CHINA AND THE UNIVERSAL HUMAN RIGHTS STANDARDS

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INTRODUCTION

The People’s Republic of China (hereinafter “PRC” or “China”) is distinctive among the many nations of the world, not only for its huge population and growing consumer market, but also for its notorious reputation in human rights performance. According to the United States 1999 Country Reports on Human Rights Practices,1 in the “authoritarian state” of China, “citizens lack both the freedom peacefully to express opposition to the Party-led political system and the right to change their national leaders or form of government.”2 The Report also accuses the Chinese government of committing widespread and well-documented human rights abuses, including suppressing dissent, persecuting unapproved religious groups, making extra judicial killings, torturing and mistreating prisoners, forcing confessions, arresting and detaining persons arbitrarily, having lengthy incommunicado detention, and denying due process.3 Moreover, the United States alleges that all this has been done “in violation of internationally accepted norms.”4

What is contained within the U.S. Human Rights Report largely reflects the Western World’s attitude towards China’s “poor human rights record.”5 The West became increasingly critical of China after 1989, when the Chinese government brutally ended a democratic protest with military force in Tiananmen Square. China’s response to the report does not come as a surprise to anyone; it declared that “the human rights and basic freedom enjoyed by the Chinese people have been upgraded to an unprecedented historical level,”6 and charged the United States with

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2. Id. at Preface.

3. Id.

4. Id.

5. See id. (“The [Chinese] Government’s poor human rights record deteriorated markedly throughout the year, as the Government intensified efforts to suppress dissent, particularly organized dissent.”).

using "double standards on the human rights issue" and running "counter to the historical trend" by attacking China.\(^7\)

In its attack of Chinese behaviors, the United States has used the notion of "internationally accepted norms" of human rights, which is synonymous with the terms "universal human rights standards" or "international human rights standards" in U.S. law and policy.\(^8\) The Chinese perspective, which will be discussed later in this article, views the "right to subsistence," "state sovereignty" and "Chinese values"\(^9\) as the most convenient and effective defenses to the United States' attacks.

While both sides claim to be on the right side of history, neither has given enough attention to the other side's position. The following question remains: Whether the universal human rights standards and Chinese values are mutually exclusive or whether China could accept such universal standards in some fashion? If China can accept international standards, in what way should the standards be incorporated in Chinese culture and policy? If China cannot accept international standards, how will the rest of the world cope with China in terms of its respect for human rights?

This article attempts to explore this question in light of today's international conditions and China's "national condition." Part I of the article will examine the evolution of the universal human rights standards, and part II will examine the PRC's position regarding human rights. Part III will discuss the possibility of applying universal human rights standards to China. Part IV, in conclusion, will address the way for China and the Western World to deal with each other.

**The Evolution of Universal Human Rights**

The International Covenant on Economic, Social and Cultural Rights\(^10\) notes that human rights "derive from the inherent dignity of the

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8. The use of the phrase "internationally accepted norms" in the *U.S. Human Rights Report* has its root in a number of U.S. statutes and judicial cases. For example, the Alien Tort Statute (28 U.S.C. § 1350 (2001)) provides a cause of action for "international torts," which are defined as follows: Violations of current customary international law, which are characterized by universal consensus in the international community as to their binding status and their content. That is, they are universal, definable, and obligatory international norms. In the case Fernandez v. Wilkinson, the court interpreted the international concerns of U.S. law as follows: "Our human rights concerns embrace those internationally recognized rights found in the United Nations Declaration of Human Rights." Fernandez v. Wilkinson, 505 F. Supp. 787 (D. Kan. 1980).

9. *See U.S. Human Rights Report, supra* note 1 (the phrase "Chinese values" was specifically stated as a defense in China's response to the *U.S. Human Rights Report*).

human person.”

In western disciplines, human rights are, by definition, the “rights one has simply because one is a human being — droits de l’ homme, Menschenrechte, the rights of man.”

The concept of human rights is rooted in Western civilization. It has existed in European thought under various names for many centuries. Arguably, this notion appeared at the time of King John of England, who was forced by his subjects to sign the Magna Charta (Great Charter) enumerating a number of what later came to be thought of as human rights. It is also said that human rights are one of the monumental legacies left by the Enlightenment. In Europe from the seventeenth through the nineteenth century, several philosophers proposed the concept of “natural rights” or rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group.

During the American-European revolutionary period, the United States’ Declaration of Independence and France’s Declaration of the Rights of Man turned scholastic concepts of human rights into official statements, holding that people by their nature were entitled to life, liberty and property. The concept of universal rights took root at the same time. Philosophers such as Thomas Paine, John Stuart Mill and Henry David Thoreau expanded this same concept.

