socialization and contribution to the harmony of society.<sup>14</sup> The granting of inalienable rights at birth would be a considered a subversion of established Chinese ideals.

Democracy is a further facet of Western traditions that fits uneasily with Chinese heritage. The Western world favours a system with the population as a ruling class, and an ultimate goal of individual rights and political liberty. From a western perspective the Confucian ideal could only be deemed corrupt as it mandates great discretionary power for one ruler, with a society accepting their decisions as being in the best interest of the community. There exists no need for political human rights as it is unnecessary to keep check on the authority of the leader.

In principle, the teachings of Confucius are manifest in China's past only, but history produces tradition and tradition shapes people's thinking and behavior. The rationality, morality, and values of human beings are embedded in the particular cultural tradition in which they find themselves and from this the picture of human rights is shaped.<sup>15</sup> China has sculpted its view of human rights from a culture at variance with that of the west, and so it contends that it cannot be governed by the same standards. The situation of China sharpens a long standing dilemma amongst various regions such as Indonesia and Africa, who articulate their inability to subsume

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simply because they are humans, have certain inalienable rights" was essentially alien to political thought in China,. Jack Donnelly. *Human Rights and Asian Values* 15 (June 1995) unpublished manuscript presented at the Hakone workshop.

<sup>12</sup> Huang Chin-Chieh, *Norms and the State in China* (Brill Academic Publishers, 1993 ), at 85, 185

<sup>13</sup> R. Handle Edwards, "Civil and Social Rights: Theory and Practice in Chinese Law Today" in et al. ed., *Human Rights in Contemporary China* (Handle Edwards, 1986) 25-26 R

<sup>14</sup> Huang Chin-Chieh, *op. cit.*, at 112

<sup>15</sup> Herskovits Melville. "Statement on Human Rights" in *American Anthropological* (Association Executive Board In the American Anthropologist, 1948) 49(4)., at 539-543

Today the problem is complicated by the fact that the declaration must be of world wide applicability. It must embrace and recognize the validity of many different ways of life. It will not be convincing to the Indonesian, the African, the Chinese if it lies on the place of like documents of an earlier period. The Rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people. Such a document will lead to frustration, not realization of the personalities of a vast number of human beings

a universalistic approach to human rights on account of their culture and traditions.<sup>16</sup>

The fundamental question is whether there can be a truly universal doctrine of human rights applicable to all nations, and to what extent culture can justify a different application of human rights thinking and discourse? This is not a problem to which the consensus can agree upon and it may be necessary for the West to accept that states can legitimately agree to disagree without being guilty of gross misdeeds. An attempt to impose the Western definitions of 'liberty' and 'freedom' may only prove to be destructive in the face of Chinese opposition, best foregone in the interest of promoting genuine human rights. What can be said is that culture should not be used as a device to commit human rights violations and to reject entirely political and civil rights; "abuse is not part of any nation's cultural heritage".<sup>17</sup>

It is a point worth noting that a persuasive case exists by which China can create a strong human rights foundation in line with global standards by drawing on its own political culture and beliefs. There are many aspects of Chinese culture which are indicative of values akin to those of the west such as value for life, and strong familial bonds.<sup>18</sup> What is more is that the traditional culture advanced to justify cultural relativism far too often no longer exists. It is important to be astute to cynical, manipulation of a dying cultural past, "communitarian rhetoric too often cloaks the depredations of corrupt and often Westernized or deracinated elites."<sup>19</sup>

### **Importance of Economic over Social Rights**

The 1948 Universal Declaration of Human Rights<sup>20</sup> proclaimed both political and economic rights, but the subsequent drafting of two separate protocols divided rights into civil and political on one hand, and economic, social and cultural on the other. Although the preambles of both the International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup>, and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>22</sup> refer to the enjoyment of both classes of rights many countries have advocated only one division. In 1998 China became a signatory to the ICCPR yet it makes the ongoing representation that given its poor economy it is unable to support the political freedoms mandated therein and instead chooses to advocate the

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<sup>16</sup> *Ibid.*

<sup>17</sup> Statement of the then Singapore Foreign Minister, Wong Kan Seng at the 1993 Vienna Conference.

