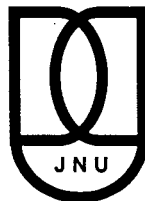


CHINA'S HUMAN RIGHTS DIPLOMACY (1989-2003)

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfillment of the requirements for the award of the Degree of*

MASTER OF PHILOSOPHY

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17 April 2004

CERTIFICATE

This is to certify that the dissertation entitled, "**CHINA'S HUMAN RIGHTS DIPLOMACY**" (1989-2003) submitted by **MR. DHONDUP DORJEE** in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY (M.Phil)**, is his original work and has not been submitted so far in part or in full, for any other degree or diploma of this university or of any other university. This is his own work.

We, therefore recommend that this dissertation may be placed before the examiners for evaluation.

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*Dedicated to
My Teacher Mr. Dawa Dhondup
(Director of TEACH)
and My Parents.*

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Finally, needless to say the shortcomings are my own.



Dhondup Dorjee

CONTENTS

| | Page No. |
|--|-----------------|
| Chapter 1 Introduction: Theory, Policy, and Diplomacy before Vienna | 1-21 |
| Chapter 2 China and the Vienna Conference Process | 22-39 |
| Chapter 3 China's Evolving Human Rights Diplomacy (1990-2003) | 40-73 |
| Chapter 4 Conclusions | 74-84 |
| Bibliography | 85-94 |

Chapter I

Introduction: Theory, Policy, and Diplomacy before Vienna

The emergence of the human rights regime as a focus of international politics in the late 1980's and the early 1990's can be explained with reference to pressures on and in Eastern Europe and the former Soviet Union to move away from the socialist system. It was further encouraged by the trend to democratization and liberalization in parts of the third world and the apparent dawn of a new world order in which international law and international institutions would assume increasing importance. The new prominence of human rights norms was also a product of globalization, which brought the individual into contact with international trends, and an outcome of the technological revolution, where "instantaneous communication has extended the basis for symbolic, and perhaps physical interventions into domestic processes in which gross violation of international norms are occurring."¹ Thus, former UN secretary General Perez de Cuellar observed in April 1991, "We are clearly witnessing what is probably an irresistible shift in public attitude towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents".²

Interest in using the UN Human Rights Commission as a forum for criticizing China only emerged after the crackdown in Tiananmen Square in June 1989. At first, the Chinese Government rejected out of hand all foreign criticism as violation of China's state sovereignty and "illegal" attempts to interfere in the domestic affairs of the PRC.

¹ Michal W Reisman, "International Law after the Cold War," *American Journal of International Law* 84(October 1990) 4:861.

² Perez de Cuellar, "Secretary – General's address at the University of Bordeaux", 22nd April 1991, United Nation Press Release SG/SM/4560, New York, 24 April 1991.

Beginning in 1990, the annual Geneva meetings were marked by efforts to table mildly worded resolutions urging China to improve its human rights practices and criticizing ongoing violations of international standards. These efforts were defeated before the resolution could come up for debate by “no-action” motions brought by one of China’s friends on the commission; Pakistan could be counted on this regard. A “No-action motion”, if passed, meant that the resolution died a quick death before ever coming to debate and vote. Soon, Beijing developed its own human rights diplomacy to respond to Western condemnation of the People’s Republic of China’s Human Rights practices. Mainly to get rid of the isolations from participating in various other international forums.

The period of active engagement began at a theoretical level with official encouragement of a limited “hundred flowers” period in academic conferences and the proliferation of publications on human rights. It saw clear governmental leadership with the publication of major White Papers on Human Rights and the setting up of institutions, such as a “NGO” to study human rights. The China Society for Human Rights Studies (CSHRS) was established by government, contained government officials, and was headed by Zhu Muzhi, former director of the Information Office of the State Council, former director of the Xinhua News Agency, and former leader of the Foreign Propaganda Department of the CCP Central Committee. Nevertheless, its establishment at least reflected Official acceptances of the role of NGO’s were expected to play in the international human rights regime.³ Subsequently, China engaged in human rights debate with western human rights delegations and official visitors and sought to test its human

³ Human Rights watch/Asia, March 1997, Vol-9, No. 3(c).

rights theory during official visit to Asia and Africa. Finally, it sought to institutionalize the fruits of its human rights policy at the regional Bangkok Preparatory Meeting of March 1993 and UN World Human Rights Conference at Vienna in June 93.

