

WILL CHINA'S RISE LEAD TO A NEW NORMATIVE ORDER?

An Analysis of China's Statements on Human Rights at the United Nations (2000–2010)

KATRIN KINZELBACH*

Abstract

This article examines whether and how the People's Republic of China challenges international human rights norms based on a qualitative analysis of human rights debates at the United Nations in the period 2000–2010. The study differentiates between framing and implication contests and is focused on China's statements on four main issues: the validity of norms; the UN's monitoring of human rights compliance; the relationship between sovereignty and human rights; and the interaction of civil and political with economic, social and cultural rights. China's human rights diplomacy at the United Nations is shown to be highly consistent; it primarily contests implications of human rights rather than the norms themselves. Although China has so far not provided an alternative normative frame to human rights, it is argued that the contestation is nonetheless serious as it facilitates a gradual erosion of established norms and instruments.

Keywords: China; counter-discourse; normative order; United Nations

1. INTRODUCTION

The rising weight of the People's Republic of China in global politics is a defining feature of the current international order. What is the implication of this new geopolitical situation for the international human rights regime? David Forsythe predicted in 2006 that 'Should an authoritarian China come to dominate international relations, the place of human rights in world affairs would change'.¹ While this forecast may appear intuitive, there remains a lack of empirical data which would support the claim that China's rise undermines the normative order. Research to date

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¹ Forsythe, D.P., *Human Rights in International Relations*, Cambridge University Press, Cambridge, 2006, p. 8.

has primarily focused on how China responded to scrutiny of its domestic human rights situation, not on whether and how China has challenged the international human rights regime. It is generally recognized that China continues to obstruct civil and political rights domestically, but to alter the role that human rights play in world affairs is a decidedly different agenda. This agenda would necessitate an ability to fundamentally challenge the current normative order. Such a fundamental challenge would require, it is posited, not only a high degree of international influence but also a coherent counter-discourse. That is, China would have to act as a norm entrepreneur in coherent opposition to international human rights norms.

Although international customary law and human rights treaties generate binding obligations for States, the international human rights regime cannot be conceptualized as static. All normative orders are contested orders,² this holds also true for human rights. Human rights norms are not only subject to continuous actualization and adaptation – they are also exposed to criticism and resistance, not least by State actors. What role does China play in this process?³ Quantitative research on voting patterns in the UN General Assembly reveals that Western nations are losing support for their positions on human rights. China, in contrast, has enjoyed a comparatively high voting coincidence during the last decade.⁴ The measure “voting coincidence” captures how many States vote alongside with a given country; yet, to what extent does this data foreshadow China’s ability to alter the human rights regime? Voting patterns alone do not provide conclusive evidence for China’s ability to substantively challenge the normative order enshrined in international human rights law. This is, first, because a State’s voting behaviour at the UN is not only influenced by normative considerations but also by power politics and utility calculations. China’s growing voting coincidence could, therefore, be due chiefly to an increasing international weight, and not a result of normative authority. Second, the voting patterns only show who votes with whom; as such, they do not unequivocally demonstrate a State’s ability to exert influence on votes cast by others. Notwithstanding the lack of data on China’s actual impact on human rights-related votes at the UN, there is no doubt that it has spectacularly gained in international power during the last decade. Inevitably, this

² Krebs, R.R. and Jackson, P.T., ‘Twisting Tongues and Twisting Arms: The Power of Political Rhetoric’, *European Journal of International Relations*, Vol. 13, No. 1, 2007, pp. 35–66; Forst, R. and Günther, K., ‘Die Herausbildung normativer Ordnungen: Zur Idee eines interdisziplinären Forschungsprogramms. Normative Orders Working Paper’, University of Frankfurt, 2010, available at: <http://publikationen.ub.uni-frankfurt.de/volltexte/2010/8073/>.

³ While it is recognized that the human rights debate within China is multifaceted and even in official circles far from uniform, this article is interested in the People’s Republic as an international actor. In the context of this article, therefore, expressions such as “China’s position” or “Beijing’s line” are used to refer to official positions taken by the People’s Republic of China in international fora.

⁴ Gowan, R. and Brantner, F., *A Global Force for Human Rights?*, European Council on Foreign Relations, London, 2008; Gowan, R. and Brantner, R., *The EU and Human Rights at the UN: 2010 Review*, European Council on Foreign Relations, London, 2010.

also enhances its standing and influence at the UN. It is high time, therefore, to take China's language on human rights seriously.

To understand whether and how China challenges international human rights norms in the context of global politics, this article presents a qualitative analysis of China's statements in human rights debates at the UN from 2000–2010. The dataset includes statements made in the Commission on Human Rights, the Human Rights Council and the General Assembly. The analysis distinguishes between two forms of contestation, one which focuses on the normative frame provided by human rights and a second one which objects to the implications that follow from these norms. The article first introduces the research context and design and subsequently offers an analysis for each of the four categories listed above. In doing so, the core elements of China's human rights diplomacy at the UN are identified. It is argued that China's official language on international human rights coherently challenges the current regime despite the fact that Beijing's positions remain, to a large extent, dominated by a self-defensive approach.

2. RESEARCH CONTEXT – CHINA AS A NORM ENTREPRENEUR?

The study of China's statements on human rights norms at the UN links to a larger enquiry into China's approach to the current world order. Since the launch of its opening and reform policy in 1978, China has not only undergone an enormous domestic transformation, it has also overcome its international isolation. The scope of China's current role in world affairs is unprecedented in the country's history. Nonetheless, it remains controversially debated whether China will fully integrate or try to alter the current international system. Among political scientists, realists have long argued that China would attempt to build a new international order with rules and institutions that suit China's interests, for example Paul Kennedy already predicted at the end of the 1980s that China would pursue this route.⁵ Recently, neoconservative Robert Kagan stressed that US beliefs and interests had chiefly shaped the current international order. Although Kagan does not view US decline as imminent, he argues that the world order would change should authoritarian countries like China come to dominate international relations.⁶ Liberal institutionalists like John Ikenberry have stressed that the current international order enjoys a never-before seen degree of integration, institutionalization and legitimacy. In his interpretation, these features present great obstacles for any power that might seek to fundamentally alter the current system.⁷ At the same time, Ikenberry concedes that 'the question really is

⁵ Kennedy, P., *The Rise and Fall of the Great Powers*, Vintage Books, New York, 1989.

⁶ Kagan, R., *The World America Made*, Alfred A. Knopf, New York 2012.

⁷ Ikenberry, J.G., 'The Rise of China and the Future of the West: Can the Liberal System Survive?', *Foreign Affairs*, Vol. 87, No. 1, 2008, pp. 23–37.

whether non-Western countries such as China and India will seek to use their rising power to usher in a substantially different sort of international order'.⁸

A constructivist perspective on international politics ascertains that established norms can socialize norm-violating States into changing their behaviour. Therefore, this school of thought has served as a key inspiration for studies on whether and how China internalized international norms. Alastair Iain Johnston presented a detailed study on how China was socialized through its participation in international and regional security organizations in the period 1980–2000.⁹ Also, Ann Kent has presented a study which describes a process of socialization with reference to China's participation in the Geneva Conference on Disarmament, the international financial system and the World Health Organization.¹⁰ These findings should, however, not be generalized across different policy fields, notably not to the field of human rights. It is noteworthy that Kent's study of China's engagement with the international human rights regime at the end of the 1990s came to a starkly different conclusion, pointing not to socialization with international norms but rather to China's ability to impede international scrutiny.¹¹ Rosemary Foot concluded in her seminal study on the global community's struggle over human rights in China that Beijing's external critics have 'drawn it into important aspects of the international human rights regime' even if China managed to undercut international attempts to monitor and criticize violations.¹² Wan Ming differentiated between tactical learning on the one hand and socialization on the other, arguing that China's international human rights diplomacy was shaped by the former but not by the latter.¹³ In a recently published article, Titus C. Chen and Rana Siu Inboden argue that China seeks not only to diminish normative pressure but also to shape international human rights institutions in ways that suit its State interests, explaining China's participation in the UN human rights regime as an instrumental foreign policy decision.¹⁴ Chen Dingding, in contrast, stresses that the incremental shift towards a greater acceptance of human rights ideas by the Chinese government was due to an elite-driven, domestic policy-reversal after 1978.¹⁵ In recent

⁸ Ikenberry, J.G., 'Liberal Internationalism 3.0: America and the Dilemmas of Liberal World Order', *Perspectives on Politics*, Vol. 7, No. 1, 2009, pp. 71–87, at p. 83.

⁹ Johnston, A.I., *Social States: China in International Institutions, 1980 – 2000*, Princeton University Press, Princeton, 2008.

¹⁰ Kent, A., *Beyond Compliance: China, International Organizations, and Global Security*, Stanford University Press, Stanford, 2007.

¹¹ Kent, A., *China, the United Nations, and Human Rights: The Limits of Compliance*, University of Pennsylvania Press, Philadelphia, 1999.

¹² Foot, R., *Rights Beyond Borders: The Global Community and the Struggle over Human Rights in China*, Oxford University Press, Oxford, 2000, p. 273.

¹³ Wan, Ming, *Human Rights in Chinese Foreign Relations: Defining and Defending National Interests*, University of Pennsylvania Press, Philadelphia, 2001, p. 126.

¹⁴ Inboden, R.S. and Chen, T.C., 'China's Response to International Normative Pressure: The Case of Human Rights.' *The International Spectator*, Vol. 47, No. 2, 2012, pp. 45–57.

¹⁵ Chen, Dingding, 'Explaining China's Changing Discourse on Human Rights 1978–2004', *Asian Perspective*, Vol. 29, No. 3, 2005, pp. 155–182.

years, however, Chinese authorities have increasingly turned against the concept of human rights, including through what Eva Pils calls 'conceptual dilution', a strategy which allows the party-State to 'go on to claim it is protecting and promoting "rights" while it is, in fact, undermining them.¹⁶

Compared with the Chinese domestic discourse on human rights¹⁷ and the government's response to international scrutiny of violations, Beijing's international norm entrepreneurship on the very concept of human rights remains less studied. Beyond the case of China, political science research on the power of human rights has so far neglected the weight of counter-discourse and competing norms.¹⁸ Today, therefore, additional research is needed to better understand, and document, how competing norms and counter-discourses to human rights shape the international normative order. The analysis presented in this article attempts to contribute to this new research agenda. It is posited that competing norms and counter-discourses not only impede human rights implementation at the national level but that they also have the potential to undermine the normative order itself. In this respect, China's international human rights diplomacy appears particularly instructive because China is not only a rising power but it is also widely perceived, as Sonia Cardenas has put it, as 'today's most high-profile human rights holdout'.¹⁹

3. RESEARCH FOCUS – FRAMING OR IMPLICATION CONTEST?

Foreign policy intentions are hard to track, even in countries whose political systems are less secretive than that of China. Due to an increasingly restrictive political environment, Chinese policy-makers currently have little incentive to reveal the details of internal debates on whether, or how, China should challenge the international human rights regime. When questioned about the intention behind China's statements in human rights debates at the UN, non-attributable responses from Chinese diplomats and establishment intellectuals who work on the country's international human rights policy ranged from 'China intends to help build a strong

¹⁶ Pils, E., 'The Dislocation of the Chinese Human Rights Movement', in: Mosher, S. and Poon, P. (eds.), *A Sword and a Shield: China's Human Rights Lawyers*, CHRLCG, Hong Kong, 2009, pp. 141–159, at p. 148.