<sup>18</sup> Leonard Downie Junior "Interview with Chinese Premier, Wen Jiabao" *The Washington Post*, 20 November 2003

<sup>19</sup> Jack Donnelly, *Universal Human Rights in Theory and in Practice* (2<sup>nd</sup> ed., Cornell Press, 1989), at 118

<sup>20</sup> Adopted 10 Dec. 1948, G.A. Res.217A (III), UN Doc. A/810, at 71 (1948)

<sup>21</sup> Entered into force 23 March 1976, G.A. Res 2200A (XXI), U.N. Doc. A/6316 (1966), 999 UNTS 171.

<sup>22</sup> Entered into force 3 January 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 993 UNTS 3.

economic and social rights embodied in the IESCR

In 2004, Liu Zhenghua spoke on behalf of Chinese Delegation on Economic, Social and Cultural Rights at the 60<sup>th</sup> Session of the Commission on Human Rights. In his speech he called upon the International Community to:

Respond positively to the legitimate demand of the developing countries for greater prominence to be given to economic, social and cultural rights so as to promote fuller enjoyment of all human rights and fundamental freedoms by all peoples.<sup>23</sup>

During the same session Du Zhongxing, adviser of the Chinese delegation on Civil and Political Rights made the following statement:

As a developing country with a large population, great regional disparities, and a comparatively low level of economic development and education, China is facing various difficulties and challenges in its effort to realize civil and political rights. No matter what method or model a country adopts in realizing human rights, the enjoyment of civil and political rights by individuals in that country cannot possibly exceed the level of its overall social development.<sup>24</sup>

Such proclamations affirm that China grants primacy to economic development to the detriment of political freedoms. In the past the government has stated that “it is a simple truth that, for any country or nation, the right of subsistence is the most important of all human rights, without which the other rights are out of the question.”<sup>25</sup> Such statements suppose a false dilemma of having to choose between starvation and oppression, as economic development flourishes when it is without the hindrance of political freedoms. There is a lack of empirical support for a contention that suppression of freedoms yields significant benefits in terms of economic performance. In fact the opposite is more likely to be true, as countries with authoritarian governments are the only nations to have suffered famine.<sup>26</sup> Promoting political rights if anything only proves to improve the economy, it allows the people to have a voice to define their economic needs, enabling a better government response.<sup>27</sup> Academics continue to

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<sup>23</sup> Statement by adviser Liu Zhenghua of the Chinese Delegation on Economic, Social and Cultural Rights (item 10) at the 60<sup>th</sup> Session of the Commission on Human Rights (Geneva, March 29, 2004) <<http://www.china-un.ch/eng/gjhyfy/hy2004/t85172.htm>>

<sup>24</sup> Statement by Adviser Du Zhongxing of the Chinese Delegation on Civil and Political Rights (item 11) at the 60<sup>th</sup> Session of the Commission on Human Rights (Geneva, April 1, 2004) <<http://www.china-un.ch/eng/gjhyfy/hy2004/t85174.htm>>

<sup>25</sup> White Paper’s of the Chinese Government “Progress of Human Rights in China”(1995) <<http://www.china.org.cn/e-white/phumanrights19/index.htm>> at 1

<sup>26</sup> Amartya Sen, *Development as Freedom* (Random House, 2000), at 182-185

<sup>27</sup> Xiarong Li “Asian Values’ and the Universality of Human Rights Report, Institute for

dispute the dichotomy of economic and political rights stating that economic development and freedoms are inseparable and that no country can legitimately prioritize economic conditions over political freedoms.<sup>28</sup>

### **Sovereignty**

China mandates that respect for each country's sovereignty and non-interference with their internal affairs is a universal principle, and that this principle extends to all fields of international relations, including human rights.<sup>29</sup> Section 7 of Article 2 of the Charter of the United Nations provides foundation for this assertion, stipulating that "Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of the state".

China is weary of other countries using human rights as a guise so that they may impose upon them their own political standards and modes of development. Consequently any criticism of its human rights by the international community is deemed to impinge their sovereignty.