This chapter documents the theoretical, institutional, and practical initiatives undertaken by China in the human rights field after 1989. It describes the internal theoretical debate of 1990-91, culminating in the publication of the first Chinese white paper on human rights in October 1991. It looks at the practice of China's human rights diplomacy at a bilateral and multilateral level. In particular, the chapter subjects the Principal Statements made by China at the Bangkok Meeting and the Fourth Preparatory Committee preceding the Vienna Conference to comparative analysis.

Chinese Theory:-

Institutional and Academic Developments:-

Legal education in China was resurrected only after the devastation of the Cultural Revolution in 1978. From this time, with the beginning of the first democracy movement, the Democracy wall movement, interest in human rights was stimulated. It did not effectively resurface until the latter part of the 1980's when the government itself began to encourage activities such as symposiums on jurisprudence, involving debates on rights and duties, and the symposium of December 1988 to celebrate the fortieth anniversary of the Universal Declaration of Human Rights in Beijing.⁴ The same year saw the publication of a slim volume on human rights by Zhang Chunjin, ("On Human Rights"). In the first quarter of 1989, on the eve of the second democracy movement, China's expert on the Human Rights Sub-commission, Tian Jin, published an article on the development of the international human rights movement.⁵

From the beginning, Deng Xiaoping recognized the danger to existing authority created by student strikes. He stressed several times that 'democracy without the leading role of the party, and democracy without discipline and order are definitely not socialist democracy'.⁶ However, Deng may also have seen some advantages for his own policies in the student strikes, the support for reform evident in student upheaval demonstrated the popularity of his policies. This helped him to contend with the leftist opposition to his

⁴ Albert H.Y. Chen, "Developing Theories of Rights and Human Rights in China", in Hong-Kong, China and 1997; Essays in legal theory, ed. Raymond Wacks (Hong-Kong: Hong-Kong university press, 1993) 125-33.

⁵ Tian Jin, "The Development of the International Human Rights Movement and current controversies", International Studies, 1989, 1:4-7.

⁶ Selected papers of Deng Xiaoping, Vol.-1, Beijing; People Press, 1983, p. 157.

economic reforms. The March 1981 Beijing University, student slogan 'Unite and develop China' and the 1984 National Day banner proclaiming 'Xiaoping, how are you?' Made Deng feel the students supported him. At the same time, permitting the students to strike demonstrated to the world his open and liberal image.

However, renewed interest in human rights under official guidance was quashed with the suppression of the Democracy Movement in June 1989.⁷ Academic journals continued to publish articles on human rights, but Chinese authorities bitterly rejected the entire international human rights critique and contested the international community's right to intervene in China's internal affairs. The first clear signs of a return of official interest and support for academic endeavor was a conference on human rights convened in September 1990 by the Research Center for Social Science Development of the State Education Commission.⁸ Over the next two years, a veritable human rights fever developed, with holding of symposiums, setting up of human rights centers, and publication of books and articles. These activities were actively supported and given financial assistance by the Chinese government.⁹ Even Chinese students studying abroad were mobilized in the massive effort to collect material on human rights in general and foreign accounts of China's human rights in particular.¹⁰ Chinese students were not the only source of information. In 1992, a number of foreign scholars were involved in joint research projects on human rights with Chinese institution. By 1993, however, at which time a Chinese theory had emerged fully developed and China was turning to multilateral

⁷ Rao Fang, "A Summary of the Theoretical Research on Human Rights and the Legal Systems", *Chinese Legal Science*, 9 July 1991, 4:41.

⁸ *People's Daily*, 17 September 1990, 5.

⁹ *Beijing Review*, Special Issue, 39 (January 1996): 25-26.