¹⁷ Weatherley, R., *The Discourse of Human Rights in China: Historical and Ideological Perspectives*, Macmillan, Houndmills/Basingstoke/Hampshire/London, 1999; Svensson, M., *Debating Human Rights in China: A Conceptual and Political History*, Rowman & Littlefield, Lanham, 2002; Goldman, M., *From Comrade to Citizen: The Struggle for Political Rights in China*, Harvard University Press, Cambridge, Mass., 2005.

¹⁸ Jetschke, A. and Liese, A., 'The Power of Human Rights – A Decade After', in: Risse, T., Ropp, S. and Sikink, K. (eds.), *From Commitment to Compliance: The Persistent Power of Human Rights*, Cambridge University Press, Cambridge, forthcoming.

¹⁹ Cardenas, S. *Conflict and Compliance: State Responses to International Human Rights Pressure*, University of Pennsylvania Press, Philadelphia, 2007, pp. 121–122.

international human rights regime' to 'All China says about human rights at the UN is just for show'.²⁰ To what extent such remarks truthfully reflect ongoing policy deliberations is uncertain. In any event, it would be a mistake to conceptualize the Chinese foreign affairs apparatus as a monolithic actor with an unambiguous intention – or belief, for that matter.

Ronald R. Krebs and Patrick T. Jackson have stressed that skilful rhetorical manoeuvrings can restrict options for an effective rebuttal regardless of whether or not a contestant personally accepts the statements as true.²¹ In other words, official statements made by the People's Republic of China at the UN have the potential to challenge the normative order even if China's representatives personally believed in the international human rights regime. At the same time, coercion with rhetorical means only works within 'a political community that shares at least some understandings of the boundaries of acceptable discourse'.²² With regards to human rights, this appears to be the case, given that there is not only the codification of norms in the form of the Universal Declaration and of binding treaty law, but also a distinct political community comprising States, inter-governmental bodies and non-governmental organizations that draw the boundaries of acceptable discourse, notably in public debates at the UN. Instead of trying to trace intentions or beliefs, the research presented here focuses on China's public statements at the UN and aims to analyse whether and how these statements contest international human rights.

How can contestation be analysed? According to Krebs and Jackson, arguments contain analytically separable parts, a frame and a set of implications that a contestant suggests follow from the frame.²³ In their model of rhetorical coercion, a framing contest occurs when a contestant rejects not specific details but rather the broader frame of an argument. In an implication contest, the frame remains unchallenged but opponents differ on its implications. This differentiation between framing contest and implication contest was used to guide the qualitative content analysis of China's statements in UN human rights debates.

The analysis was conducted for the period 2000–2010, that is a decade during which China enjoyed a comparatively high voting coincidence on human rights at the UN General Assembly. The question of whether China caused this high voting coincidence extends beyond the scope of this article. Nonetheless, it is important to note that the arguments analysed in the next sections represent a perspective, which had a high level of support among UN Member States. All debates of the Commission on Human Rights and of the Human Rights Council were examined. With regard to the General Assembly, only those debates classified as human rights debates in the

²⁰ Confidential interviews conducted by the author in the year 2011.

²¹ Krebs and Jackson, *loc.cit.* note 2, at p. 42.

²² *Ibidem* at p. 57.

²³ *Ibidem* at p. 43.

UN's bibliographic information system UNBISNET where included into the dataset. In total, 430 official records of the UN were analysed.

The content analysis was thematically structured by four categories that capture statements on the validity of human rights norms (VALIDITY); on the UN's monitoring of human rights compliance (MONITORING); on the relationship between sovereignty and human rights (SOVEREIGNTY); and on the interaction of civil and political rights with economic, social and cultural rights (RIGHTS). To further focus the content analysis, conceivable forms of rhetorical contestation were hypothesized. They were intended to reflect both the four substantive categories as well as the distinction between framing and implication contest and are summarized in the following table:

Category	Framing contest	Implication contest
1. VALIDITY	promotion of particularism	endorsement of universalism but rejection of westernization
2. MONITORING	supposed lack of legitimacy	supposed lack of authority
3. SOVEREIGNTY	sovereignty as an absolute norm	human rights as subordinate norms to sovereignty
4. RIGHTS	hierarchical: economic, social and cultural rights as intrinsically more important than civil and political rights	conditional: civil and political rights as dependent on economic development (justification of sequencing)

The content analysis of China's statements in UN human rights debates (2000–2010) explores whether these hypothesized forms of rhetorical contestation are manifest in reality. The material was reduced in two steps. First, the data was structured by its content according to the four categories and the eight conceivable forms of contestation captured in the table above. For each contestation manifest within the dataset, recurrent and therefore typical statements made by China during human rights debates at the UN were identified. These will be presented in the next sections. In addition, the analysis also takes exceptional, contradictory, extreme or otherwise distinctive arguments into account including, as required, any arguments that do not fit into the eight hypothesized forms of contestation.²⁴

²⁴ In line with Mayring, P. *Qualitative Inhaltsanalyse: Grundlagen und Techniken*, Beltz, Weinheim, 2003, at pp. 89–90.

4. ANALYSIS OF STATEMENTS ON CATEGORY 1 – VALIDITY

In human rights debates at the UN, the People's Republic of China hardly ever challenges the validity of universal human rights norms. To the contrary, in the period analysed (2000–2010), Chinese politicians and diplomats have emphatically endorsed the global validity of international human rights. For example, in 2002, the Chinese Vice Minister for Foreign Affairs, Wang Guangya, stated that 'the promotion of human dignity and human rights had been the constant quest of mankind'²⁵ and that human rights were a 'common treasure'.²⁶ In other statements it was stressed that human rights were a 'common goal' of the 'whole international community'²⁷ or, in a variation, that China 'shared the common ideal of safeguarding and promoting human rights and fundamental freedoms'.²⁸

The above statements use exceptionally emotional language. The most typical form of endorsement was less touching; it simply noted that China 'attached great importance to the promotion and protection of human rights'.²⁹ Sometimes the endorsement was tailored to the rights of a particular group, for example here: 'The Chinese Government has always attached great importance to the protection of the rights and interests of persons with disabilities';³⁰ or it focused on a particular right, such as in the assertion that China 'attached great importance to the elimination of torture'.³¹ Considering the context in which these statements were voiced, it can be construed that their primary purpose was not necessarily to endorse the validity of international human rights norms. Rather, these statements were put forward to serve as an argument against criticism of China's human rights record or to counter the allegation that China was willingly condoning rights abuses by other countries, such as in Sudan, Myanmar or Cuba.

Most commonly, China's endorsement of human rights norms was linked to the ratification of international human rights treaties. After stating the specific number of treaties ratified by China at a given point in time, Chinese representatives repeatedly

²⁵ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2002/SR.21 (2002), para. 1.

²⁶ *Ibidem* at para. 5.

²⁷ UN Commission on Human Rights, Summary Record of the 52nd meeting, UN Doc. E/CN.4/2005/SR.52 (2005), para. 44.

²⁸ UN General Assembly, Third Committee, Summary Record of the 42nd Meeting, UN Doc. A/C.3/57/SR.42 (2002), para. 38.

²⁹ See for example, UN General Assembly, Third Committee, Summary Record of the 41st Meeting, UN Doc. A/C.3/56/SR.41 (2002), para. 102; UN General Assembly, Third Committee, Summary Record of the 37th Meeting, UN Doc. A/C.3/57/SR.37 (2005), para. 53; UN General Assembly, Third Committee, Summary Record of the 32nd Meeting, UN Doc. A/C.3/63/SR.32 (2008), para. 35.

³⁰ UN General Assembly, 76th plenary meeting, UN Doc. A/61/PV.76 (2006), pp. 13–14.

³¹ UN General Assembly, Third Committee, Summary Record of the 28th meeting, UN Doc. A/C.3/62/SR.28 (2007), para. 17.

reassured commitment to the treaties and stressed China's compliance with their provisions. A typical statement points out, for example, that China was 'a party to 21 international human rights instruments and that the Chinese Government attached great importance to their provisions'.³² Exceptionally, the Chinese representatives also referred to the Universal Declaration of Human Rights rather than to treaty law, for example in the reassurance that 'The Government of China would continue to adhere to the spirit and objectives of the Declaration'.³³ The Universal Declaration was also said to be 'the theoretical and ideological basis of international human rights instruments'.³⁴ On the one hand, the more frequent reference to treaties is surprising, given that treaties involve implementation and reporting procedures, while the Universal Declaration does not. On the other hand, the treaties ratified by China do not cover all rights contained in the Declaration, notably because China has so far not ratified the International Covenant on Civil and Political Rights; this may well be the reason for the less frequent references to the Universal Declaration.

In 2004, it was announced in the UN General Assembly that China had revised its constitution to insert a specific reference to the protection of human rights,³⁵ implying a certain adjustment of China's approach towards human rights. An earlier statement by a Chinese diplomat even suggested that China's commitment to human rights was a novelty, speaking of 'a new China' that was promoting and protecting the human rights of all citizens.³⁶ A similar sense of evolution was also found in a General Assembly debate on human rights education. Here the Chinese government pointed out that human rights education was particularly important in the People's Republic, given that the country was the most populous one in the world. After providing an overview on China's efforts in this regard, the representative reiterated the country's commitment to 'promoting a culture of human rights'.³⁷ Intriguingly, the statement concluded with the observation that the government's approach to human rights education had changed the citizens' rights-awareness: 'Today, as Chinese citizens are increasingly aware of their rights, the concept of human rights is taking root in China'.³⁸ Chinese Director General Li Baodong, who later became China's Permanent Representative to the UN, was even more explicit in his remarks about China's gradual acceptance of human rights norms. In October 2000, he stated that:

³² UN General Assembly, Third Committee, Summary Record of the 20th Meeting, UN Doc. A/C.3/62/SR.20 (2007), para. 4.

³³ UN General Assembly, Third Committee, Summary Record of the 32nd Meeting, UN Doc. A/C.3/63/SR.32 (2008), para. 35.

³⁴ UN General Assembly, Third Committee, Summary Record of the 18th meeting, UN Doc. A/C.3/63/SR.18 (2009), para. 67.

³⁵ UN General Assembly, Third Committee, Summary Record of the 25th meeting, UN Doc. A/C.3/59/SR.25 (2004), para. 30.

³⁶ UN General Assembly, Third Committee, Summary Record of the 39th meeting, UN Doc. A/C.3/55/SR.39 (2001), para. 66.