The Industrial Revolution created a tension between the downtrodden working class and capitalists, drawing people’s attention to the issues of economic and social rights. In the late nineteenth and early twentieth centuries, conferences were held in the Hague, St. Petersburg, and in Geneva in an effort to limit the new industrial capacity for destruction of human life. The conferences gave birth to the modern version of humanitarian law, but failed to stop the carnage of World War I and World War II; during these wars the behaviors of the Nazis, Japa-

11. ICESCR, supra note 10, at pmbl.
13. See JOHN A. MAXWELL & JAMES J. FREIDBERG, HUMAN RIGHTS IN THE WESTERN CIVILIZATION 1600-PRESENT xiii-xv (1991). James Freidberg noted that, in their international law scholarship, Spanish theologians, Vittoria and Suarez, expressed concerns on the manner in which the Spanish dealt with the Amerindians. See id. at xiv. In his masterwork, THE LAW OF WAR AND PEACE in 1625, Hugo Grotius raised rules of prohibiting mistreatment of prisoners, of wounded and civilians, and the use of excessive brutality against combatants. This could be the early stage of the development of the concept of “humanitarian law.” See id. at xv.
14. MAXWELL & FREIDBERG, supra note 13, at xvi.
nese forces, and sometimes the Allied Powers convinced the world that human rights might be related to the subsistence of mankind. The modern human rights movement, therefore, started its first step at the end of World War II. U.S. President Franklin Roosevelt input moral strength into the war against Japan and Germany in his 1941 speech to Congress, articulating the four well-known freedoms: freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear. In January of 1942, the Allied Powers claimed that complete victory over their enemies was essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own as well as in other lands.

After World War II, the involvement of the United Nations fostered progress in human rights. The United Nations was founded on the premise of "faith in fundamental human rights, in the dignity and worth of human persons, in the equal rights of men and women, and of nations large and small." In 1948, the United Nations passed the Universal Declaration of Human Rights, which prescribes that all human beings are entitled to all the human rights and fundamental freedoms set forth in the Declaration. This is the most fundamental of all U.N. instruments; most subsequent human rights statements are based on its tenets. In 1966, the United Nations passed the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Optional Protocol to the International Covenant on Civil and Political Rights. These documents, known collectively as the International Bill of Human Rights, form the basis for all other human rights instruments. The United Nations also established institutional mechanisms such as the United Nations Commission on Human Rights (hereinafter "UNCHR"), the High Commissioner for Human Rights, and the High Commissioner for Refugees to watch, discuss and oversee human rights situations around the world.

To summarize, the Western concept of human rights is literally "built on the fundamental principles of: (1) protection under law; (2) genuine popular participation in government, that is, democracy; (3) ec-

18. Id.
onomic freedom of choice, which provides material base for personal and political freedom; and (4) freedom of the mind, spirit, or will.”

Many believe that with the enactment of the International Bill of Human Rights and other regional and national human rights instruments, the universal standards of human rights obligations which encompass a wide range of personal, legal, civil, political, and other rights, have been fairly established. Although many nations in the world refuse to allow much international enforcement or even monitoring of their performance in living up to these obligations, and although the domestic practices of some countries regularly fall far short of the international practices, these rights are widely accepted as more or less binding international standards.

Notwithstanding the above view, it is a matter of fact that the issue of universal human rights in a diverse world is probably the most profound philosophical issue facing the human rights movement today. There are at least three dichotomies challenging the concept of universal human rights. These dichotomies include: the civil-political versus economic-social dichotomy, the universality versus cultural relativism dichotomy, and the international obligations versus state sovereignty dichotomy. The traditional human rights concept enunciated in the eighteenth and nineteenth centuries focused on political and civil rights. In recent years some human rights theorists have referred to the economic and social rights as “second generation rights.” The second dichotomy demonstrates the debate between advocates of universal rights and advocates of the “cultural relativist” school of human rights. The latter presents the argument that human rights are a “Western construct with limited universal applicability.” With respect to the third dichotomy, developing countries, especially big developing countries such as China, repeatedly assert that human rights can never be raised over state sovereignty. As a matter of fact, all three dichotomies have been employed by China in refuting international criticism of its human rights record.

22. See Maxwell & Friedberg, supra note 13, at xxvii.
CHINA AND THE INTERNATIONAL HUMAN RIGHTS REGIME

Because of its distinctive social value, its mixed economic and political system, its ascribed superpower status, its economic and strategic muscle, and its position as a Permanent Member of the United Nations Security Council, China turns out to be a very special case in the international community. In terms of human rights protection, it is often pointed out that the Chinese government is not the worst human rights violator in the world; nonetheless it is a major contributor to these violations. China is not completely ignorant of international pressure, but such pressure has by no means made any significant progress in changing the Chinese government's attitude towards human rights in recent decades. Serious misunderstandings always arise when the United States led Western society and the Chinese sit down to talk about human rights. The following part attempts to depict human rights in China.

PRC’s Participation in International Human Rights Regime
Before 1989

From its earliest days, the People’s Republic of China employed human rights proactively as part of its domestic and foreign policy. In the 1950s and 1960s, the PRC supported sovereignty and self-determination claims of the third world emerging states, arguing that these were human rights claims. Meanwhile, it charged the United States, France, South Africa and Israel, among others, as violators of these rights. However, prior to 1971, China did not make human rights a stated and formal foreign policy.