¹⁰ Ann Kent, *Human Rights in the People's Republic of China; National and International Dimensions*. Canberra, Peace Research Centre, ANU, 1990.

forums, this interest in foreign involvement appeared to have waned. Coincidentally, China became more outspoken in its critique of human rights conditions in U.S. and of U.S. human rights diplomacy.¹¹

There were two main types of Chinese academic and government activity. The first were academic symposiums held from the end of 1990 to 1992 with government encouragement or sponsorship, whose purpose was to build up expertise in human rights and create a theory of human rights with “Chinese Characteristics”. Topic under discussion included the concept and content of human rights, historical origins of human rights ideas, bourgeois theories and how to deal with them, the relationship between human rights, International Law and International Politics, the relationship between state sovereignty and the international protection of human rights, the enrichment of Marxist theory on human rights, and human rights protection and human rights research in China. The second form of activity followed the publication of the three White Papers on human rights beginning in October 1991 and consisted of national government forums for discuss their significance and application.¹²

Academic Theories:-

The development of official theories after 1989 occurred against the backdrop of an enormous output of articles in academic journals and books on human rights. A Chinese bibliography published in 1992 listed 296 articles on human rights in major newspapers, weeklies, social science journals and legal journals published between 1979 and 1992.¹³

¹¹ Liu Wenzon, “On Americas Human Rights Diplomacy”, *International Studies*, (1993) 3:28-34.

¹² Human Rights in China, (Beijing, Information Office of the State Council, October 1991).

¹³ Zhongguo, (ed.) “Contemporary Human Rights”, Beijing: 1992: 448-468.

Of these, 240 were published between 1979 and mid 1992. Analyzed chronologically, 32 were published in 1989, 46 in 1990, 120 in 1991 and 42 in the first half of 1992. Numerically, and in terms of their content, the efflorescence of publications and the development in human rights concepts clearly occurred in 1991. From 1989 to 1997, a substantial number of books on human rights were also published. Although many of the human rights publications focused on issues emphasized in the official theories, the debate range widely and was not constrained in its development of theory, or in the theoretical question it addressed.

Identifying some of the outer parameters of the debate best indicates the sophistication and diversity of Chinese discourse. The most significant of the literature bearing on this study was the material produced before the publication of the Official White Paper in October 1991, as it not only fed into the thinking of the white paper, but also was not inhabited by it. Chinese diplomat Pen Sen's book was largely written before October 1991. Another important precursor was the Chinese Academy of Social Sciences Symposium in June 1991, which wrestled with, and helped inform, many of the issues later addressed in the White Paper. However, its papers, published, as "Contemporary Human Rights" did not appear until August 1992, allowing subsequent revision.

For this reason, one of the best guides to the parameters of the pre-white paper academic debate remains the proceeding of the different conferences, published immediately after their completion in the People's Daily or in legal journals.¹⁴ At the State Education Commission Conference in September 1990, debate flourished. As its

¹⁴ "Summary of a Conference on Theoretical Research on Human Rights", 20 April 1991, Chinese Legal Science.

title suggested, its main purpose was to build a Marxist view of human rights that could counter the human rights diplomacy of Capitalist States.

Some participant's spoke of man's basic human rights, specifically, the rights of subsistence, development, equality, and freedom. Chinese expert to the UN Human Rights sub-Commission, Tian Jin, had already prepared the way for this basic rights argument in an April 1990 speech at the Fourteenth Conference on the Law of the world. He pointed out that "the developing countries underscore such collective rights as the right to survival, right to Self determination of nation, right to sovereignty over natural resources, and the right to development."¹⁵

The right to subsistence was not mentioned in the report on the March conference of the Law society of China, which was couched in rather general and rhetorical language, Nevertheless, the right to subsistence was well established as a basic and prior right by early 1991, on 14 April, during a meeting with former President Jimmy Carter, premier Li Peng stated that, in China's view, "human rights are primarily the people's right to subsistence and the national right to independence, and if these two basic conditions were not guaranteed, there would be no human rights to speak of".¹⁶

The most restricted and sensitive aspect of the debate related to the international protection of human rights versus the principle of state sovereignty. The bottom line was general agreement with the official position that state sovereignty could not be undermined under the pretext of international human rights protection. However, there was still room for scholarly disagreement, even after the publication of the white papers

¹⁵ Beijing Review 33, 22 (28 May to 3 June, 1990): 12.

¹⁶ People's Daily, 15 April, 1991: 1.

on human rights and the statement at the Vienna Human Rights Conference in June 1993 by China's Vice-Foreign Minister, Liu Huaqiu. For instance, at the opposite pole of Liu's strong position on state sovereignty stood Li Ming, who argued that the principle of non-interference was difficult to adhere to because the international community was paying increasing attention to the protection of human rights, and because "respect for human rights is a demand of modern times."¹⁷ It is to be noted that Li Ming's article was published in the same month as Liu Huaqiu's statement at the Vienna Human Rights Conference. In between these two positions stood Chinese scholar and UN diplomat Pang Sen, who argued that "respect for, and protection of, human rights was one principle of the United Nations Charter, and respect for each state's sovereignty was also an important principle of the charter.