³⁷ UN General Assembly, 70th Plenary Meeting, UN Doc. A/59/PV.70 (2004), p. 10.

³⁸ *Idem*.

The concept of a state subject to the rule of law had been formally incorporated into the Constitution in 1999. Chinese society was in a phase of transition between two systems; supremacy of power was about to give way to supremacy of law.³⁹

However, Chinese statements have also consistently pointed out that human rights entitlements must be adopted to national circumstances. Some, albeit only very few, of China's statements explicitly seek to limit the principle of universality: 'While respecting and endorsing the principle of universality of human rights, China believed that each country was entitled to choose how to promote and protect those rights on the basis of its national situation'.⁴⁰ A more succinct statement reads 'for although human rights were universal their protection could not be uniform'.⁴¹ With regard to civil and political rights, Chinese representatives have also argued that the 'international community must combine the principles of universality and specificity when reviewing the realization of civil and political rights in countries, and must respect their Governments' choices'.⁴² More commonly it was argued that countries differed and that there could not be a general model or blueprint. A typical statement reads as follows:

Each country's cultural and historical particularities, economic circumstances and chosen development path must be acknowledged and respected. Imposition of a single model of human rights promotion and protection must therefore be avoided.⁴³

Also in the context of the new Universal Periodic Review mechanism of the Human Rights Council, China recommended that other States pursue human rights in line with their national conditions⁴⁴ or in accordance with the national situation.⁴⁵ China, moreover, argued that international standards were not only arbitrary but even counterproductive: 'To arbitrarily impose a fixed set of human rights rules, regardless of the differences in the specific environment and reality, will not serve the interests of the people of any country'.⁴⁶ The argument was made with regard to both sets of

³⁹ UN Commission on Human Rights, Summary Record of the 31st Meeting, UN Doc. E/CN.4/2000/SR.31 (2000), para. 14.

⁴⁰ UN General Assembly, Third Committee, Summary Record of the 40th Meeting, UN Doc. A/C.3/56/SR.40 (2002), para. 17.

⁴¹ UN Economic and Social Council, Summary record of the 12th Meeting, UN Doc. E/CN.4/2005/SR.12 (2005), para. 7.

⁴² UN Commission on Human Rights, Summary Record of the 32nd Meeting, UN Doc. E/CN.4/2005/SR.32 (2005), para. 88.

⁴³ UN General Assembly, Third Committee, Summary Record of the 29th Meeting." A/C.3/64/SR.29 (2009), para. 71.

⁴⁴ UN Human Rights Council, Sixteenth session. Agenda item 6, UN Doc. A/HRC/16/5 (2011), para. 84(31).

⁴⁵ UN Human Rights Council, Fifteenth session. Agenda item 6, UN Doc. A/HRC/15/16 (2010), para. 97(10).

⁴⁶ UN General Assembly, 12th plenary meeting, UN Doc. A/55/PV.12 (2000), p. 7.

rights. For example, it was argued that the 'Full realization of economic, social and cultural rights would be a gradual process and countries were entitled to choose their own development models based on their national conditions'.⁴⁷ And, it was further argued that:

[...] while every country had the obligation to protect its people's democratic rights and political freedoms, it had the right to determine how it followed its path of development, in accordance with its own specific conditions. There was no one model of democracy and countries that had blindly followed alien models had failed to bring benefits to their people.⁴⁸

In debates about the universal applicability of civil and political rights, the rejection of westernization became not only the most apparent but also the most fierce, culminating at times in a veritable rhetorical battle in which China also resolved to directly attacking its Western critics. The US was by far the most frequent target. In all likelihood this is not only because the US is a powerful advocate for the position that civil and political rights are best protected in liberal democracies; the country is also an exceptionally direct critic of China's human rights record. An extreme example of China's response to US criticism was found in a 2005 debate at the Commission of Human Rights. Here it was argued that:

China was one of those countries which did not allow others to dictate its conduct. Just as it could not and did not want to make the United States into another China, no country could transform China into another United States. The United States must stop dreaming and wake up.⁴⁹

This statement is a clear example for the hypothesized implication contest under category 1, in which China was expected to reject the emulation of a "Western" form of human rights implementation. Although China most frequently argued that it rejected a blueprint for implementation, some statements went significantly further and questioned the universality of human rights. For example, in a debate at the Third Committee of the General Assembly, a Chinese representative stated that China was holding human rights dialogues with countries whose 'values were different from China's'.⁵⁰ Shortly before, the Chinese Vice Minister for Foreign Affairs, Wang Guangya, had stressed that it was counterproductive to 'measure such a diverse world

⁴⁷ UN Commission on Human Rights, Summary Record of the 33rd Meeting, UN Doc. E/CN.4/2002/SR.33 (2002), para. 71.

⁴⁸ UN Commission on Human Rights, Summary Record of the 72nd Meeting, UN Doc. E/CN.4/2001/SR.72 (2001), para. 47.

⁴⁹ UN Commission on Human Rights, Summary Record of the 50th Meeting, UN Doc. E/CN.4/2004/SR.50 (2005), para. 103.

⁵⁰ UN General Assembly, Third Committee, Summary Record of the 40th Meeting, UN Doc. A/C.3/56/SR.40 (2002), para. 19.

against a particular set of values'.⁵¹ The said difference in values was, again, explained with reference to diverse national conditions:

The concept of human rights resulted from the political, economic and cultural conditions in a given society, and it was therefore normal that differences existed between States with regard to human rights issues. Such differences should be resolved through dialogue on the basis of mutual respect, in accordance with the Charter of the United Nations.⁵²

As will be further discussed in the following section on the UN's monitoring of human rights compliance (category 2), the call for dialogue on the basis of mutual respect is a recurrent theme in China's statements at the UN. For the analysis of category 1 (the validity of universal human rights norms), it is important to note that China's argument about the influence of political, economic and cultural differences is not strictly limited to an implication contest but, at times, extends towards a framing contest. This happens where the differences between States are no longer portrayed as resolvable. A clear example in this regard is a 2008 statement which calls on the newly established Human Rights Council to 'promote the inclusive coexistence of different conceptions of human rights'.⁵³ China also stressed that the new Council ought to respect 'diverse cultural traditions',⁵⁴ that the Office of the High Commissioner for Human Rights (OHCHR) ought to promote a culture of diversity⁵⁵ and that the staffing of treaty bodies must 'fully reflect the specificities of different cultures and legal systems'.⁵⁶

Overtly particularistic frames such as "Asian values" were not found in the dataset, only one mention of 'Chinese-style democracy' was noted towards the end of the period under review.⁵⁷ However, by resorting to ideas of coexistence and of cultural diversity, Chinese representatives have in actual fact exploited the long-lasting implication contest around how to implement human rights as a rhetorical opening for a framing contest on the validity of universal human rights norms.

China's persistent advocacy for a Declaration on Human Social Responsibilities constitutes another contestation which challenges the very essence of human

⁵¹ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2002/SR.21 (2002), para. 4.

⁵² UN Commission on Human Rights, Summary Record of the 52nd meeting, UN Doc. E/CN.4/2005/SR.52 (2005), para. 44.

⁵³ UN General Assembly, Third Committee, Summary Record of the 32nd Meeting, UN Doc. A/C.3/63/SR.32 (2008), para. 34.

⁵⁴ UN General Assembly, Third Committee, Summary Record of the 30th Meeting, UN Doc. A/C.3/62/SR.30 (2007), paras. 8–10.

⁵⁵ Nations Unies Conseil des Droits de l'Homme, Compte Rendu Analytique de la 6e Séance, UN Doc. A/HRC/4/SR.6 (2007), para. 10.

⁵⁶ UN General Assembly, Third Committee, Summary Record of the 29th Meeting. A/C.3/64/SR.29 (2009), para. 72.

⁵⁷ UN Human Rights Council, Eleventh Session. Agenda Item 6, UN Doc. A/HRC/11/25 (2009), para. 10.

rights norms. By co-sponsoring a motion introduced by Egypt at the Commission on Human Rights in 1999, China as well as Algeria, Cuba, India, Indonesia, Iran and Malaysia paved the way for a UN study on human social responsibilities. As a consequence of this motion, Miguel Alfonso Martínez was appointed Special Rapporteur on the issue in 2001. Alfonso, a Cuban national, was eventually mandated by the Commission on Human Rights to formulate suggestions for a Declaration on Human Social Responsibilities. These developments were accompanied by repeated debates and China played a very active role in these exchanges. Director General Li Baodong argued that China was seeking a balance between rights and obligations and that 'Rights and obligations were indivisibly linked'.⁵⁸ Additionally, Sha Zukang, Chinese Permanent Representative to the UN in Geneva and Coordinator of the Like-Minded Group of the Commission on Human Rights from 2004 to 2007, called human rights and responsibilities inseparable.⁵⁹ Accordingly, China stressed that the UN Commission on Human Rights 'must not neglect the fundamental concept of man's responsibilities towards society' when promoting human rights.⁶⁰ And in 2006, shortly after the Chinese Communist Party had started to propagate the concept of a 'harmonious society' in domestic politics, it was stressed that China's 'aim in protecting human rights was to promote social harmony' in addition to 'comprehensive human development'.⁶¹ The EU was a vocal opponent and argued that an 'approach to human rights that made them conditional on the performance of so-called human duties and responsibilities was contrary to the Commission's core principles'.⁶² According to the EU, 'it was not acceptable that human rights should only be enjoyed or respected if the individual fulfilled his or her obligations to the community or the State. Individual human rights needed to be promoted unconditionally'.⁶³

This debate amounts to a framing contest but it does not neatly fit into the hypothesized counter-arguments introduced above because human rights are here not portrayed as particularistic values. The proposed Declaration on Human Social Responsibilities was finally rejected in 2005, but only by a small margin. Although China's advocacy for the resolution was, thus, ultimately unsuccessful, the debates on this subject at the UN nonetheless provide evidence that China challenged not only the implication of universal human rights norms by emphasizing different

⁵⁸ UN Commission on Human Rights, Summary Record of the 31st Meeting, UN Doc. E/CN.4/2000/SR.31 (2000), para. 14.

⁵⁹ Nations Unies Commission des Droits de l'Homme, Compte Rendu Analytique de la 58e Séance, UN Doc. E/CN.4/2005/SR.58 (2005), para. 94.

⁶⁰ UN Commission on Human Rights, Summary Record of the 52nd meeting, UN Doc. E/CN.4/2005/SR.52 (2005), para. 45.

⁶¹ UN General Assembly, Third Committee, Summary Record of the 22nd Meeting, UN Doc. A/C.3/61/SR.22 (2006), para. 75.

⁶² UN Commission on Human Rights, Summary Record of the 57th Meeting, UN Doc. E/CN.4/2004/SR.57 (2004), para. 47.

⁶³ *Ibidem* at paras. 47–48.

national conditions for their implementation, China also contested the frame itself by questioning the central concept of unconditional entitlement.