After its admission to the United Nations in 1971, China became, in theory, a party to the basic human rights principles embodied in the U.N. Charter, and subject to the International Bill of Human Rights as well. However, China did not express an interest in international human rights

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24. As stated in a cover article in the Financial Times, China's "socialist market economy"... is, in many ways, scarcely less capitalist than those in the west.” Furthermore, a landmark new report by the International Finance Corp. said that private businesses generated thirty-three percent of China’s gross domestic product in 1998 compared with thirty-seven percent from the state sector. See James Kynge, China 'Beoming More Capitalist,' Financial Times, at http://news.ft.com/ft/gx/cgi/ftc?pagename=view&c-article&cid=ft3VQMN3B356C&live=true (May 10, 2000).


activities until 1979, when it began to attend meetings of the U.N. Human Rights Commission as an observer.\textsuperscript{27} In 1982, China was elected to become a formal member of the U.N. Human Rights Commission. Since then, China has participated in the Subcommission on Prevention of Discrimination and Protection of Minorities and in working groups concerned with the rights of indigenous populations, freedom of communications, the rights of children, the rights of migrant workers, and the issue of torture. China promoted the idea of a "right to development" with other Third World countries, which the U.N. General Assembly enacted by resolution in 1986. China expressed its flexibility by voting in favor of U.N. investigations into human rights violations in Afghanistan and in other countries.\textsuperscript{28}

During this time, China's human rights condition lost much international attention, due to the U.S.-China partnership-like relationship in dealing with the Soviet Union. After Richard Nixon's visit to China in 1972, U.S. and China formed a \textit{de facto} alliance to achieve a mutual interest in international politics — the fighting against Soviet expansionism. America and its Western allies seem to have suspended judgment on the subject of Chinese politics, because many Western human rights observers directed their attention to the violations of human rights in the Soviet Union and Eastern Europe. In addition, China's opening and reform policy since 1979 and its great and quick achievement in economic welfare also give it some credit in the international community, disguising its own domestic human rights violations.\textsuperscript{29}

\textit{International Pressure and China's Response After 1989}

The events in Tiananmen Square in June 1989 brought about a radical shift in American as well as international public opinion about China. Since then, China has become the primary target for other countries' human rights diplomacy. Following the incident at Tiananmen, sanctions were imposed, including diplomatic cold shoulders of one kind

\textsuperscript{27} However, China used human rights as a weapon in foreign policy as early as 1977 through its public criticism of the Soviet Union for the imprisonment and exile of dissidents, and of Taiwan for the suppression of democracy supporters. See KENT, supra note 26, at 101.

\textsuperscript{28} See Nathan, supra note 25, at 146.

or another, cancellation of economic, military and cultural exchanges, and freezes on bilateral aid and loans. Officers from Prime Ministers to department directors released public condemnations. Debates were raised in the United States on China's eligibility to enjoy Normal Trade Relation status, and in the U.N. Human Rights Commission on passing a resolution to condemn China each year. Each year since 1990, the U.S. or EU have been requesting that the Commission pass a resolution drafted by them condemning China’s human rights performance. However, China has been continuously defeating the draft resolution. Industrialized nations gave sanctuary to refugee dissidents, and some, like the United States, gave permanent residency to Chinese visiting scholars and students. After 1989, China suffered a two-year decline in its credit rating, foreign investment, export orders and tourism. In the several years following 1991, nearly every Western leader visiting China (probably none of them intended to go to China before 1991) made public and private representations concerning human rights before their Chinese host. A number of Non-Governmental Organizations (NGOs), including the International Labour Organization (ILO), Amnesty International, International Commission of Health Professionals for Health and Human Rights, and the International League for Human Rights, began to release annual reports related to China’s human rights situations. All these activities negatively portrayed China’s international image and seriously damaged its relations with the West. Moreover, the anti-China atmosphere thereafter defeated China's 1993 bid to host the 2000 Olympic Games, and weakened Beijing's negotiating position in talks over intellectual property rights and entry into the GATT/WTO.


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Beijing also initiated or participated in some international human rights activities. In 1992 and again in 1994, China signed a Memorandum of Understanding with the United States to restrict export of prison labor products to America. Since 1993, Beijing began to provide information to American diplomats on political prisoners and held inconclusive talks and prison visits with the International Committee of the Red Cross (ICRC). Beijing also moved further toward accepting human rights as a valid subject of international dialogue, sending some human rights delegations to the West.

At the multilateral level, China has taken its most significant steps during the second half of the 1990s. In October 1997, China signed the International Covenant on Economic, Social, and Cultural Rights (hereinafter “ICESCR”), and in October 1998, it signed the International Covenant on Civil and Political Rights (hereinafter “ICCPR”). Though these treaties were not ratified by the National People's Congress, signature represented China's acceptance, in principle, of the international community's right to monitor the overall condition of its human rights. Partly due to its signature of the two covenants, Beijing successfully softened the West's prosecution of its human rights performance in the international community, particularly when, in 1999, the European Union refused to co-sponsor with the United States a resolution to condemn China's human rights record in the annual conference of the U.N. Human Rights Commission.


33. To date, the National People's Congress (NPC) of China has only approved the ICESCR (approved on Feb. 28, 2001). See id.