The weakness of China's objection is twofold. Firstly the issue is not whether the international protection of human rights infringes domestic sovereignty, but whether it does so unlawfully. Secondly, the question arises as to whether the benefits to the world community outweigh the measure of national sovereignty that is relinquished. In addressing human rights the international community is not unlawfully interfering with China's internal jurisdiction. Human Rights issues cross national boundaries and so are valid international concerns; they deal with interactions between states and individuals, not relations between nations.<sup>30</sup> One need only look at the many Christians, Tibetans and Falun Gong practitioners that fled China under the regime of Jiang Zemin to escape religious persecution.<sup>31</sup> They now reside as refugees in countries external to China, an example of the domestic affairs spilling into the international arena.

As already noted, China is a voluntary member of the UN and signatory to the UN Charter, and consequently subject to international human rights enforcement decisions. In pursuing a policy of fiercely protecting its domestic integrity, China ultimately ignores the element of sovereignty

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<sup>28</sup> Amartya Sen, *op. cit.*, at 147.

<sup>29</sup> White Papers of the Chinese Government "China's Peaceful Development Road" (2005). <<http://www.china.com.cn/english/features/book/152684.htm>>

The internal affairs of a country should be decided by its people, international affairs should be discussed and solved by all countries on an equal footing. No country is entitled to impose on others its own will.

<sup>30</sup> Guo Luoji, "A Human Rights Critique of the Chinese Legal System". (1996) 9 Harv. Hum.Rts.J.1

<sup>31</sup> Mauren Zebian, "Chinese Refugees Running Scared" The Epoch Times, 20 February 2004.

abdicated in becoming a full member of the International Community.<sup>32</sup> It is suggested therefore that in resolving who should have ultimate control on these matters, a balancing test of potential benefits to harms tips the argument in favour of international protection and enforcement. To avidly protect the integrity of China's domestic sovereignty over human rights will lead to individual harm, thus negating the very fabric of the treaties to which China is a signatory.

### **Rectifying the Problem**

China's human rights position is one requiring a delicate approach. Its preference may be one of isolation and entirely independent governing, but its poor human rights record and repressive regimes nullify such a prospect. In pressing for progress, the international community must be careful not to upset the fragile balance between enduring human rights and respecting cultural difference.

### **USA**

The United States Department, as part of its Human Rights and Democracy Fund Project assigned more than \$12,000,000 to China in 2004 and approximately \$19,000,000 in 2005.<sup>33</sup> Such expenditure is intended to encourage innovative programs to uphold democratic principles, support democratic institutions and improve human rights. A substantial proportion of this fund is assigned to develop law and governance so as to create greater transparency in government and increase public participation.<sup>34</sup> This form of contribution carries weighted benefit. China continually mandates that economic instability is a major reason why political rights cannot be fully realised by their citizens. In providing a fund that has a sole focus of promoting a foundation for political rights, the United States is helping to remove one of China's greatest obstacles to fully ratifying the ICCPR.

In addition to funding, the United States<sup>35</sup> recently published a report aimed at supporting democracy and human rights.<sup>36</sup> Therein the US affirmed its commitment to continue to urge China to bring its human rights standards in line with that of the international community. As a means of securing this endeavour, US officials at all levels regularly engage with Chinese officials and researchers to discuss legal reform. The US mission in China has also brought internationally recognized speakers to China to address audiences on various topics, including democracy, human rights, religious freedom, corporate social responsibility and rule of law. Such mechanisms facilitate the mutual exchange of ideas and create greater trust between China

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<sup>32</sup> Robert F. Drifin et al., "The 1991 Battle for Human Rights in China", 14 HUM. RTS.Q.21, 24 (1992)

<sup>33</sup> US Department of State. FY 2005-2006 Human Rights and Democracy Fund Projects, December 6 2005 <<http://www.state.gov/g/drl/rls/57669.htm>>

<sup>34</sup> *Ibid.*

<sup>35</sup> Hereafter referred to as the US.

<sup>36</sup> Bureau of Democracy, Human Rights and Labor, "Supporting Human Rights and Democracy" The U.S. Record 2004-2005, released March 8, 2005.

and the Western world. For China to commit to evolving its human rights it is important to encourage internal understanding as to what this will entail, otherwise it will be categorised as hostile imposition of foreign ideologies.