5. ANALYSIS OF STATEMENTS ON CATEGORY 2 – MONITORING

The most recurrent theme in China's statements on the UN's human rights monitoring is that confrontation should be avoided and that human rights should instead be promoted through dialogue and cooperation. The call for a mutually respectful dialogue first emerged in debates on China's own human rights situation. A typical statement reads as follows: 'The Chinese Government was open to cooperation with all countries on the basis of equality and mutual respect'.⁶⁴ The same line was also taken in debates on the role of the Commission on Human Rights:

Mr. SHA Zukang (China) said that the Commission should be a forum for dialogue between equal members of the international community based on mutual respect. His delegation objected to using human rights issues to exert political pressure on developing countries.⁶⁵

The argument that international human rights pressure was disproportionately directed against developing countries, a frequently reiterated proclamation in China's statements on the work of the UN Human Rights Commission, is noteworthy.⁶⁶ By identifying developing countries as primary targets of human rights criticism, China questioned the legitimacy of this criticism and also facilitated an alliance with the Commission's voting members from the developing world. The argument was repeatedly made and quantitative data was invoked to support the assertion. For example, permanent representative Sha Zukang pointed out in March 2005 that the Commission had, since the end of the Cold War:

adopted over 100 country-specific resolutions that had almost all been directed against developing countries, leaving the impression that human rights problems existed only in those countries, and that developed countries had a perfect record. In truth, no country

⁶⁴ UN Commission on Human Rights, Summary Record of the 36th Meeting, UN Doc. E/CN.4/2002/SR.36 (2002), para. 31.

⁶⁵ UN Commission on Human Rights, Summary Record of the 50th Meeting, UN Doc. E/CN.4/2005/SR.50 (2005), para. 27.

⁶⁶ See for example UN Commission on Human Rights, Summary Record of the 62nd Meeting, UN Doc. E/CN.4/2001/SR.62 (2001), para. 58; UN General Assembly, Third Committee, Summary Record of the 40th Meeting, UN Doc. A/C.3/57/SR.40 (2002), paras. 109–110; UN Commission on Human Rights, Summary Record of the 52nd Meeting, UN Doc. E/CN.4/2003/SR.52 (2003), para. 8; UN Commission on Human Rights, Summary Record of the 47th Meeting, UN Doc. E/CN.4/2004/SR.47 (2004), para. 34; UN General Assembly, Third Committee, Summary Record of the 52nd Meeting, UN Doc. A/C.3/61/SR.52 (2007), para. 15.

could claim to have such a record, and no country could stay outside the process of international human rights development.⁶⁷

According to China, the instruments of country-specific resolutions and even country-specific discussions were in themselves problematic. Instead, China consistently advocated for a thematic focus in UN human rights debates, thus rejecting an international monitoring of national human rights situations. Early on it was argued that the Sub-Commission on the Promotion and Protection of Human Rights 'should carry out studies and refrain from deliberating on human rights situations in specific countries'.⁶⁸ As regards the Commission proper, China contended that 'the practice of using Commission resolutions to exert pressure on States was harmful',⁶⁹ or, in another iteration, 'counterproductive'.⁷⁰ Not only were the criteria for tabling country-specific resolutions unclear; according to China, they also pushed the Commission 'increasingly further away from its original objective of promoting international cooperation in the field of human rights'.⁷¹ Rather than monitoring specific human situations, China wanted the Commission on Human Rights to 'become a forum for mutual learning from experience'.⁷²

Iran, Cuba, North Korea, Sri Lanka, Myanmar, Sudan, Zimbabwe, Russia, Belarus, Uzbekistan and Turkmenistan all benefitted from China's votes against country-specific resolutions. Indeed, the rejection of country-specific resolutions was consistently pursued. For instance, when the US was criticised in a draft resolution tabled by Belarus in 2007 (in retaliation for a US-sponsored resolution on Belarus), Liu Zhenmin explained that China 'was opposed, in principle, to any resolution that targeted specific countries'.⁷³ Beijing did not vote against but abstained from voting on the draft resolution entitled "Situation of democracy and human rights in the United States of America". China not only sought to limit the use of country resolutions but also the appointment of special rapporteurs with country-specific rather than thematic mandates. The only exception in an otherwise coherent line of argument relates to the Palestinian territories. On behalf of the Group of Like-Minded Countries, the Chinese delegation asserted that 'the mandate of the Special

⁶⁷ UN Commission on Human Rights, Summary Record of the 20th Meeting, UN Doc. E/CN.4/2005/SR.20 (2005), para. 14.

⁶⁸ UN Commission on Human Rights, Summary Record of the Fiftieth Meeting, UN Doc. E/CN.4/2000/SR.50 (2000), para. 74.

⁶⁹ UN Commission on Human Rights, Summary Record of the 56th Meeting, UN Doc. E/CN.4/2000/SR.56 (2000), para. 92.

⁷⁰ UN Commission on Human Rights, Summary Record of the 50th Meeting, UN Doc. E/CN.4/2004/SR.50 (2005), para. 35.

⁷¹ UN Commission on Human Rights, Summary Record of the 20th Meeting, UN Doc. E/CN.4/2005/SR.20 (2005), para. 17.

⁷² UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2004/SR.21 (2004), para. 56.

⁷³ UN General Assembly, Third Committee, Summary Record of the 52nd Meeting, UN Doc. A/C.3/61/SR.52 (2007), para. 86.

Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 did not constitute a country-specific mandate, for the Group believed that foreign occupation represented the worst form of human rights violation'.⁷⁴ And as per Human Rights Council resolution 5/1 of 18 June 2007, the permanent agenda of the Council includes a dedicated item entitled 'Human rights situation in Palestine and other occupied Arab territories' (item 7). Accordingly, the topic is discussed at each regular session of the Council.

China's approach to this issue is in clear contrast to the view Beijing otherwise purports regarding the mandate of UN human rights bodies. In 2005, China not only supported the idea of a threshold 'according to which resolutions on country situations could be tabled only in the event of massive, systematic and gross violations of human rights, and when all other remedies had been exhausted',⁷⁵ but acknowledged the merits of abolishing country resolutions altogether. When the Commission on Human Rights was turned into the Human Rights Council in 2006, the mandate and procedures of the new body were discussed in great detail. Ambassador Sha Zukang presented a comprehensive critique against country-specific mandates, arguing that there 'were several grounds for the position that all such mandates should be abolished'.⁷⁶ He pointed out that such country resolutions were 'adopted after bitter negotiations and divisive votes', and that some of the resolutions 'had been summarily rejected by the countries concerned'.⁷⁷ He also stated that the 'confidential 1503 procedure would adequately address gross and systematic violations of human rights'.⁷⁸

Western countries were determined to ensure that the new Human Rights Council maintain procedures for country-specific monitoring and public shaming. In a compromise move, Canada 'suggested that the Commission should consider the possibility of establishing a new mechanism to review periodically the human rights situation in each Member State, so that no one avoided scrutiny or could claim selectivity'.⁷⁹ This is what eventually happened when the new universal periodic review mechanism (UPR) was established. China acknowledged that the UPR respected 'the principles of objectivity, universality, equity and non-selectivity'.⁸⁰ At the same time, however, China also defended the view that an inherent tension was being created

⁷⁴ UN Human Rights Council, Summary Record of the 25th Meeting, UN Doc. A/HRC/2/SR.25 (2006), paras. 44–45.

⁷⁵ UN Commission on Human Rights, Summary Record of the 20th Meeting, UN Doc. E/CN.4/2005/SR.20 (2005), United Nations Economic and Social Council, "Commission on Human Rights", para. 18.

⁷⁶ UN Human Rights Council, Summary Record of the 25th Meeting, UN Doc. A/HRC/2/SR.25 (2006), para. 44.

⁷⁷ *Idem.*

⁷⁸ *Idem.*

⁷⁹ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2005/SR.21 (2005), para. 1.

⁸⁰ UN General Assembly, Special Session, Summary Record of the 35th Meeting, UN Doc. A/C.3/62/SR.35 (2008), para. 45.

by institutionalizing a UPR process without abolishing country resolutions: 'the universal periodic review mechanism was intended to ensure universal coverage and equal treatment for all States, and it should not operate in tandem with an alternative and confrontational mechanism'.⁸¹

Since the abolition of country resolutions proved impossible, China called on the Council's Member States to use 'caution in proposing country-specific human rights resolutions and noted that if such resolutions proved to be necessary, they should respect the views of the regional group to which the country concerned belonged'.⁸² The same argument appears in debates on specific country resolutions, for example in the position that African States were best placed to understand the situation in Darfur,⁸³ or in the remark that 'China, as a neighbouring State, fully understood the special difficulties confronting the Government and people of Myanmar'.⁸⁴ By trying to increase the say of neighbours and regional groups over public and country-specific human rights criticism by the Council, China challenged the authority of international human rights assessments. Evidently, this also played to China's favour. For example, during the Periodic Review of China in 2009, Myanmar stated that 'As an immediate neighbour with long-standing traditional close ties of friendship with China, Myanmar [...] sympathized with and understood the challenges faced by China with regard to human rights issues'.⁸⁵

With regard to treaty bodies, the Chinese delegation argued that their reporting system was too burdensome, especially for developing countries. Beijing also stressed that there was a need for 'closer cooperation between treaty bodies and States Parties with a view to deepening mutual understanding'.⁸⁶ Accordingly, Beijing not only wanted to reduce 'complexity and redundancy of the current reporting system'⁸⁷ but stressed that '[r]eform initiatives should, inter alia, aim at ensuring that the requirements for the contents of the reports and their consideration did not go beyond the purview of the relevant treaties'.⁸⁸ China also supported the adoption of a code of conduct for special rapporteurs. According to Chinese ambassador Sha Zukang, 'a code of conduct for mandate-holders was necessary in order to avoid irresponsible

⁸¹ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2005/SR.21 (2005), para. 1.

⁸² UN General Assembly, Summary Record of the 35th Meeting, UN Doc. A/C.3/62/SR.35 (2008), para. 45.

⁸³ Nations Unies Commission des Droits de l'Homme, Compte Rendu Analytique de la 60e Séance, UN Doc. E/CN.4/2005/SR.60 (04.05.2005), para. 51.

⁸⁴ UN Commission on Human Rights, Summary Record of the 52nd Meeting, UN Doc. E/CN.4/2003/SR.52 (2003), para. 55.

⁸⁵ UN Human Rights Council, Eleventh Session. Agenda Item 6, UN Doc. A/HRC/11/25 (2009), para. 94.

⁸⁶ UN General Assembly, Third Committee, Summary Record of the 36th Meeting, UN Doc. A/C.3/58/SR.36 (2004), para. 49.

⁸⁷ UN General Assembly, Third Committee, Summary Record of the 20th Meeting, UN Doc. A/C.3/62/SR.20 (2007), para. 5.