Immediately after that conference, the sudden rise of Falun Gong, a mixture of qigong and religious believers, interrupted China’s short-lived, yet harmonious, relationship with the West. After more than ten thousand Falun Gong followers surrounded the central government’s office at Zhong Nan Hai on April 26, 1999, Beijing began to take radical measures to crackdown what it labeled an “evil cult.”\textsuperscript{35} Needless to say, this incurred radical reactions from the West, which viewed “free religious belief” as one of the most fundamental human rights. As of this writing, the verbal combat regarding Falun Gong between the PRC and the West is continuing.\textsuperscript{36}

\textit{China’s Arguments and Theories on the International Protection of Human Rights}

To defend its human rights record and counterattack its critics, China mounted a number of arguments and employed some established theories of international law, embodied in its human rights White Papers and official statements. In China’s White Papers and other official statements regarding human rights, the Chinese government put forward the following arguments as its defenses: critics are using a double standard because China drew condemnation while other countries in which violations were in some sense worse did not draw condemnation; prosperous Westerners insisted on immediate implementation of modern standards in a developing China; the West itself has committed human rights violations at least as deplorable as those it was criticizing; China has achieved great improvement in human rights while China’s record was essentially no poorer than that of western countries. Among its defenses China also proclaimed the following theories:

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\textsuperscript{36} The United States views that China’s suppression of Falun Gong is a serious violation of religious freedom. A State Department report on China’s religious freedom commented: “During the period covered by this report, the Government’s respect for freedom of religion and freedom of conscience worsened, especially for some unregistered religious groups and spiritual movements such as the Falun Gong. The Government intensified its repression of groups that it determined to be “cults” in general, and of the Falun Gong. Various sources report that thousands of Falun Gong adherents have been arrested, detained, and imprisoned, and that approximately 100 or more Falun Gong adherents have died in detention since 1999.” \textit{See International Religious Freedom Report 2001: China}, U.S. Dep’t of State, \textit{at} http://usinfo.state.gov/regional/ea/uschina/chinarf1.htm (Oct. 2001).

It is the Chinese government’s firm position to put “people’s rights to subsistence and development” over any other aspects of human rights. This policy has been reiterated by official spokespersons and repeated in nearly every human rights White Paper. In the 1991 paper Human Rights in China, this policy was elaborated as follows:

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. The Universal Declaration of Human Rights affirms that everyone has the right to life, liberty and the security of person. In old China, aggression by imperialism and oppression by feudalism and bureaucrat-capitalism deprived the people of all guarantee for their lives, and an uncountable number of them perished in war and famine. To solve their human rights problems, the first thing for the Chinese people to do is, for historical reasons, to secure the right to subsistence.

The same theory was reaffirmed in 50 Years of Progress in China’s Human Rights, it states: “the Chinese government has always put the people’s rights to subsistence and development first, focused on economic construction, and made efforts to develop social productivity.” Numerous statistics were presented in the papers as evidence of “great improvements” in Chinese social and economic rights. For example, it was stated that from 1952 to 1998, China’s industrial added value increased by 159 times, with an average annual growth rate of 11.6%. Also, “[t]he livelihoods of both urban and rural people have leaped several stages in succession, and the consumption level has improved remarkably.” Furthermore, in the past twenty years, while the poverty-stricken population throughout the world has risen each year, China has helped 200 million people rise above the poverty line. China continues to enhance its citizens’ social rights, security and health systems by de-

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38. See id.
40. Id.
42. Id.
creasing working time requirements and by focusing on cultural and educational guarantees.43

China not only asserts social and economic rights domestically, but also proclaims those rights in the international forum. In 1997, the Chinese alternate representative spoke before the United Nations Human Rights Commission:

The commission has not been able to give full play to its due role in facilitating the realization of economic, social and cultural rights and these rights have long been neglected in the commission . . . . The Chinese delegation maintains that the full realization of the economic, social and cultural rights and the right to development is the urgent task with practical significance for the developing countries.44


For a number of reasons, the concept of state sovereignty was at the core of China’s concerns in its involvement in all issues of international law. At the early stage of the People’s Republic, China asserted the supremacy of state sovereignty in order to prevent the Soviet Union from interfering with its internal affairs on the pretext of keeping in contact with part of the “socialist family.” Later, China was also concerned with Western intervention in its internal affairs under the pretext of human rights. This position began to loosen upon the implementation of the “Reform And Open Door” policy in 1979. In their international law textbook, editors Wang Tieya and Wei Min, two well-respected legal scholars in China, listed as international obligations the preservation of the right to self-determination, the prevention of discrimination, the prevention and punishment of genocide, the prohibition against slavery and similar systems and customs, and the prevention and punishment of terrorism.45 This book also noted that “necessary measures taken by all states and international organization to suppress these behaviors were consistent with generally recognized principles of international law and should not be considered as intervening in the internal affairs of a state.”46

46. Kent, supra note 45.
But after the Tiananmen Square event, this more liberal interpretation reverted back, in official policy, to the collective rights and nearly absolute state sovereignty doctrine. China continued to maintain that the international community had a legitimate role to play in upholding the protection of those collective human rights, but not in supporting individual rights. In the 1991 human rights White Paper, the Chinese government stated:

China [is] firmly opposed to any country making use of the issue of human rights to sell its own values, ideology, political standards and mode of development, and to any country interfering in the internal affairs of other countries on the pretext of human rights, the internal affairs of developing countries in particular, and so hurting the sovereignty and dignity of many developing countries. . . . China has always maintained that human rights are essentially matters within the domestic jurisdiction of a country. Respect for each country's sovereignty and non-interference in internal affairs are universally recognized principles of international law, which are applicable to all fields of international relations, and of course applicable to the field of human rights as well.47

Meanwhile, in the same White Paper, China left a little room for the international aspect of human rights protection:

The international community should interfere with and stop acts that endanger world peace and security, such as gross human rights violations caused by colonialism, racism, foreign aggression and occupation, as well as apartheid, racial discrimination, genocide, slave trade and serious violation of human rights by international terrorist organizations.48