### **The European Union**

The European Union<sup>37</sup> has continually stood against China on account of its poor human rights regime. In 1997 the EU clarified its position by refusing to sponsor a human rights resolution on China at the United Nations Human Rights Commission.<sup>38</sup> 2005 brought with it greater stress on the importance of dialogue and compromise between the EU and China with the holding of the 8<sup>th</sup> EU-China Summit in Beijing. During this meeting both sides endorsed the importance of exchanges in the field of human rights on the basis of equality and mutual respect. The EU welcomed China's commitment to ratifying the ICCPR and both sides confirmed their commitment to co-operate with UN human rights and international human rights standards provided for in relevant international human rights instruments.<sup>39</sup>

Debatably one of the greatest achievements of the rhetoric between these two parties has been the emergence of the EU-China Legal and Judicial Co-operation Programme. This has become one of the most important assistance programs of its kind in China, aiming to support and strengthen the rule of law thorough citizen participation.<sup>40</sup> This type of grass roots up approach grants greater insurance that the endeavours of the international community are in keeping with the best interests of the Chinese people. Smaller grass roots projects have also been established, such as the EU-China Village Governance Programme, so as to empower citizens with civil rights.<sup>41</sup> This program aims to devolve power to small regions, so that they can establish their own 'mini government' in which they participate in voting and the election of representatives. Such a system allows a natural understanding of what political rights entail, and allows citizens to experience their values. If the ICCPR is ratified, the approaches endorsed by the European Union will greater allow for the practical application of the rights contained therein.

### **The UN**

The Office of the High Commissioner for Human Rights<sup>42</sup> has developed a Regional Programme<sup>43</sup> with a main objective of providing support for the ratification and

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<sup>37</sup> Hereafter referred to as the EU

<sup>38</sup> 53<sup>rd</sup> Session of the UN Commission on Human Rights, OJ C 85, 17.3.1997, at 143

<sup>39</sup> Jose Manuel Barroso, Joint Statement of the 8<sup>th</sup> EU-China Summit, Beijing, 5<sup>th</sup> September 2005 <[http://www.eu.int/comm/external\\_relations/news/barroso/sp05\\_478.htm](http://www.eu.int/comm/external_relations/news/barroso/sp05_478.htm)>

<sup>40</sup> Delegation of the European Commission, *EU-China Human Rights Dialogue* <[http://www.delchn.cec.eu.int/en/Political/Human\\_Rights.htm](http://www.delchn.cec.eu.int/en/Political/Human_Rights.htm)> (Visited 8<sup>th</sup> January 2006)

<sup>41</sup> *Ibid.*

<sup>42</sup> Hereafter referred to as OHCHR

<sup>43</sup> Office of the High Commission for Human Rights, "Implementation of the 2002-2004

implementation of international human rights treaties through comparative analysis of law and practices in the regions. OHCHR's approach involves working closely with regional actors, including government, national institutions, international organisations and civil society. This type of program acknowledges China's reluctance to fully engage with the international community on the grounds of cultural difference. By becoming more aware of the diversity of the East, and the practices of law already in place the UN is better equipping itself to encourage a culturally sensitive approach to treaty ratification. The effects of this regime are already resonating in the more formal steps that China took towards ratification of the ICCPR at the close of 2005. At this time, during a visit by the High Commissioner for Human Rights, Louise Arbour, China assented to an agreement that they would ratify the ICCPR in the near future.

### China

The People's Republic of China has made some positive moves towards the realisation of human rights. According to estimates of the United Nation's, China ranks seventh in the world in terms of the size of its economy<sup>44</sup>. If we take the progress that China has made in terms of taking its people out of poverty, and compare it with the rest of the globe, statistics will show that in the last 20 years, China has been decreasing the number of poverty stricken people by 10 million per year.<sup>45</sup> In 1999 the World Bank and the UN development program issued a report stating that "the number of poverty stricken people in the world is increasing in many places in the world, but China is an exception and China has achieved world renowned progress in solving the poverty problem"<sup>46</sup> This makes China the leader in the world at reducing the number of poverty stricken people