⁸⁸ *Idem*.

behaviour such as had sometimes been witnessed in the past'.⁸⁹ He further suggested that 'admissibility criteria' be established for communications by special procedures.⁹⁰ Such communications notably include urgent actions on individual cases to which States are asked to reply. By contrast, a code of conduct for States that are visited or contacted by a special procedure does not exist; that is, the control over the work of special rapporteurs has recently been increased without simultaneously creating new impetus for State compliance with the special procedures.

In another debate on the role of treaty bodies, Tian Ni, Advisor to the Chinese Delegation at the 60th session of the General Assembly, stressed that the 'consideration of the implementation reports of States parties by human rights treaty bodies was an exchange of views on an equal footing'.⁹¹ Moreover, Xie Bohua, Counsellor of the Chinese Mission to the UN, pointed out that 'reporting and consideration procedures [...] helped the international community to better understand the measures taken by States parties'.⁹² Similarly, when China first invited the Special Rapporteur on Torture to visit China in 1999, the mandate-holder at the time, Sir Nigel Rodley, and the Chinese government failed to agree over the terms of the visit. In a debate at the Third Committee of the General Assembly in October 2000, Beijing informed the Special Rapporteur that he could only meet Chinese authorities 'on an equal footing and in the spirit of mutual respect'.⁹³ That is, China repeatedly refuted the notion that treaty bodies were mandated to monitor State compliance; rather, China portrayed them as advisory bodies to States. China's position on this matter is, obviously, only one factor in a complex decision-making process at the UN. Nonetheless, it has certainly facilitated a gradual tightening of procedural flexibility and independence of treaty bodies. Chinese diplomacy in UN human rights institutions is characterized by careful attention to procedural detail, with a discernable focus on preventing an extension of mandates at the cost of State sovereignty and, at times, even an effort to introduce new procedural restrictions.

In addition to the implication contest on UN human rights monitoring, evidence was also found for a long-lasting framing contest under category 2. Instead of questioning the legitimacy of UN human rights bodies and monitoring instruments *per se*, China's remarks on the issue focused predominantly on individual UN Member States. It was argued that their human rights monitoring was not credible. The view that Western countries, and the US in particular, clung to an outdated

⁸⁹ UN Commission on Human Rights, Summary Record of the 2nd Meeting, UN Doc. E/CN.4/2004/SR.2 (2004), para. 64.

⁹⁰ *Idem*.

⁹¹ UN General Assembly, Third Committee, Summary Record of the 22nd Meeting, UN Doc. A/C.3/60/SR.22 (2005), para 22.

⁹² UN General Assembly, Third Committee, Summary Record of the 31st Meeting, UN Doc. A/C.3/56/SR.31 (2002), para. 58.

⁹³ UN General Assembly, Third Committee, Summary Record of the 36th Meeting, UN Doc. A/C.3/55/SR.36 (2000), para. 43.

Cold War mentality was a common accusation.⁹⁴ Similarly, Western States were criticized for not adequately addressing their own shortcomings before starting to monitor the human rights compliance of others. For example, in a March 2001 debate at the Commission on Human Rights, China stated that a UK representative 'had indulged in irresponsible accusations against other countries while turning a blind eye to widespread violations of human rights in his own country, which included police brutality, racial and gender discrimination and polarization of wealth'.⁹⁵ China concluded the statement by stressing that 'The United Kingdom Government would be well-advised to put its own house in order first'.⁹⁶ In another debate, the German delegation was told that it should 'concentrate on tackling the problems posed by the activities of neo-Nazis in Germany', instead of criticizing others.⁹⁷

US statements on human rights in China and around the world were frequently portrayed as illegitimate, again by means of referring to US domestic conduct. A 2004 debate was marked by an exceptionally aggressive tone. China called upon the US to 'take a close look at itself in the mirror'.⁹⁸ Mentioning a white paper China had prepared on the situation of human rights in the US, the Chinese delegation disdainfully advised other State representatives 'not to read it before going to bed, as it could give them nightmares'.⁹⁹ Also US pre-eminence in world affairs was referred to as an argument against the country's credibility:

The United States attack against China's move was a typical act of hegemony. The United States representative must remember that the Commission was not the United States Congress, and that the Commission followed the rules of procedure of the United Nations, not the will of the United States.¹⁰⁰

US failure to ratify core human rights conventions was also singled out. In a debate on the Convention on the Rights of the Child, China criticized that 'a certain super-Power' had not ratified it 'while indulging in self praise and criticizing the observance of human rights by other countries. One could only doubt the sincerity of that country's

⁹⁴ See for example: UN Commission on Human Rights, Summary Record of the 20th Meeting, UN Doc. E/CN.4/2000/SR.20 (2000), para. 22; UN General Assembly, Third Committee, Summary Record of the 25th meeting, UN Doc. A/C.3/59/SR.25 (2004), para. 28; UN Human Rights Council, High-level Segment, Summary Record of the 5th Meeting, UN Doc. A/HRC/1/SR.5 (2005), para. 20.

⁹⁵ UN Commission on Human Rights, Summary Record of the 7th Meeting, UN Doc. E/CN.4/2001/SR.7 (2001), para. 69.

⁹⁶ *Idem.*

⁹⁷ UN Commission on Human Rights, Summary Record of the 3rd Meeting, UN Doc. E/CN.4/2004/SR.3 (2004), para. 42.

⁹⁸ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2004/SR.21 (2004), para. 89.

⁹⁹ *Idem.*

¹⁰⁰ UN Commission on Human Rights, Summary Record of the 55th Meeting, UN Doc. E/CN.4/2000/SR.55 (2000), para. 87.

support for human rights, and question its motives in passing judgement on others'.¹⁰¹ In 2010, China reiterated concern 'that the United States had not become a party to a number of core international human rights instruments'¹⁰² and recommended as part of the UPR-process that the US '[r]atify [the] ICESCR, CEDAW, the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities and other core human rights treaties as soon as possible'.¹⁰³ Recurrent international themes in China's discussion of US credibility were the wars in Iraq and Afghanistan and the so-called war on terror. A 2008 debate in the General Assembly is illustrative of this approach. In this debate, the Chinese delegation voiced harsh criticism:

Quick to denounce what was happening in other countries, the [US] representative seemed to have forgotten what was happening in his own country, and in Iraq and Afghanistan. The killing of 17 innocent Iraqi civilians by employees of the Blackwater company was yet another illustration of the collateral damage of United States armed and security force actions. Under the pretext of counter-terrorism, the Government of the United States had not hesitated to infringe the right to privacy and freedom of opinion and expression, notably by tightening its control over the Internet. [... the Chinese delegation] hoped that the representative of the United States would remember all that before setting himself up as a human rights judge, and that he would wake up to the hypocrisy of his country with respect to human rights.¹⁰⁴

When questioning the credibility of a State's assessment of another's human rights compliance, China not only commented on contemporary issues but frequently drew a link with historical events. For example in a 2005 debate, a UK speaker was told that he had:

acted as though he was governor of the Empire where the sun never set, having forgotten that the world had changed. It was the United Kingdom that had imposed its colonialist domination on many countries, including China; that had tried, in the nineteenth century, to force the Chinese to take opium and was responsible for the massacre of large numbers of Chinese during the infamous opium war; and that had appropriated the territory of Hong Kong for almost 100 years. The United Kingdom had also invented the maxim "divide and rule", but it was better known in the contemporary era for race riots and police brutality. The Chinese delegation suggested that the United Kingdom, whose occupying forces in Iraq had been responsible for the death of many innocent civilians, should be subjected to peer pressure, as it had recommended in the case of other countries.¹⁰⁵

¹⁰¹ UN Commission on Human Rights, Summary Record of the 40th Meeting, UN Doc. E/CN.4/2000/SR.40 (2000), paras. 51–52.

¹⁰² UN Human Rights Council, Sixteenth Session, Agenda Item 6, UN Doc. A/HRC/16/11 (2011), para. 21.

¹⁰³ *Ibidem* at para. 92(17).

¹⁰⁴ UN General Assembly, Third Committee, Summary Record of the 33rd Meeting, UN Doc. A/C.3/62/SR.33 (2008), para. 17.

¹⁰⁵ UN Commission on Human Rights, Summary Record of the 11th Meeting, UN Doc. E/CN.4/2004/SR.11 (2005), para. 77.

Sweden was also accused of 'dark incidents of human rights violations' in the course of its history.¹⁰⁶ The Chinese delegation assessed Sweden's human rights situation as 'rather sombre' and firmly rejected Sweden's criticism of others, stating "That country does not have the right to point fingers at others over human rights situations".¹⁰⁷ And when Japan, which is frequently criticized by China for war crimes during World War II, tried to rebut the relevance of historical references in another debate, the Chinese permanent representative Sha Zukang made prompt use of the right of reply and stressed that 'contrary to what the representative of Japan had said, crimes committed over 60 years previously were not unrelated to the current work of the Commission and lessons learned from the past could be used to build the future'.¹⁰⁸ A further argument against the credibility of criticism raised against China was to point to double-standards. For example the German Foreign Minister Joschka Fischer was told that he 'had deliberately omitted to mention the serious human rights violations taking place in a country that was its ally and in his own country. It was clear that his concern was selective and political in nature'.¹⁰⁹

The dispute over the legitimacy of human rights monitoring was a continuous feature of UN human rights debates in the period 2000–2010. Although most frequently directed against States that had voiced criticism against China, the rhetorical battle eventually became broader, challenging the UN's main human rights bodies. In 2005, Sha Zukang warned 'that political confrontation had eroded the Commission's authority'¹¹⁰ and that the 'Commission was confronting a credibility crisis because it applied double standards and practised a policy of naming and shaming developing countries'.¹¹¹ When the UN Commission on Human Rights was turned into the UN Human Rights Council in 2006, this broader criticism of the Commission as an institution was invoked more regularly, for example here:

The Human Rights Council should correct the weakness of the former Commission on Human Rights. Although it had contributed in its own way to the cause of human rights, the Commission's practices of politicization, double standards and "naming and shaming" had damaged its reputation irreparably. Therefore, the Council should take care to avoid those old practices.¹¹²

¹⁰⁶ UN General Assembly, 22nd Plenary Meeting, Official Records, UN Doc. A/65/PV.22 (2010), p. 48.

¹⁰⁷ *Idem*.

¹⁰⁸ UN Economic and Social Council, Summary Record of the 7th Meeting, UN Doc. E/CN.4/2005/SR.7 (2005), para. 69.

¹⁰⁹ UN Commission on Human Rights, Summary Record of the 16th Meeting, UN Doc. E/CN.4/2005/SR.16 (2005), para. 80.

¹¹⁰ UN Commission on Human Rights, Summary Record of the 50th Meeting, UN Doc. E/CN.4/2005/SR.50 (2005), para. 43.

¹¹¹ UN Economic and Social Council, Summary Record of the 2nd Meeting, UN Doc. E/CN.4/2005/SR.2 (2005), para. 48.

¹¹² UN General Assembly, Third Committee, Summary Record of the 30th Meeting, UN Doc. A/C.3/62/SR.30 (2007), para. 9.