The States Theories:-

The most important, broadly based, and influential of China's Official Publications on human rights was the White Papers, (Human Rights in China), published in October 1991. The reason cited for publishing the first white paper suggested China's need to defend its human rights conditions, both for internal and external purposes, as well as to institute a new set of priorities that constituted a creative theoretical input. Its purpose as stated in a People's Daily article was to meet the needs of both Chinese and foreigners who lacked a clear understanding of human rights in China and to provide "a powerful rebuttal and counter-attack to those who have spread rumors and made fabrications to

¹⁷ Li Ming, "Human Rights in the UN Charter and the Question of Non-Interference in Internal Affairs", Chinese Legal Science, 3 (9 May 1993): 43.

attack China over its human rights situation.¹⁸ The white paper was considered so important that news of its publication occupied the main headlines and an editorial on the first page of the People's Daily, the official party newspaper, which published the whole white paper over subsequent days.

The preface of the white paper paid tribute to the activities of the United Nation's in setting up human rights standards. However, it also quickly affirmed the values of cultural relativism and the importance of national independence with respect to human rights. On the basis of China's claim that "countries differ in their understanding and practice of human rights." it put forward the basic essence of its theory. This was 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". In addition, it was claimed, "without national independence, there would be no guarantee for the people's lives.

The achievements it claimed in economic and social rights were more descriptive of the Maoist past than of the real economic and social issues with which China was currently grappling. The main categories of domestically protected rights it addressed were the right to subsistence, China's political rights, its economic, social and cultural rights, guarantees of human rights in China's judicial work, the guarantee of the right to work, the citizens enjoyment of freedom of religious belief, the guarantee of the rights of minority nationalities, family planning and the protection of human rights, and the guarantee of human rights for the disabled. Of these rights, two aspects were later developed into white papers on the rights of Tibetans and the reform of criminals. Other white papers followed, over succeeding years on women's rights, on the rights of the

¹⁸ People's Daily, 2 November 1991: 1, 4.

child, on family planning, as well as two more general updates on the original white paper, in 1996 and 1997, and finally, another on Tibet in 1998.¹⁹

The most significant aspect of the white paper was that, while it referred to the importance of state sovereignty, it did not bind that principle into an integral part of its new theory. It took issue with the western view on non-interference. The argument that the principle of non-interference in international affairs does not apply to the issue of human rights is, in essence, a demand that sovereign states give up their state sovereignty in the field of human rights, a demand that is contrary to international Law.

China's first human rights white paper represented not just a standardization of official views but a foundation from which it could refine its evolving human rights diplomacy. That diplomacy extended to both the western and non-western world.²⁰

The period of western human rights delegations to China, initiated by the first Australian delegation in July 1991, lasted for three years, and included two Australian delegations, one French, one Swiss, two EC delegations, a Canadian Parliamentary delegation, a British delegation, and a Swedish delegation.²¹

These visits coincided with the easing of multilateral sanction against China, and were seen as an alternative to them, deflecting part of the monitoring burden onto individual states, however, their initiations appears to have been one of the more haphazard developments in international human rights diplomacy, being the outcomes of

¹⁹ China Human Rights Research Society, ed., *Human Rights in China: A Collection of white papers on Human Rights*, Beijing, 1997.

²⁰ Ann Kent, *China, the United Nations, and Human Rights – The limits of Compliance*; University of Pennsylvania Press, 1999.150-153 (Philadelphia).

²¹ Reports of the Australian Human Rights delegation to China, 14-26 July 1991 (Canberra: Australian Department of Foreign Affairs and Trade, September 1991).

informal discussions between Australian and Chinese diplomats in Beijing as to how to improve the overall Australia-China relationship.²²

Taking their cue from the first delegations, most U.S., Canadian, European State leaders visiting China subsequently included human rights issues on their formal agendas. The human rights delegations, which virtually ceased in that particular form after President Clinton's de-linkage of MFN and human rights in May 1994, represented an important phase in China's interaction with the human rights regime. They provided evidence of China's readiness to make compromises with the international community on human rights when its leadership deemed it necessary. In lively exchanges, the Chinese government invoked the White Paper as its standard of human rights, and tested its efficacy in encounters with the Western world of human rights. Starting from these basic premises and fundamental differences formulated during three years of intense theoretical debate, and taking into account both the Western and Asian response, in 1993 China entered the formal arena of multilateral human rights discourse.