The development of a comprehensive social security system and health service system is further affirmation of China's progression in terms of Socioeconomic Rights<sup>47</sup>, as is the improved

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Programme of Action for the Asia Pacific Framework for Regional Cooperation for the Promotion and Protection of Human Rights". <<http://www.unhchr.ch>> (Visited 3<sup>rd</sup> January, 2006)

<sup>44</sup> Information Office of the State Council of the People's Republic of China, *Government White Paper: "Fifty Years of Progress in China's Human Rights, 2000* <<http://www.china.org.cn/e-white>> (Visited 11 January 2005)

<sup>45</sup> *Ibid.*

<sup>46</sup> The World Bank Group, *World Bank and UN Development Report 1999* <<http://www.worldbank.org>> (Visited 10 December 2005)

<sup>47</sup> Information Office of the State Council of the People's Republic of China , *loc.cit.*

In 2000 China covered over 99 million of its citizens with unemployment insurance. In addition there exists free medical service and labour protection medical care assistance at public expense. The overall standard of health has also improved. The people's health has greatly improved. The incidence of acute epidemic diseases has decreased from 20,000 per 100,000

education system where the enrolment rate for primary school-age children now stands at 87.3 percent. These figures exceed the average figures for developing countries in the corresponding period.<sup>48</sup>

China's efforts in the realm of social and economic rights are admirable, but the dubious aspect of its rights portfolio lies in the area of civil and political rights. In the 2004 White Paper entitled "Building of Political Democracy in China", China declared the adoption of a constitutional amendment by the Second Session of the 10th National People's Congress.<sup>49</sup> The new addition proclaims that 'the state respects and protects human rights'.<sup>50</sup> This insertion has been deemed by many as a positive move forward and is backed by Amnesty International, but it does negate the remaining inadequacy of the Constitution as a whole nor does it remedy the inadequate legal and institutional system which provides no practical mechanism for the Constitution's application.<sup>51</sup><sup>52</sup>

China has become a signatory to the ICCPR, and although it has yet to be ratified, the intention to do so in the near future has been declared.<sup>53</sup> There have already been some signs of a changing attitude toward political rights under the auspices of the Chinese authorities. At local levels democratic policy making is developing through the establishing of village committees. Direct elections of members of villagers' committees take place and they themselves are encouraged to decide upon major affairs of their community through democratic dialogue. Since the promulgation of the new Organic Law on Villagers' Committees in 1999, nearly half of the provinces, municipalities directly under the Central Government and autonomous regions

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people before the founding of the PRC to 203.4 per 100,000 people; the death rate, from 33 per 1,000 people to 6.49 per 1,000 people in 1994, and the infant death rate from 200 per 1,000 to the present 33.1 per 1,000. The average life expectancy of Chinese people has increased from 35 years in 1949 to 70.8 years at present, 10 years longer than that of the developing countries and the same as that of the medium-developed countries.

<sup>48</sup> *Ibid.*

<sup>49</sup> Information Office of the State Council of the People's Republic of China, *Government White Paper: "Building of Political Democracy in China."*(2005) *op.cit.*

<sup>50</sup> The Chinese Constitution <<http://www.usconstitution.net/china.html>> (Visited 1<sup>st</sup> January 2006)

<sup>51</sup> Amnesty International, "People's Republic of China: Constitutional Amendment on Human Rights must be backed by concrete action"(2004) AI Index: ASA 17/011/ 2004. the principle of Human Rights protection in the Constitution needs to be backed up by a legal mechanism in order to enforce these Constitutional guarantees' Zho Jue, president of China Society for Human Rights Studies. Opening remarks of seminar in Human Rights.