The rhetorical shift is significant in that it signals a new stage in the framing contest on the legitimacy of UN human rights monitoring. As will be discussed in the following section, this shift goes hand-in-hand with China's unequivocal defence of a strong sovereignty norm which, according to the Chinese interpretation, places strict limits on international human rights monitoring.

6. ANALYSIS OF STATEMENTS ON CATEGORY 3 – SOVEREIGNTY

Beijing's insistence on State sovereignty is commonly explained as a strategy to counter criticism of China's domestic human rights situation and as a result of the country's own experience with imperialism and foreign intervention.¹¹³ It is, therefore, not surprising that Chinese statements in UN human rights debates frequently refer to the sovereignty norm. This section seeks to understand how China delineated the relationship between sovereignty and human rights in the period 2000–2010, notably whether human rights were portrayed as subordinate to sovereignty (indicative of an implication contest), and to what extent the notion of absolute sovereignty was promoted (indicative of a framing contest).

The idea that the right of a nation (*guoquan*) was more important than human rights (*renquan*) was already articulated by Deng Xiaoping.¹¹⁴ According to this perspective, human rights violations can never justify interference in the internal affairs of another country. This idea is also reflected in Chinese statements at the UN, and that at very high level. For example, the Chinese Minister of Foreign Affairs Tang Jiaxuan stated in 2000 that sovereign equality and non-interference in the internal affairs of States were the two 'core principles guiding international relations'.¹¹⁵ He further said, 'Countries differ in size, strength and wealth, but they are all equal members of the international community. None should be discriminated against and their state sovereignty brooks no encroachment'.¹¹⁶

He also argued that the then debated UN reform was 'aimed at better safeguarding the fundamental rights and interests of all Member States'.¹¹⁷ This formulation is striking because the term "fundamental rights" is typically used in national constitutions, where it refers to inalienable entitlements of human beings under the State's jurisdiction. It could be said that by applying the term "fundamental rights" to States, the Chinese Minister of Foreign Affairs launched in a framing contest, seeking to portray State sovereignty as absolute. However, given that this was not a consistent

¹¹³ Zhu, Y., 'China and International 'Human Rights Diplomacy', *China: an International Journal*, Vol. 9, No. 2, 2011, pp. 217–245.

¹¹⁴ *Ibidem* at p. 223.

¹¹⁵ UN General Assembly, 12th plenary meeting, UN Doc. A/55/PV.12 (2000), p. 4.

¹¹⁶ *Ibidem* at p. 5.

¹¹⁷ *Idem*.

line of argument in the dataset, the above quote is best understood as an exceptional proclamation on the relationship between sovereignty and human rights norms. The far more common line of argument in Chinese statements at the UN is that sovereign equality and non-interference were important legal principles enshrined in the UN Charter and that country-specific human rights criticism 'contravened the spirit of the Charter'¹¹⁸ or, in another formulation, 'made a mockery of the Charter of the United Nations'.¹¹⁹ Although the UN Charter is frequently invoked by Chinese speakers, only one example was found where it was acknowledged that the Charter also refers to human rights and not only to sovereignty and non-interference.¹²⁰

Another common argument was that sovereignty is the prerequisite for human rights protection. The argument was usually put forward in support of calls for non-interference but it was also found in debates on the occupied Palestinian territories. For example, Dai Yuzhong stated in 2000 that the experience of the Palestinian peoples 'illustrated the importance of the existence of a sovereign State, which was the premise for the enjoyment by the people concerned of their fundamental human rights'.¹²¹ A particularly noteworthy statement was found under agenda item 5 of the Commission on Human Rights, covering the right to self-determination. In this context, Qi Xiaoxia (then Counsellor at the MFA's International Conferences and Organizations Department and later Special Representative on Human Rights) argued that:

Firstly, national self-determination [...] was the basis for the exercise of all other human rights. Secondly, self-determination meant that all peoples had the right freely to choose their preferred economic and political system and their path to development. In that respect, the interference of one State in the internal affairs of another constituted a gross violation of the right to self-determination. Finally, that right should not become a pretext for splitting up sovereign States and instigating national hatred.¹²²

The main argument here is that a violation of the sovereignty principle inevitably constituted a human rights violation. This line of argument can be interpreted as strategically employed political rhetoric used to justify a strict interpretation of the sovereignty norm in human rights terms.

¹¹⁸ UN Commission on Human Rights, Summary Record of the 3rd Meeting, UN Doc. E/CN.4/2001/SR.3 (2001), para. 21.

¹¹⁹ UN Commission on Human Rights, Summary Record of the 2nd Meeting, UN Doc. E/CN.4/2004/SR.2 (2004), para. 63.

¹²⁰ UN General Assembly, Third Committee, Summary Record of the 36th Meeting, UN Doc. A/C.3/55/SR.36 (2000), para. 104.

¹²¹ UN Commission on Human Rights, Summary Record of the 13th Meeting, UN Doc. E/CN.4/2000/SR.13 (2000), para. 61.

¹²² UN Commission on Human Rights, Summary Record of the 13th Meeting, UN Doc. E/CN.4/2004/SR.13 (2005), para. 3.

China frequently rejected the notion of humanitarian intervention as a pretext, for example, when stating that interference in the sovereignty of a State was forbidden ‘under any pretext’ including under ‘allegedly humanitarian grounds’.¹²³ The arguments that a) human rights criticism was interference and b) that human rights were only used as a pretext for ulterior motives are the dominant themes in China’s statements on the relationship between sovereignty and human rights. This is the case not only in debates about the human rights situation in China but also with respect to other countries. For instance, in April 2004 Sha Zukang argued that a draft resolution on the human rights situation in Chechnya ‘constituted an interference in the internal affairs of a sovereign country’ based ‘on the pretext of defending human rights’.¹²⁴ The ambassador made the same argument with regard to Turkmenistan: ‘some of the elements of the draft resolution constituted interference in the internal affairs of Turkmenistan under the pretext of human rights’.¹²⁵ In more general terms, China’s Deputy Permanent Representative to the UN, Wang Min, noted in October 2010 that ‘It was unfortunate that the promotion of human rights [...] was used as an excuse to interfere in the internal affairs of certain countries’.¹²⁶ A particularly poignant version of the same line of argument was found in a record of 10 years earlier, which stated ‘To interfere in other countries’ internal affairs in the name of protecting human rights in order to advance one’s own political agenda is simply to blaspheme and betray the human rights cause’.¹²⁷

As was already mentioned in the analysis of category 2, Chinese statements often contain rhetoric that is tailored to attracting solidarity from developing countries; this also applies to category 3. For example, when commenting on ‘slandorous allegations’ in a US draft resolution on the human rights situation in China, Qiao Zonghuai (then China’s Permanent Representative to the UN in Geneva and later Vice Foreign Minister) stated that these allegations against China ‘amounted to interference in the internal affairs of developing countries and undermined their development efforts under the pretext of concern for human rights’.¹²⁸

The limits placed on external actors’ acceptable behaviour in the field of human rights are, indeed, interpreted very narrowly by China. In a debate on the adoption of the Declaration on Human Rights Defenders, Special Advisor of the Chinese delegation Liu Jing ‘recognized that individuals, groups and organs of society could

¹²³ UN Commission on Human Rights, Summary Record of the Fiftieth Meeting, UN Doc. E/CN.4/2000/SR.50 (2000), para. 73.

¹²⁴ UN Commission on Human Rights, Summary Record of the 50th Meeting, UN Doc. E/CN.4/2004/SR.50 (2005), para. 67.

¹²⁵ UN Commission on Human Rights, Summary Record of the 52nd Meeting, UN Doc. E/CN.4/2003/SR.52 (2003), para. 27.

¹²⁶ UN General Assembly, Third Committee, Summary Record of the 32nd Meeting, UN Doc. A/C.3/65/SR.32 (2011), para. 26.

¹²⁷ UN General Assembly, 12th plenary meeting, UN Doc. A/55/PV.12 (2000), p 7.

¹²⁸ UN Commission on Human Rights, Summary Record of the 62nd Meeting, UN Doc. E/CN.4/2001/SR.62 (2001), para. 58.

play a positive and constructive role in the promotion and protection of those rights' but also stressed that it was 'for States to determine, on the basis of their laws, whether activities carried out by individuals, groups or organs of society were of a nature to promote and protect human rights as defined in the Declaration'.¹²⁹ In other words, the Declaration on Human Rights Defenders was not rejected in its entirety by China, but it was not accepted that non-governmental organisations, UN bodies or other States could use the Declaration to decide whether certain actors were, indeed, human rights defenders that needed protection. In China's view, this decision had to remain the privilege of the State concerned.

Similarly, China contended that public statements on individual cases constituted a violation of the sovereignty principle. For example, when the EU called for the release of Chinese intellectual and democracy activist Liu Xiaobo after he received the 2010 Nobel Peace Prize, the Chinese delegation called this 'a gross attempt to infringe on China's judicial sovereignty'.¹³⁰ Again, there is an unusual use of a legal concept, this time not 'fundamental rights of States' but 'judicial sovereignty'. The term "judicial sovereignty" usually refers to a Supreme Court's supremacy with regard to constitutional interpretation. The concept encapsulates the notion that constitutional law supersedes other legislation and that the Court can overrule laws to safeguard the constitution. The statement quoted above, however, makes a different use of this term. It suggests that international criticism on the handling of specific cases by the Chinese legal system was illegitimate because it not only disrespected the adjudication of alleged criminal cases by the Chinese judiciary but also violated China's sovereignty. The wording "judicial sovereignty" has been used repeatedly by Chinese diplomats whenever individual cases attract a high level of international attention. In addition to Liu Xiaobo, another prominent recent example is the artist Ai Weiwei. Also in his case, the Chinese Ministry of Foreign Affairs stressed that other countries must respect China's judicial sovereignty and stop commenting on the case.¹³¹ Given that politics and law commissions which operate under the command of the Chinese Communist Party control the Chinese judiciary, it is likely that the unusual use of the term "judicial sovereignty" is not coincidental but deliberate; it would simply not be credible to reject international statements on the handling of individual cases with a reference to the independence of the Chinese judiciary.

In line with the hypothesized implication contest under category 3, China accepted that human rights norms obligate States, but it coherently insisted that alleged violations must be dealt with as an issue of domestic concern that did not warrant international intervention. Country-specific debates in international fora,

¹²⁹ UN Commission on Human Rights, Summary Record of the 53rd Meeting, UN Doc. E/CN.4/2000/SR.53 (2000), para. 19.

¹³⁰ UN General Assembly, Third Committee, Summary Record of the 31st Meeting, UN Doc. A/C.3/65/SR.31 (2010), para. 85.

¹³¹ Cheng Jia, 'China's judicial sovereignty should be respected', *Global Times*, 6 May 2011, available at: <http://china.globaltimes.cn/diplomacy/2011-05/652124.html>.

resolutions and governmental, public criticism of another country's handling of individual cases were all interpreted as undue interference, driven by ulterior motives. Two examples for attempts to reframe established legal concepts were identified under category 3; however, these attempts fall short of a strategy to fundamentally redefine the relationship between sovereignty and human rights norms.