Bangkok Meeting and the Fourth Preparatory Committee Preceding the Vienna Conference:-

During 1991 and 1992, as it developed its theory domestically, China had sought to promote and test its views on the right to subsistence and on cultural relativism in the Asian-Pacific region.²³ By July 1991, an Association of South-east Asian Nations

²² Ann Kent, "Australia and China: Monitoring by a Middle Power", 20 July 1995.

²³ Chen Jie, "Human Rights: ASEAN's New Importance to China", *Pacific Review* 6(1993), 3:227-37.

(ASEAN) consensus had been formulated on human rights that agreed that “while human rights is universal in character, implementation in the national context should remain within the competence and responsibility of each country, having regard for the complex variety of economic, social and cultural realities”.²⁴ This consensual position did not refer to the right to subsistence, which was not officially articulated in detail by China until October 1991. However similarities between the ASEAN view and China’s included historical and cultural relativism, the priority of the right to development, the stress on sovereignty and opposition to aid conditionality. Within this content, a joint statement on 11 January 1992 by China’s President, Yang Shangkun, and Malaysia’s Prime Minister Mahathir Mohammed, referred not only to the importance of the each country’s particular values but to the two human rights priorities of development and the corresponding individual rights of subsistence.²⁵ On the same day, China’s foreign Minister Qian Qichen, on a visit to Mali and Guinea, also described the human rights priorities of developing countries as subsistence and development. Apart from bilateral agreements, however, it was not clear that the right so subsistence found collective favor in the Asian regional where at that period most states had already moved far beyond a state of “Subsistence.” In August 1992, State Council Official, Liu Fenzhi, did not demur when it was suggested in an interview that the Chinese notion of the priority of the right to subsistence might not be considered appropriate to all the states in the region. In answer, he affirmed that China’s human rights position gained its main support from India, Singapore and Malaysia.²⁶ Moreover, the more open potential system characteristic of

²⁴ Ibid.

²⁵ People’s Daily, 12 January 1992, 1.

²⁶ Liu Fenzhi, State Council, Beijing, 28 August 1992.

most of the ASEAN states represented a crucial difference with China's authoritarian system, so that in arguing their commonality, the ASEAN states and China were forced to highlight their "Lowest common denominator: 'Asian-ness' and their status as developing countries." Any attempt China might make to assume leadership of the Asian bloc by promoting the idea of the right to subsistence, however, faced a greater challenge.

Even though its efforts in this respect were ultimately not successful, China's far ranging bilateral diplomacy in the region at least prepared it for the appropriate strategies to follow when it sought support for its newly honed human rights theories at the Bangkok preparatory meeting in March 1993 and at the UN Human Rights conference in Vienna in June 1993. China's contribution to the Bangkok meeting was consistent with the desire of the participating Asian/Arab states to formulate a theory of human rights with distinct "regional characteristic". The formal Chinese statement was therefore in line with these aims and showed the effect of its earlier regional diplomacy. However, at Vienna, China took a considerably harder line than at Bangkok.

China's Diplomacy at Bangkok Meeting: 29th March to 2nd April 1993:-

The defaulting states named by Zoller for the most part formed part of "Asian" group, Constituting forty-nine Asian and middle east governments which, from 29 March to 2 April 1993, met in Bangkok to produce a regional contribution to the Vienna-Conference. China was elected as a Vice-Chairman of the meeting and took a leading role in the Drafting committee, a body headed by the chief delegate from Iran and including the chief delegate from Burma. For most of the proceeding NGO meeting of 25-28 March, Human Rights in China, based in New York, was the only NGO organization representing China. On the last day two men representing the China Society