<sup>52</sup> Zheng Lifei, "Legislator: Human Rights Improving", China Daily, 23 December 2004. (Zho Jue, president of China Society for Human Rights Studies. Opening remarks of seminar in Human Rights: "the principle of Human Rights protection in the Constitution needs to be backed up by a legal mechanism in order to enforce these Constitutional guarantees")

<sup>53</sup> *Supra.*, at 10

have published their own laws and regulations on the election of villagers' committees.<sup>54</sup>

Many of these improvements have been outlined in the Chinese White Papers, publications which boast of the human rights endeavours that China has undertaken. One should be weary of taking these proclamations at face value. Sidney Jones, the Asian Director of Human Rights Watch has made prior statements of concern as to the motives of these papers and the substantiality of their claims. He has termed them a 'white wash' and suggested that they are a tactic used to placate the international community even though the reality of the situation in China is very different.<sup>55</sup>

The Standing Committee of the 10<sup>th</sup> National People's Congress, China's top legislature has also stipulated an amendment to the criminal procedure in its five year legislature plan.<sup>56</sup> It has been predicted that the amendment will include presumption of innocence, the right of the defendant to keep silent and seek legal council during questioning.<sup>57</sup> Such amendments are a clear move towards improving the judicial system so as to support the upholding of human rights. As yet though there has been no clear move towards defining these amendments, nor any definite announcement on the part of any Chinese Official, so it remains to be seen whether they will be put in place in actuality.

### Conclusion

To berate China for its poor human rights record and to impose upon them standards envisaged by Western traditions will undoubtedly be greeted with aversion. The events of Tiananmen Square are evidence that China at times will not heed International outrage, therefore there is only so much influence the international community can exert.<sup>58</sup> Given China's high sensitivity to criticism from outside, and interference with its sovereignty it is essential that an outside ideology is not forced upon them. The better approach is to create human rights with Chinese characteristics that stem from within the state, a product of Chinese cultural, philosophical and political traditions. Such progress is already evidenced in the aforementioned regimes backed by the international community, such as the EU-China Village

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<sup>54</sup> Information Office of the State Council of the People's Republic of China, *Government White Paper: "Building of Political Democracy in China."*(2005) *op.cit.*

<sup>55</sup> Human Rights Watch, "China White Paper a Whitewash." <<http://hrw.org/english/docs/2001/04/10/china242.htm>> (Visited 3<sup>rd</sup> January 2006). Quotes Sidney Jones, Asia Director of Human Rights Watch: "This so called White Paper is a whitewash of China's human rights practices. But we've seen this combination before: High level visits to Latin America to get allies for the Commission, together with the release of a report which boasts that China's human rights record has never been better"

<sup>56</sup> *Xinhau News*, September 8 2005

<sup>57</sup> *Ibid.*

<sup>58</sup> Nan Lin, *The Struggle for Tiananmen: Anatomy of the 1989 Mass Movement* (Praeger Publishers, 1992)

Governance Programme and Human Rights and Democracy Fund Project.

It is still important that International pressure continues as it has already been responsible for many human rights improvements in China, such as prisoner releases and the greater disclosure of human rights practices through the production of the 'White Papers'. Given its focus on economic growth, China will want to continue receiving foreign investment, which is more likely to occur when there is a good relationship with the fellow members of the International Community. Ensuring human rights standards is one thing China can do to stop these relationships turning sour.

It should be further noted that human rights are not something which can be defined and set in stone. A universal consensus of human rights is extremely difficult to establish given the different understanding of their contents. To emphasize universality of human rights is to confine oneself to a very narrow area such as the right of political freedom and the right of freedom of speech. It is only the most general basis upon which agreement can be made, such as human rights having dignity and value. Although we continue to discuss a universal standard of human rights in reality there is none. Different countries and regions will continue to prioritise rights and the integral whole of human rights will remain an ideal to which countries should work towards.

What should be focused on is where the consensus on human rights from any given region is emanating from. Is it the people in power or the citizens? What we see in China is a rejection of Western thinking on human rights, but it is the voice of the government we are hearing or the people? For China to truly be deemed a proponent of human rights on its own merit, it must implement reforms internally so as to allow its citizens' greater capacity to define their human rights thinking. This means granting safeguards for the constitutionally guaranteed rights such as freedom of association and expression. In addition corrugated the constitution with a legal system that supports it, one with avenues for judicial and constitutional review.

It is apparent that the will of the people is there to improve human rights and although universality may be rejected by China, if it begins to take heed of the desires of its own people it will create a new domestic definition of human rights. The basis for realising a positive human rights regime is already existent in China; it is its cultivation that calls for support.

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