7. ANALYSIS OF STATEMENTS ON CATEGORY 4 – RIGHTS

When the People's Republic of China issued its first white paper on human rights in 1991, it stated: 'It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question'.¹³² Two decades later, there is no doubt that the Chinese government continues to accord a higher priority to economic rights than to political rights in its domestic politics. It ratified the International Covenant on Economic, Social and Cultural Rights in 2001 but has to this date not yet ratified the International Covenant on Civil and Political Rights. In the most recent government policy paper on human rights, the National Human Rights Action Plan 2012–2015, it was again stressed that 'The Chinese government will continue to give priority to the protection of the people's rights to subsistence and development'.¹³³ Regarding civil and political rights, in contrast, it is stated that China endeavours to 'expand the orderly political participation of citizens'.¹³⁴ It was, therefore, expected that Chinese statements in human rights debates at the UN would provide empirical evidence for an ongoing contest on the interaction of civil and political rights with economic, social and cultural rights. Two possible alternatives were introduced above. It was hypothesized that China portrayed the relationship between the two sets of rights either as hierarchical (framing contest) or as conditional (implication contest).

In most general terms, Chinese speakers observed that 'safeguarding international peace and security, and promoting development were pre-conditions to the protection and promotion of human rights',¹³⁵ or that 'economic, social and cultural development [...] [were] the key to the realization of human rights'.¹³⁶ Similarly, Wang Guangya, then Chinese Vice Minister for Foreign Affairs, argued in 2002 that 'Economic and

¹³² Information Office of the State Council of the People's Republic of China, *Human Rights in China: White Paper of the Chinese Government*, Beijing, 1991, available at: www.china.org.cn/e-white/7/index.htm, Section I.

¹³³ Information Office of the State Council of the People's Republic of China, *National Human Rights Action Plan of China (2012–2015)*, Beijing, 2012, available at: http://news.xinhuanet.com/english/china/2012-06/11/c_131645029.htm, Section I.

¹³⁴ *Ibidem* at Section II.

¹³⁵ UN Commission on Human Rights, Summary Record of the 52nd meeting, UN Doc. E/CN.4/2005/SR.52 (2005), para. 44.

¹³⁶ UN General Assembly, Third Committee, Summary Record of the 45th Meeting, UN Doc. A/C.3/58/SR.45 (2003), para. 6.

social development were the best building blocks for the full enjoyment of human rights'.¹³⁷ With regard to the realization of civil and political rights, it was pointed out that 'Low levels of economic development and education posed challenges'.¹³⁸ The indivisibility and interdependence of both sets of rights is of course generally recognized and usually not a point of major contestation in international human rights debates. The sequencing of rights, on the other hand, is far more controversial. China has argued for sequencing by stating that the realization of civil and political rights was 'a gradual process, dependent on the level of overall social development'.¹³⁹ The idea that economic development formed the basis for political liberalisation also transpires in the following statement on the situation in China:

Having in recent decades achieved decent living standards for its people, the Government [of China], guided by the rule of law, was actively improving its political democracy to ensure democratic elections, decision-making processes and oversight. It was overhauling its legal, judicial and law-enforcement system to institute greater human rights guarantees and was raising its citizens' awareness of their rights.¹⁴⁰

Only in one case did a Chinese representative argue otherwise. In response to a statement made by the UK's Foreign Minister Jack Straw, the Chinese representative La Yifan (Division Director of the MFA's Department of International Organisations and Conferences) argued that China's economic miracle had only been achieved due to a parallel installation of democracy and rule of law.¹⁴¹ His assertion that the protection of civil and political rights was a simultaneous and not a consecutive step in China's ongoing transformation can be interpreted as a diplomatic mistake. Made in direct reply, the statement was most certainly not cleared through the usual channels and, instead, formulated on an *ad hoc* basis, thereby making this slight deviation from the standard line possible.

In addition to the standard argument that economic development had to come first, Chinese diplomats frequently assured others that China was committed to both sets of rights. For example, Li Baodong, then Director-General of the MFA's Department of International Organizations and Conferences and later China's Permanent Representative to the UN, stated in 2000 that 'while his Government was committed to the realization of economic, social and cultural rights, it also

¹³⁷ UN Commission on Human Rights, Summary Record of the 21st Meeting, UN Doc. E/CN.4/2002/SR.21 (2002), para. 3.

¹³⁸ UN Commission on Human Rights, Summary Record of the 32nd Meeting, UN Doc. E/CN.4/2005/SR.32 (2005), para. 90.

¹³⁹ UN Commission on Human Rights, Summary Record of the 32nd Meeting, UN Doc. E/CN.4/2004/SR.32 (2004), para. 61.

¹⁴⁰ UN General Assembly, Third Committee, Summary Record of the 45th Meeting, UN Doc. A/C.3/58/SR.45 (2003), para. 7.

¹⁴¹ Nations Unies Commission des Droits de l'Homme, Compte Rendu Analytique de la 46eme Séance, UN Doc E/CN.4/2002/SR.46 (2002), para. 75.

attached great importance to civil and political rights'.¹⁴² In another debate, Li Baodong curiously renamed the two sets of rights. In reference to the situation of ethnic minorities in China, he stressed that 'The protection of political, religious and cultural rights, on the one hand, and social and economic development, on the other, were not mutually exclusive but complementary'.¹⁴³ This renaming may be viewed as an implicit admission that religious and cultural practices were politically controlled in China's minority regions, but since it is a unique example in the dataset it cannot be interpreted as evidence for a framing contest on the relationship between different rights. It is more significant that other statements on the situation in China drop the reference to civil and political rights altogether, for instance here: 'sustained economic growth had laid a solid basis for the further realization of the economic, social and cultural rights of the Chinese people'.¹⁴⁴ This omission hints at China's shortcomings in the field of civil and political rights.

The assurance that both sets of rights were given equal importance was frequently provided in reference to domestic policy choices, but Chinese speakers also appealed more generally that 'The international community should treat all human rights equally, not give some preference over others'.¹⁴⁵ In 2001, China 'welcomed the work of the High Commissioner, particularly the emphasis she laid on the equal importance of both categories of human rights'.¹⁴⁶ It was also China's view that the new Human Rights Council ought to ensure equal attention to both sets of rights.¹⁴⁷ It would be wrong, however, to interpret the above statements as an endorsement of the equal importance of rights. China's appeal for an equal emphasis on all human rights was, rather, a moderate form of the argument that civil and political rights were being overemphasized in UN human rights fora. Throughout the period 2000–2010, the latter position was frequently voiced. For example, in 2000, China called on the Commission to 'play its part in the realization of economic, social and cultural rights. It must urgently address the tendency to emphasize civil and political rights at the expense of economic, social and cultural ones'.¹⁴⁸ This position was reiterated in 2002, when China said that 'the Commission was at the centre of United Nations human rights efforts and should play a greater role in enhancing the enjoyment of economic,

¹⁴² UN Commission on Human Rights, Summary Record of the 31st Meeting, UN Doc. E/CN.4/2000/SR.31 (2000), para. 14.

¹⁴³ UN Commission on Human Rights, Summary Record of the 54th Meeting, UN Doc. E/CN.4/2001/SR.54 (2001), para. 58.

¹⁴⁴ UN Commission on Human Rights, Summary Record of the 24th Meeting, UN Doc. E/CN.4/2005/SR.24 (2005), para. 118.

¹⁴⁵ UN Commission on Human Rights, Summary Record of the 31st Meeting, UN Doc. E/CN.4/2001/SR.31 (2001), para. 56.

¹⁴⁶ UN Commission on Human Rights, Summary Record of the 3rd Meeting, UN Doc. E/CN.4/2001/SR.3 (2001), para. 52.

¹⁴⁷ Nations Unies Assemblée Générale, Conseil des Droits de l'Homme, Compte Rendu Analytique de la 3e Séance, UN Doc. A/HRC/3/SR.3 (2007), para. 15.

¹⁴⁸ UN Commission on Human Rights, Summary Record of the 23rd Meeting, UN Doc. E/CN.4/2000/SR.23 (2000), para. 60.

social and cultural rights by all the peoples of the world'.¹⁴⁹ The same statement also stressed that economic, social and cultural rights 'made an important contribution to the realization of other categories of human rights'.¹⁵⁰ Similarly, in 2005, China called on the international community to 'take measures to correct the prevailing imbalance between two categories of human rights' and 'called on it to respond positively to the legitimate demand of developing countries by giving greater prominence to economic, social and cultural rights'.¹⁵¹ As already observed under category 2 and 3, the intent to forge an alliance between developing countries is apparent. Finally, OHCHR was asked to 'develop more specific and pragmatic initiatives' with respect to economic, social and cultural rights,¹⁵² and to provide 'increased support' to special procedures with mandates in the areas of the right to food, health and development.¹⁵³ Also in the context of the UPR, China typically comments on countries' development stage and most of its remarks focus exclusively on economic, social and cultural rights. Similarly, in its own UPR review, China did not endorse most of the recommendations other countries had made on civil and political rights. Among the ones it accepted was the proposal that it create conditions for ratification of the ICCPR, a proposal that obviously suited China's sequencing argument.¹⁵⁴ The more specific suggestion that China announce a clear timetable for ICCPR ratification was, however, rejected.¹⁵⁵ China's tactical UPR manoeuvring may be seen as evidence for a dishonest spirit; at the same time, there is no denial that Beijing remained in firm control over the language in the final report. This is in stark contrast to the limited influence Beijing has so far managed to impose on treaty bodies such as, for example, on the UN Committee against Torture, which issued much more critical language on China not long before the UPR session took place.¹⁵⁶

China's emphasis on economic, social and cultural rights is closely linked to the advocacy for the right to development. China not only repeatedly expressed support for the right to development as an inalienable human right, it also called it a pillar of the UN's work¹⁵⁷ and promoted the elaboration of a legally binding instru-

¹⁴⁹ UN Commission on Human Rights, Summary Record of the 33rd Meeting, UN Doc. E/CN.4/2002/SR.33 (2002), para. 70.

¹⁵⁰ *Idem*.

¹⁵¹ UN Commission on Human Rights, Summary Record of the 26th Meeting, UN Doc. E/CN.4/2004/SR.26 (2005), para. 84.

¹⁵² UN Economic and Social Council, Summary record of the 12th Meeting, UN Doc. E/CN.4/2005/SR.12 (2005), para. 8.

¹⁵³ UN General Assembly, Third Committee, Summary Record of the 22nd Meeting, UN Doc. A/C.3/65/SR.22 (2011), para. 16.

¹⁵⁴ UN Human Rights Council, Eleventh Session, Agenda Item 6, UN Doc. A/HRC/11/25 (2009), para 114(1).