The U.S. bombing of the Chinese Embassy in Yugoslavia on May 8, 1999 seriously damaged the U.S. image with the Chinese population.49 This event encouraged Chinese scholars to revisit the question of human rights versus state sovereignty. After that event, the Chinese official policy became much more harsh. On May 26, 1999, a Xinhua News article stated “it is time now to put an end to the fallacy that human rights are above state sovereignty cooked up by the [U]nited [S]tates and its major allies.”50 It claimed that by mistakenly killing innocent people and demolishing civilian infrastructures, the United

47. See 1991 White Paper on Human Rights, supra note 37, at pt. X.
48. Id.
States and its major allies had used this fallacy as a “justification for their extremely cruel acts of aggression.” This comment might be too emotional to represent China’s official position, yet it at least indicates that changing China’s sovereign policy would presently be difficult.

3. China Also Argues Cultural Relativism and Chinese Values.

In line with its proposition of establishing a multi-polar world after the Cold War, Chinese officials have repeatedly argued that cultural standards differ in terms of human rights protection. No culture’s concept of human rights has greater claim to be accepted than any others. Therefore, foreigners have no moral right to judge China’s view of human rights over another country’s view. Rather than placing universality of human rights over any particular cultural value,

[c]onsideration should be given to the differing views on human rights held by countries with different political, economic and social systems, as well as different historical, religious and cultural backgrounds. International human rights activities should be carried on in the spirit of seeking common ground while reserving differences, mutual respect, and the promotion of understanding and cooperation.52

Universal Standards Versus Chinese Stance: Incorporation and Compromise

Tension between the universal human rights proposed by the West and China’s staunch position regarding its own policy towards human rights is expected since neither side could easily get rid of or even, simply, persuade the other side. However, with the development of globalization and intensive cultural, economic and political exchanges between the two sides, some strongly held positions may need open-minded adjustments in order to avoid destructive clashes.

This part will evaluate the theories held by both sides and will explore the possibility for adjustments. By evaluation, the following positions may be advanced:

On one hand, there are some basic and universal elements in human rights. Assuming that the economic-social rights assertion, the cultural relativism, and the state sovereignty doctrine are all justified, the universal nature of core human rights elements still cannot be refuted.

As noted previously, human rights are, by definition, the rights one has simply because one is a human being. The fact that all human be-

52. See 1991 White Paper on Human Rights, supra note 37, at pt. X.
ings share certain life styles and live by the same or similar material resources would give rise to commonalities in people's social values. Although human rights standards have ample amounts of different versions in different countries, regions or groups, there are some basic elements rooted in all human rights proclamations. Drawing a minimum level of protection from rights embodied in the Universal Declaration of Human Rights and subsequent United Nations human rights covenants, security (representing protection against torture and slavery and recognition before law), subsistence (representing social and economic rights) and liberty (including personal freedom and freedom of thought, expression, and religion) are basic rights for all human society.  

It is true that human nature is itself in some measure culturally relative. Thus in some sense cultural relativism might correctly hold that culture may be an important source of the validity of a moral right or rule. However, an absolute understanding of this theory cannot be used as a pretext to stubbornly refuse adjustment or change in one cultural group's human rights position. First, absolute cultural relativism stems from perceptions of the persistence of traditional societies, and it is assumed that culture is a static entity.  On the contrary, culture is dynamic and adaptive. It can and does change. It continually exhales the old and inhales the new. Second, absolute cultural relativists also make the erroneous assumption that culture is a unitary and unique whole that cannot be changed incrementally or only in part. They argue that universal standards embodied in the U.N. Bill of Human Rights are applicable only to certain Western societies; to impose them on other societies from where they did not originally arise would do serious and irreparable damage to those cultures.  However, people are quite adept cultural accommodationists. Unless forced by external enemies, there is no shame in incrementally changing or adjusting a society's culture. Moreover, culture is always affected by social structure. This conclusion can be drawn from nearly every society, because every society's current culture is different from that of the past due to changes in every society's social structure as well as society's political and economic norms.

State sovereignty arguably remains one of the pillars of international law, and it still plays a central role in the enforcement of U.N. Human Rights Covenants. In the U.N. Charter, sovereignty and human

55. Id.
rights are given equal weight. Chapter I, article 1 articulates the aim to "achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Article 2, on the other hand, declares: "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any states or shall require the Members to submit such matters to settlement under the present Charter." The U.N. Charter, therefore, allows selective choice by each member state as to which principle to invoke as legal authority for its position on human rights. However, the application of state sovereignty also cannot be understood and interpreted in an absolute sense. As former U.N. Secretary-General Ghali has observed:

While respect for the fundamental sovereignty and integrity of the state remains central, it is undeniable that the centuries-old doctrine of absolute and exclusive sovereignty no longer stands, and was in fact never so absolute as it was conceived to be in theory. A major intellectual requirement of our time is to rethink the question of sovereignty — not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function.

With respect to social and economic rights, because both civil-political and social-economic rights were integrated into the International Bill of Rights, the key question here is not that one must choose between these two groups of rights, but which one should be put in priority? Put another way, social-economic rights cannot be used to exclude civil-political rights, and vice versa.

Applying the above analysis to China's case, one could conclude that all three approaches fall short of serving as weapons against the basic universal human rights standards. In the Chinese society, some, but by no means all, essential traditional elements have been retained.