for the Human Rights Studies (CSHRS), formed two weeks before in China, attended the NGO conference, and as in the subsequent Vienna Conference, China's former Ambassador to Bern and Expert on the human rights sub-commission, Tian Jin, joined it for the final plenary sessions.²⁷ This development was not objected to by other NGO's since it was believed that "the more the Chinese government encouraged the emergence of pseudo-NGO'S, the greater their tacit acknowledgement of the value of non-party organizations. It has been observed that the Asian government's inability to agree on an agenda prior to the Bangkok conference, and the difficulty of negotiations on their declaration, indicated the disunity among governments in the region.²⁸ Despite this disunity, even greater division was apparent between states and their NGO's, which outnumbered the governments present by more than two to one. In the words of one leading western NGO representative, at Bangkok "It was clear that there was no single "Asian' position on anything, and that when it came to human rights, the most important distinctions were neither the East-West nor the North-South, but between the powerful and the powerless.²⁹ A central issues dividing Asian governments and NGO's was Universality. Other issues included the indivisibility of human rights, the use of human rights as a condition for aid, the attitude toward NGOs, and Self-determination.³⁰

The principal inter state division at Bangkok saw Japan, Thailand, Nepal, South Korea, and the Philippines assuming a more liberal interpretation of human rights, and

²⁷ Human Rights watch/Asia, Sydney Jones, Canberra, 30 July 95.

²⁸ Human Rights Monitor, May 1993, 21:20.

²⁹ Sidney Jones, "Cultural Clash: Asian Activists Counter their Governments' restrictive views on human rights," China Rights Forum,(Summer 1993):8-9,22.

³⁰ Pat Walsh, UN World Conference on Human Rights: Report on the Bangkok Preparatory Meetings, Human Rights Office, ACFOA, 1993.

China, Indonesia, Iran and Burma taking a more uncompromising stand.³¹ China's statement, delivered by Ambassador Jin Yong Jian at Bangkok on 30 March 1993, formed an interesting contrast with the final Bangkok Declaration, and both differed in unexpected ways from the subsequent Chinese statement at the Fourth Prepcom on 21 April 1993. Ambassador Jin's Bangkok speech obscured the boundary between the Chinese and the consensual "Asian" view.³² It called on the Asian Countries to "first demonstrate solidarity among themselves", and stressed two sets of priorities. The first were collective Maoist human rights values of opposition to racism, colonialism, foreign aggression and occupation. The second was state sovereignty, defined as "basis for the realization of human rights".

Ambassador Jin thus retraced the earlier priority of the rights of subsistence and national independence established in the 1991 white paper. The right to development was mentioned, but only as one right among others. Not only was subsistence not cited as a prior right, it was described as a condition rather than a right. This signal change was probably due to the less than favorable regional reception, which had greeted China's earlier defined priorities.

Ambassador Jin's statement mentioned Universality only in the content cited above, but acknowledged the interdependence and indivisibility of all rights and the necessity for international cooperation. However, the most interesting aspect of his speech was the use of the principle of the rights of Self-determination to promote culturally bound nature of rights, he agreed that the right of self-determination, according to which countries and

³¹ Gordon Fairclough, "Standing Firm", *Asia Sticks to its view of Human Rights*, *Far Eastern Economic Review*, 14 April 1993.

³² *Beijing Review*, 36(19-25 April, 1993).

peoples could freely choose their political and economic system and their own road to development, was a basis for cooperation between Asian states. Therefore, he argued, respect for the right of Self-determination had an “important role” in safeguarding human rights and fundamental freedom. He thus approached cultural relativism from a new direction. The interesting twist in this argument was that it represented a shift from China’s traditional revolutionary emphasis on the external meaning of Self-determination, that is, of a state’s right to independence and freedom from interference, to internal meaning, of self-determination, or the right of citizens to influence their political system. This more liberal view was presumably due to China’s concern to avoid criticism of its policies in Tibet during the meeting, and to link its interests with Indonesia which had similar concern with respect to East Timor.³³

The Bangkok Declaration:-

The Bangkok declaration has been subject to considerable western and NGO criticism.³⁴ One leading western NGO representative has called it an “execrable official document, a patch work of provisions which some authoritarian governments did not want and have no intention of upholding, provisions which were hypocritical in the extreme and provisions which refuted regional interests.”³⁵ Nevertheless, in all aspects apart from the issue of self-determination, it was more enlightened than the Chinese statement.

The Declaration not only reaffirmed states commitment to the principles contained in the UN charter and the Universal Declaration of Human Rights, but also welcomed the

³³ Chen Jie, “Tactical Alliance: South East Asia and China’s Post 1989 Human Rights Diplomacy”, China’s Rights Forum (Fall 1998), 10.