¹⁵⁵ *Ibidem* at para. 117.

¹⁵⁶ UN Committee against Torture, Concluding Observations of the Committee against Torture: China, UN Doc. CAT/C/CHN/CO/4 (2008).

¹⁵⁷ UN General Assembly, Third Committee, Summary Record of the 44th Meeting, UN Doc. A/C.3/64/SR.44 (2010), para. 60.

ment.¹⁵⁸ Mirroring the advocacy for greater attention to economic, social and cultural rights, China also called for a prioritization of the right to development.¹⁵⁹ Beyond such prioritization, China appealed to the international community to ‘mainstream the right to development in the work of the United Nations, the international financial institutions and the multilateral trade system’.¹⁶⁰ This suggestion not only recalled but countered a Western-led initiative on mainstreaming human rights in development assistance. A joint statement by the Non-Aligned Movement and China explicitly stated that ‘shifting the focus from the right to development to the mainstreaming of human rights’ should be avoided.¹⁶¹ Evidently, therefore, the proposals to mainstream human rights, on the one hand, and to mainstream the right to development, on the other hand, were portrayed as conflicting by China. This is noteworthy insofar as the Declaration on the Right to Development, adopted by the General Assembly in 1986, states that

in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.¹⁶²

That is, the Declaration does not prioritize one set of human rights over another, nor does it endorse a sequencing agenda which holds progress on economic, social and cultural rights as the precondition for civil and political rights. The above statement regarding a conflict on what to mainstream may, thus, be read as a framing contest, where the collective right to development is promoted – in contrast to the content of the Declaration – as an alternative for the frame of individually-held rights. But China’s arguments on the issue are not consistent. In another joint position with the non-aligned countries, for example, the right to development is described as ‘a bridge between economic, social and cultural rights and civil and political rights’.¹⁶³ This latter statement does not invoke tension between the two sets of rights; it only

¹⁵⁸ See for example, UN Commission on Human Rights, Summary Record of the 16th Meeting, UN Doc. E/CN.4/2004/SR.16 (2004), para. 52; UN Commission on Human Rights, Summary Record of the 16th Meeting, UN Doc. E/CN.4/2005/SR.16 (2005), para. 36; UN Human Rights Council, First, General Segment, Summary Record of the 14th Meeting, UN Doc. A/HRC/1/SR.14 (2006), para. 37.

¹⁵⁹ UN General Assembly, Third Committee, Summary Record of the 32nd Meeting, UN Doc. A/C.3/65/SR.32 (2011), para. 27.

¹⁶⁰ UN General Assembly, Third Committee, Summary Record of the 44th Meeting, UN Doc. A/C.3/64/SR.44 (2010), para. 60.

¹⁶¹ UN Commission on Human Rights, Summary Record of the 16th Meeting, UN Doc. E/CN.4/2004/SR.16 (2004), para. 48.

¹⁶² UN General Assembly, Declaration on the Right to Development, UN Doc. A/RES/41/128 (1986), preamble.

¹⁶³ UN Human Rights Council, General Segment, Summary Record of the 14th Meeting, UN Doc. A/HRC/1/SR.14 (2006), para. 37.

restates the position that civil and political rights should not be the initial step in a development process.

The one common element in China's various statements on the interaction between different rights is that development as well as economic, social and cultural rights must be prioritized. In UN human rights debates, China has not gone so far as to argue that these rights were intrinsically more important than civil and political rights. Rather, the call for prioritizing economic, social and cultural rights over civil and political rights is linked to a justification of China's own development path and, furthermore, vindicated with the frequently reiterated opinion that existing international human rights mechanisms overemphasized civil and political rights.

8. ASSESSMENT

Under each of the analysed four categories, evidence for ongoing implication contests was identified. It was found that, under category 1, China endorsed the validity of international human rights norms but argued that implementation inevitably differed depending on national circumstances and cultural traditions. Under category 2, China challenged the relationship between UN monitoring instruments and States, pressing for significant restrictions regarding country-mandates and special procedures. Under category 3, human rights norms were portrayed as sub-ordinate to sovereignty. Accordingly, human rights scrutiny was dismissed as interference and, oftentimes, interpreted as a pretext for ulterior motives. Under category 4, China stressed that economic, social and cultural rights were a priority for developing countries, but not that these rights were intrinsically more important than civil and political rights.

China's leading advocacy for a Declaration on Human Social Responsibilities provided the most important substantiation for the assumption that the human rights normative order is also being challenged through framing contests. The notion that human rights protection was subject to an individual's social conduct defies the very essence of human rights. Although the Declaration was eventually not adopted, the active participation of Chinese diplomats in this debate illustrates that Beijing challenges the normative frame of universal human rights with an entirely different conception regarding the relationships between individuals, society and State. It is not at all certain that the Declaration on Human Social Responsibilities was the last attempt to critically reframe the normative order established by international human rights law. Based on the analysis of China's statements in UN human debates from 2000–2010, and assuming the domestic political system as constant, it can be expected with a considerable degree of certainty that Beijing will continue to resist the idea that individuals hold unconditional entitlements vis-à-vis their States.

Also under category 2, which captured statements on the UN's monitoring of human rights compliance, a framing contest was identified. For the most part, China's statements focused on the mandate of different monitoring bodies, not their

legitimacy, but whenever China was itself criticised, it attacked the credibility of the speaker in question. During the transition from Human Rights Commission to Human Rights Council, China's argument broadened to the effect that not only the behaviour of individual countries but the entire working of the UN's human rights monitoring was put into question, challenging both specific details of their mandate (implication contest) as well as their legitimacy (framing contest).

Overall, China's statements appear remarkably scripted, with a comparatively small number of arguments forming the core of China's human rights diplomacy at the UN, namely: 1) human rights are universal but since national circumstances differ, there cannot be a global measure or model; 2) countries make sovereign decisions which are to be respected; 3) the role of the international community is to promote cooperation, not to interfere in internal affairs; and 4) the UN should not overemphasize civil and political rights but focus on the right to development. These points were not only frequently repeated in the debates from 2000–2010, the very same arguments can also be identified in much earlier statements. For example, in January 1992, Chinese premier Li Peng stated at the first Security Council meeting held at the level of Heads of State that:

The human rights and fundamental freedoms of all mankind should be universally respected. Human rights cover many aspects. They include not only civil and political rights but also economic, social and cultural rights. As far as the large number of developing countries is concerned, the rights to independence, subsistence and development are of paramount importance. In essence, the issue of human rights falls within the sovereignty of each country. A country's human rights situation should not be judged in total disregard of its history and national conditions. It is neither appropriate nor workable to demand that all countries measure up to the human rights criteria or models of one country or a small number of countries.¹⁶⁴

This statement by Chinese premier Li Peng must be placed in historical context and understood as a defence against the criticism which the Chinese leadership faced after violently cracking-down on the Tiananmen protest in 1989. After the June 4th massacre, the Chinese government was for the first time confronted with widespread international criticism voiced not only by non-governmental organizations but also by other States, condemning China's failure to respect fundamental human rights norms. The comparison between the early, high-level political statement made by Li Peng and the main arguments voiced by Chinese diplomats between 2000–2010 illustrates that the substance of China's human rights diplomacy at the UN has hardly advanced from the self-defensive position that the Chinese party-State formulated after the Tiananmen massacre – more than 20 years ago.

¹⁶⁴ UN Security Council, Provisional Verbatim Record of the Three Thousand and Forty-sixth Meeting, UN Doc. S/PV.3046 (1992), pp. 92–93.

The finding that China's statements on international human rights remain, to a large extent, dominated by a self-defensive approach could be interpreted as an indication of China's inability to fundamentally challenge the normative order established by human rights law. Given that China's strikingly consistent counter-speech – which primarily challenges implications that follow from international human rights norms rather than the norms themselves – has not generated a new normative order during the last 20 years, why should the country's unaltered position result in a new normative order today?

It is true that the People's Republic of China has so far not provided an alternative normative frame to human rights, nonetheless it would be wrong to conclude that China's diplomacy at the UN does not impact on the international human rights regime. China's repeated and firm opposition to core implications has facilitated a restriction of country-specific human rights monitoring, naming and shaming. Furthermore, the arguments put forward by China have at the very least eased, and probably even caused, a shift in international attention towards economic, social and cultural rights and towards the obstacle that a lack of development poses for human rights protection. This attention shift does not, in itself, run counter to a doctrine which recognizes all rights as indivisible and interdependent. Many governments as well as non-governmental organizations would agree that the promotion of economic, social and cultural rights has not received sufficient international attention. But beyond this concern, China has argued for sequencing and conditionality of civil and political rights, and has furthermore defended the idea that rights compliance can only be assessed in consideration of a country's particular circumstances – and not against international standards. Following this logic, compliance becomes a matter of interpretation, not of facts, and violations become justifiable, if not permissible. The kind of prioritization of economic, social and cultural rights which China suggests, thus, provides leeway for interpreting the protection of civil and political rights as optional.

9. CONCLUSION

The analysis of Chinese statements in human rights debates at the UN in the period 2000–2010 shows that Beijing accepts, by and large, the normative frame provided by international human rights, but it rejects many of its implications. Although it is an important achievement that China participates in the international human rights regime, including in such new mechanisms as the UPR, this participation should not be misunderstood as a sign for the robustness of the normative order.

The qualitative analysis substantiates what the quantitative data on voting coincidence already suggested: There is a real possibility that China, in collaboration with like-minded States, rewrites the normative order – even if China's contestation remains focused primarily on the implication of human rights norms rather than on

the norms themselves. To prevent and counter a gradual erosion of established norms and instruments, it is not sufficient to win framing contests on the universality of human rights. It is eye-catching that China's international language on human rights shares a characteristic of the party-State's domestic rhetoric which Eva Pils has called 'conceptual dilution'.¹⁶⁵ In Pils' analysis, Chinese authorities pursue a deliberate strategy of endorsing human rights while simultaneously using political rhetoric that undermines them, rendering rights 'weak, confusing and obscure through their use in official language'.¹⁶⁶ Similarly, Chinese State representatives in UN human rights debates refrain, for the most part, from contesting the frame of human rights but they nonetheless systematically challenge them by opposing central implications that derive from these norms.

Although it remains, of course, impossible to predict the longer-term impact of China's human rights rhetoric on the international normative order, China's statements at the UN must be recognized as influential. This is not least because most countries are increasingly hesitant to openly confront Beijing on human rights. Accordingly, many governmental responses to China's statements at the UN are carefully worded to avoid offence, notably when the human rights frame is not openly challenged. This political reality undoubtedly increases China's ability to shape the international human rights discourse and, in turn, to influence the outcome of human rights debates at the UN. The boundaries of acceptable language on human rights have already shifted significantly in the period 2000–2010 – in favour of China's positions and to the detriment of such notions as unconditional entitlement, international standards and country-specific monitoring.

¹⁶⁵ Pils, E., *op. cit.* note 15.

¹⁶⁶ *Ibidem* at p. 145.