56. U.N. CHARTER art. 1, para. 3.
57. U.N. CHARTER art. 2, para. 7.
58. KENT, supra note 45, at 26 (quoting Boutros Boutros-Ghali, Empowering the U.N., 1(Foreign Affairs (1992-1993)).
59. For example, under the concept of Li and its institutional carrier, Zongfa (Family-state feudal system), confucian Chinese society was a hierarchical one, in which each individual was expected to play a role defined by his or her position in society and the human or social relationship of which the person forms a part. Meanwhile, people were required to be loyal to one's superior, show respect personally to one's inferior, love one's family, be faithful to one's friends, and be honesty to strangers. While the hierarchical structure of the society had to be abandoned, the values dealing with others have been largely preserved, forming the mainstream of Chinese "philosophy of life." See, e.g., JOHN KING FAIRBANK, THE UNITED STATES AND CHINA, Chs. 2, 3 (1965).
China has incorporated into its system an ample amount of new elements from the outside world since the late Qing dynasty. Marxist-Leninist theory once dominated the society after 1949, but has been almost abandoned in real life in the most recent decades. Now Western social values seem to occupy many fields of Chinese life. In essence, the traditional society in which principles of social justice are based not on rights but on status and intermixing of privilege and responsibility have been under endless changes and amendments. Throughout history, Chinese society has had many instances of successfully absorbing outside cultural factors into its body (a most striking example of this cultural adoption is Buddhism, which was imported from India and ultimately became one of China’s major religions). Thus, in this sense, it is very possible that China will continue to incrementally absorb outside practices by incorporating basic universal human rights standards into its culture and politics. Also, what is left of traditional Chinese values does not present a huge or troublesome obstacle to China’s acceptance of basic human rights.  

State sovereignty is of particular importance in China’s dealings with the foreign world. The Chinese interpret the history of their interaction with the outside world during the nineteenth century as a long series of painful episodes of national humiliation in which foreign powers constantly trampled on China’s sovereignty. Although I personally share this common feeling with the majority of my countrymen, I do not endorse an absolute sovereignty claim. While, in theory, a nation’s internal affairs should not be meddled with by an outside force, a government should be so broadminded as to accept international criticisms and should have the courage to correct its own errors. Often in the past, state sovereignty has been used and manipulated as a political tool by the Chinese government to distract the Chinese people’s attention from their government’s wrongdoings.

It should be noted that China appears to have a second position regarding universal human rights standards. As a contrast to its repeated statement of state sovereignty and cultural distinctions, the Chinese government in reality is not totally ignorant of the international aspects of

60. As pointed out by some scholars, the concept of human rights in traditional China included both political freedoms, meaning individual freedoms and protection from unrestrained rulers, and economic rights, which were identified with the material welfare of the people. See John F. Cooper, Defining Human Rights in the People’s Republic of China, in HUMAN RIGHTS IN THE PEOPLE’S REPUBLIC OF CHINA, supra note 21, at 9-17. Illustrative teachings such as “wen zhu yi fu zhou ye, wei wen shi jun ye,” (I just heard King Wu’s killing of an evil person Zhou, but I never hear his regicide) indicate that subjects have a right to rise to overthrow a tyrant. Other teachings such as “cang lin shi er zhi li jie,” (if you want people to obey law and rules, you must warrant their welfare) indicate that material welfare is people’s primary need.
human rights protection. It expressed many times in the international forum that it was willing to abide by international human rights covenants. The 1991 Human Rights White Paper formally acknowledged the international aspect of human rights. In Premier Li Peng’s Government Work Report in March 1992, Li stated, “We believe that human rights and fundamental freedoms of all mankind should be respected everywhere . . . China agrees that questions concerning human rights should be the subject of normal international discussion.” In April 1994, the Minster of the Foreign Affairs of the Chinese government, Qian Qichen, declared that, “China respects the Universal Declaration of Human Rights, the Proclamation of Teheran, the Declaration on the Rights to Development, and other international documents related to human rights.” In the 1995 White Paper *The Progress of Human Rights in China*, the Chinese government stated that “China respects the purposes and principles of the Charter of the United Nations related to the promotion of human rights and fundamental freedoms.” China also grabbed the chance, as it usually does, to sing its own praise: “In recent years China has, as always, actively supported and participated in international activities in the human rights field and has made new efforts to promote the healthy development of international human rights since the Cold War.” The highest level of support came about in October 1997, in his press Conference with American President Bill Clinton, Chinese President, Jiang Zemin, stated: “It goes without saying that, as for general rules universally abided by in the world, China also abides by these rules.”