³⁴ Pat Walsh, ACFOA, UN World Conference 10-13.

³⁵ Jones, “Culture Clash”, 22.

increased international attention to human rights. It stressed the universality of human rights, their interdependence and social rights with the “growing trend to democracy and the promotion and protection of human rights”. It acknowledged the important role of international institutions, the importance of cooperation and dialogue between governments and NGO’s, and reiterated the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia.

The Bangkok declaration emphasized the principle of state sovereignty and noninterference, although not, as in the Chinese position, as a prior right. While recognizing that human rights were universal in nature, it insisted that “they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds”.

Like China’s statement, the Bangkok Declaration expressed opposition to racial discrimination, racism, colonialism, and foreign aggression and supported the right to development, but gave these lower priorities. It introduced opposition to aid conditionality, something not mentioned in Ambassador Jin’s speech. It also gave the right of Self-determination a completely different interpretation, insisting on its external definition and limiting it to peoples under foreign domination and as a right of the state. It claimed that “the right to Self-determination is applicable to people under alien or colonial domination and foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of states”.

The final Bangkok Declaration was adopted by consensus, even though Japan and Cyprus expressed their reservations, disagreement, or disappointment with parts of the document. According to diplomat's reports, the consensus was achieved due to the solidarity of ASEAN delegates, who formed a bridge between Japan and hard-line states such as China, Burma and Iran.³⁶ Considerable divergence was thus illustrated within Asian views of human rights, suggesting a degree of complicity, and even open support, among some with the western emphasis on individual civil and political rights.

Fourth Preparatory Committee: China's Statement (21st April, 1993):-

Three weeks after his speech at Bangkok, China's ambassador, Jin Yongjian, made a second statement on his country's, human rights goals at the fourth session of the Preparatory Committee for the World Conference.³⁷ On this occasion, he focused on China's view of what the final Vienna Declaration should contain. His speech revealed interesting contrasts with his earlier Bangkok statement and interesting similarities with the Bangkok Declaration. It reflected the degree to which China's official view had been modified as a result of multilateral interaction at Bangkok.

In contrast with China's Bangkok speech, the statement on 21 April 1993 entitled "China's view on the Final Document" did not presume to represent the Asian region. Nor did it insist on Asian solidarity. Yet, unlike the 30 March speech, it showed considerable sensitivity to the consensual Asian view. It omitted any reference to Self-

³⁶ Gordon Fair Clough, "Standing Firm".

³⁷ Jin Yongjian, "China's View on the Final Document", Beijing Review 36 (31 May to 6 June 1993).

determination, thus avoiding the contradiction between China's internal definition in its Bangkok speech and the Bangkok Declaration's external definition.

He itemized seven main issues that he wished the final document of the World Conference in Vienna to contain. The first consisted of a summary of many of the points contained in paragraphs 1-7 of the Bangkok Declaration. They included a reference to China's opposition to aid conditionality, something missing from the 30 March speech. Likewise, Ambassador Jin's second point, on Cultural Relativism, was framed in terms similar to paragraph 8 of the Bangkok Declaration, although it omitted the Declaration's concession on Universality. His third point, on the interdependence and individuality of rights and the need to give equal emphases to all categories of human rights, echoed the Bangkok Declaration paragraph 10. This concession represented a change from China's Bangkok speech, which had sought to establish a hierarchy of rights.

The fourth point of the 21 April speech placed Maoist values of opposition to colonialism and racial discrimination in a subordinate position, echoing paragraph 14 of the Bangkok Declaration.

The fifth point, on the right to development, corresponded to paragraphs 17-19 of the Bangkok Declaration. Once again, Jin made no reference to the right to subsistence. His sixth point, on the need to protect the rights of vulnerable groups, echoed paragraphs 22-23 of the Bangkok Declaration and represented an addition not found in China's Bangkok speech. The final seventh point, on the necessity to rationalize UN human rights mechanisms, coincided with paragraph 28 of the Bangkok Declaration.