Although the actions of the Chinese government usually lags far behind what it says, the government did take many measures to incorporate universal human rights standards into its judicial, political and economic system in the last few decades. For example, China’s 1997 revised Criminal Law and Criminal Procedural Law established a series of principles that the international human rights community had long

62. See 15 Beijing Review xvi (1992). Launched in 1958, the Beijing Review is one of China’s major English journals owned by the Chinese government. Its main purpose is to spread and explain the Chinese Communist Party’s policy to foreigners. For more information, please refer to the Journal’s website at http://www.bjreview.com.
64. Id.
65. Id.
pressed China to adopt, such as: (1) acts not stipulated in explicit terms as crimes are no longer considered crimes; (2) the highly ideological category of “crimes of counterrevolution” was repealed; (3) a person is presumed innocent until proven guilty by a court or tribunal at the closing of the trial; (4) Chinese law will not regard as criminal any peaceful activity in the exercise of the fundamental rights guaranteed by the Universal Declaration of Human Rights; and (5) a permanent independent tribunal will be established or a judge will be associated with all proceedings under which the authorities may commit a person to reeducation through labor, 67 “in order to obviate the possibility of any criticism that the present procedure is not entirely in conformity with international standards for a fair trial.” 68

Although it is difficult to determine which position speaks louder than the other due to their conflicting nature, two implications seem to be clear. Our analysis of the first position indicates that the basic universal human rights standards are possibly applicable to China. Strengthening our analysis, the second position indicates that China is (or appears to be) willing to accept such universal standards.

On the other hand, culture, sovereignty and development issues bear some merits in the human rights arena; in promoting and protecting universal human rights, much attention should be given to a country’s cultural distinction, national condition, and development stage.

Please note that in the above section I used the qualifying word “absolute” before cultural relativism and state sovereignty. In fact, culture and sovereignty should not be totally ignored in considering universal human rights standards. Cultural differences cannot be excuses for every wrong, however, they can explain many things. Rooted in a nation or group’s tradition and living habit, culture can be adaptive to some totally new things, such as universal human rights, but the change is clearly a time-consuming process rather than an overnight transformation. Moreover, changes may or may not happen, and outside powers who may want to impose changes upon the culture first need to respect the indigenous culture. With regard to sovereignty, no agreement has been reached as to how much a country should surrender its sovereignty to the international community. Nonetheless, it is irrational to believe that a country’s sovereignty should be ignored when other countries dis-


agree with its human rights performance. Perhaps, an international convention should be drafted to address this issue. Moreover, in promoting human rights, a country's national condition and its development should be taken into consideration.

There are dangers when writers in the West attempt to critically judge the human rights records of non-western cultures, regardless of all the differences in the national condition. While for most North Americans, Europeans and Japanese, modernism has meant increased liberty and prosperity, for Third World peoples if has often meant economic deprivation, resource depletion, and sometimes a torn social fabric.

Respect for the rights guaranteed by either of the United Nations Covenants is impossible without respect for the rights guaranteed by both. One cannot accept the civil and political rights but reject the economic, social and cultural rights, and vise versa. But is there a priority issue? The answer may be yes. Human rights may include moral concerns, but often they are not merely moral concerns. Sometimes a country can afford to act on its own or external human rights concerns, other times it cannot. Also, for a certain period, some countries can afford to invest their resources in all aspects of human rights concerns, others cannot. China is a nation that has suffered from wars and foreign invasions for more than 150 years. During that period, the Chinese had an unstable society. Moreover, China was populous and poor, lacking capital, educated and skilled manpower, as well as many material resources. Hence, it is understandable why China seeks to place subsistence and development as its primary need for a certain period. The puzzle confronting China is that, the West wants China to become a civil and political rights based society overnight. Chinese leaders deny the idea that the two groups of rights (civil and political/economic, social, and cultural) exclude each other, but rather believe that economic prosperity is the foundation that must be built before a viable standard of civil and political rights could take shape.

Occasionally, Westerners use universal human rights standards in an overly simplified manner, without a full consideration of the Chinese people's major concerns. American and international human rights organizations and officials have been more interested in the rapid expansion of civil rights for the majority of Chinese people than in the serious violation of a small minority's human rights. There are two striking examples demonstrating the incompatibility between a simple imposition of universal standards and the Chinese people's main concern. One is the family plan program, and the other is the Chinese government's ongoing crackdown of the Falun Gong. The family policy and its implementation have incurred more criticisms internationally than domesti-
cally. Given that nearly twenty million people reach working age in China every year and a majority of those people need jobs, most Chinese people, including those in rural areas, are aware that the limited resources in China cannot support too large a population. As a matter of fact, a common level of understanding as to this situation is, arguably, not a Chinese government fabrication but is something existing in reality. As to the crackdown on Falun Gong, foreigners always assume that the Chinese government is persecuting people’s religious beliefs and infringing upon all Chinese people’s basic human rights. However, responses inside China are quite different from that of the West. When the Chinese government declared the Falun Gong an “evil cult,” it was not a surprise to many people in China, because Falun Gong includes pieces of teaching from Buddhism, Taoism, and Chinese folk superstitions that include fox and weasel sprits.69 Professor de Lisle correctly points out, Falun Gong attracts “those who have not fared especially well during the reform era, including the elderly, the unemployed and many people socialized under high socialism who have not managed a comfortable transition to a market-based order.”70 To be sure, the Chinese government’s main goal is maintaining its rule over the country.71 However, when the government declared that it did this in order to maintain social stability and safeguard the fruit of economic performance of the past twenty years, it spoke, most likely, on behalf of the majority of the Chinese people. It is estimated that there are 2.4 million Falun Gong followers, while most other Chinese are not affiliated with this sect. One may draw an impression by reading those free comments on those most well known Chinese BBS or Internet Discussion Forums72 based in the United States or Hong Kong, where Falun Gong is the most venerable target being criticized for its threats to China’s stability. The popular view even criticizes the Falun Gong for diverting the Chinese people’s attention from the democratic movement.

It is true that sometimes the government’s policies regarding the Family Plan Program and the Falun Gong go too far and officials too

69. Craig S. Smith, Rooting Out Falun Gong — China Cracks Down on Mysticism, N.Y.
falun177.html.


71. Id.

enthusiastically implement policies against these groups. Nonetheless, it is unwise to judge such policies by a simple model, specifically that: universal standards require free religious belief, and Falun Gong seems to be a religion (or something akin to religion), therefore, China’s crackdown violated universal human rights standards. However, this model is neither convincing nor appealing to the Chinese people, but, rather, instills some negative feelings of the West. Nonetheless, it is a legitimate claim to require the Chinese government to achieve its targets by legal methods and with more secure and mild ways that respect human dignity.

**Recommendations and Conclusion**

China has made some progress in providing human rights protection to its citizens, yet it has a long way to go when measured against universal human rights standards. Since it has very often been noted that China’s stability and prosperity conform to the interests of the West, and it has been proposed that there is a “democratic peace” linkage between human rights and a sound political system, international and regional security, arms proliferation, and the world’s environment, the international community is justified in their great concerns regarding China’s application of the universal human rights standards. However, such concerns should be approached in a realistic way, comporting with the international political, economic and cultural norms, while remaining conducive to China’s national and cultural climate. There are several points worth reflecting on as both the Chinese government and the West consider what they can do to improve China’s human rights record.

First, the Chinese leadership should understand that enhancing China’s protection of human rights, according to basic universal human rights standards, presents no threat to Chinese interests. The goals of the international human rights regime are consistent with China’s announced internal goals of rule of law, prosperity, stability, and decision-making. The Chinese government’s argument that human rights violations are a necessary trade-off to achieving economic development is

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73. It has been long recognized that the United States “seeks constructive relations with a strong, stable, open, and prosperous China that is integrated into the international community and acts as a responsible member of that community.” See U.S.-China Relations, U.S. Dep’t of State, at http://www.state.gov/www/regions/eap/fs_us_china_relations.html (Jun. 20, 1997). An excellent explanation of why a China with such qualities would benefit the U.S. was made by Mr. Stanley O. Roth, former Assistant Secretary for East Asian and Pacific Affairs of the U.S. Department of State. See Stanley Roth, A Strategy for the Future: U.S-China Relations and China’s WTO Accession, Address Before the Woodrow Wilson Center, Washington, D.C., at http://www.state.gov/www/policy Remarks/2000/000509_roth_china.html (May 9, 2000).
simply not viable. This argument can be refuted by evidencing the fact that the best human rights protections are offered by the most developed countries.

Second, those who want to influence China should keep in mind that economic engagement is the most effective way to fulfill their purpose, and it is a substitute for human rights policy pressure. In any country, economic growth leads to the development of a large and strong middle class. Eventually, a middle class will make demands on political leaders for greater participation, accountability, and openness in the government. The only question is how long it will take. In his recent book, *Dragon in a Three-Piece Suit*, China scholar Doug Guthrie surveyed industrial firms in the Shanghai area and concluded that increased foreign involvement in a company — through direct investment or joint venture arrangements — leads to improved human rights and labor conditions in these firms.\(^{74}\) Thus, Mr. David Lampton, Director of Chinese Studies at the Nixon Center, correctly observed that the development of a middle class is the most important developmental change taking place in China. “Once you have a property-owning class, a class that has something to lose by virtue of government regulation . . . you find middle classes want to get involved politically to shape the nature of that regulation.”\(^{75}\) These arguments have been evidenced in many cases in China’s local election process in which some millionaires participated in elections running for public offices, and won successfully against with the government-backed candidates. On the contrary, economic separation and sanctions will only reduce the Chinese people’s contact with the outside world and block their exposure to existing human rights standards that citizens in other countries are enjoying. Armed with this new knowledge, they have begun to press their own government to guarantee them the same rights.

Third, cultural and educational exchanges play a very important role in transforming Chinese thoughts and values, as well as Chinese people’s attitudes toward the outside world. Constructive efforts, such as educational and technical assistance, exchanges of specialists, and institution building have successfully brought new thoughts and ideas to China. This is contributing to developments in numerous areas such as building the court system, reforming legal codes, training the legal profession, upgrading prison administration, and improving the social wel-


\(^{75}\) *Id.*
fare system. These contributions can be expected to increase in the future. Thus, it can be logically inferred that if China could ultimately establish modern political, legal and economic institutions, it would be more willing to accept universal human rights standards.

Fourth, universal human rights standards will be more acceptable to the Chinese if they turn out to be based on purely humanitarian and moral concerns. The human rights agenda is damaged by its combination with other goals, including opposition to communism, antagonism to family planning, and promotion of Tibetan and Taiwan independence. Under these circumstances, the Chinese government will be in a very easy position to convince its people that the West is trying to weaken and harm China by using human rights as a pretext to intervene in China’s internal affairs.

In brief, China has achieved some improvements in human rights protection both on paper and in reality. It has also absorbed the procedures and norms of the international human rights regime to the point where it has prepared to accede to the major U.N. human rights instruments. Although there remains a long way to go, the future looks promising if the West and China can interact properly with each other, based on both sides’ sincere concern for human welfare, as well as with a clear understanding that each side has its own perspectives and goals that must be respected.