Such parallels did not mean that China's position had been transformed by the Bangkok meeting. Crucial differences remained, and they were to be found not in any

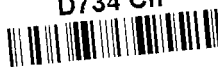
new concepts or old ideas in Ambassador Jin's speech, but in the paragraph of the Bangkok Declaration his speech omitted to cite. It left out the Declaration's recommendations regarding Universality, the right of Self-determination, the need for effective monitoring of human rights, the need for environmental protection, and paragraph 21, condemning terrorism. The most obvious omission regarded the institutional recommendations in paragraphs 24-30 of the Bangkok Declaration. Ambassador Jin failed to endorse its support for national institutions and regional arrangements promoting human rights, and its call for dialogue and cooperation between governments and NGOs, and for strengthening the UN centre for Human Rights.

Within the Bangkok content, textual analysis thus reveals a degree of responsiveness in China's human rights policy to regional values. It also indicates a reservoir of remaining differences, many of them related to institutional developments, both domestic and international, that had the potential to control over domestic human rights condition from the grip of the Chinese state. Whether this responsiveness constituted anything more than a temporary diplomatic adjustment, however, could only be measured by means of a longer term comparison between these statements and Vice-Foreign Minister Liu Huaqiu's speech on 15 June before the UN World Human Rights Conference in Vienna.

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(Chapter II)

China and the Vienna Conference Process

As a Vice Chairman of the Vienna Conference, China played an important role in its proceedings. Even before the formal opening of the Conference on 14th June 1993, it dominated the political agenda and procedural debate. To some extent this was a role forced on it by the Austrian government's invitation to the Dalai Lama and other Nobel Peace laureates to attend the opening ceremonies. The importance China placed on the conference was suggested by the size of its delegation, not much smaller than that of the U.S with two representatives, six alternate representatives, and twenty advisers.¹ The precise timings of the Conference created difficulties for a China intent on a favorable decision by the International Olympic Committee in its choice of host country for the year 2000 Olympics and concerned to deflect criticism of its human rights record. Circumstantial developments and issues of principle as well as a fear of defeat and an unwillingness to be seen to make open concessions combined to place it in a combative and publicly inflexible diplomatic position.

This rigidity was signaled some days before the Conference. In an interview on 10 June 1993, China's Vice Minister for Foreign Affairs, Liu Huaqiu, declared that the Conference "should reflect different political systems, economic and social as well as historical, religious and cultural differences of countries".² He said it was "natural that different countries could have different interpretations on the question of human rights". Although he hoped that the Conference would allow the promotion of human rights for

¹ UN DOC. A/ Conf. 157/Misc.1, Vienna, 14-25 June, 1993.

² "China for Human Rights", AFP report of Liu Huaqui interview, 10 June, 1993.

all people, he denounced the use of human rights for political purposes. At the Conference, China's problem with Tibet was the initial source of its unfavorable publicity. The cancellation by UN authorities of the Austrian government's invitation to the Dalai Lama to attend the opening ceremony had become the focal point of the "upstairs – downstairs" difference that emerged between UN and government authorities meeting in preparation for the Conference on the first floor of the Austria Centre, and the NGO Forum meeting on the ground floor.

In its initial plenary session at the opening of the NGO Conference on 10 June, the Forum had early rejected UN guidelines not to raise the human rights abuses of specific countries in its deliberations, since, without mention of specific countries; the actual abuses could not be raised. NGOs thus became incensed by early rumors that the Dalai Lama had been excluded from the Conference due to Chinese pressure. These rumors were confirmed on 11th June, when the Austrian Foreign Minister, Alois Mock, confirmed that the Dalai Lama had been invited by the Austrian government to attend the opening ceremonies of the World Conference, an invitation cancelled by Ibrahima Fall, Conference Secretary General.³

A second issue that dogged the Conference, the question of NGO participation in drafting the final document, was also a focus of government debate throughout 11 June, with Asian governments reported by observers to be opposed to any NGO involvement. Some observers predicted a split between Asian and other regional groupings after the meetings.⁴ It was reported that on 13 June, after informal government meetings had reached a consensus allowing NGO representatives to observe closed sessions of the

³ Ramon Isberto, "Dalai Lama: Visit up in the Air", *Terra Viva*, 12 June, 1993.

⁴ Iain Guest, "NGOs Face Exclusion from Crucial Drafting Committee", *Terra Viva*, 12 June, 1993.

Drafting Committee, China, which had reportedly consistently lobbied against an NGO presence, reopened the issue and threatened to take it to the credentials committee.⁵ On the morning of 12 June, a demonstration outside Austria Centre linked these two issues, which both related to China. Chanting “Don’t Silence NGOs”, demonstrators protested both the restrictions on NGO participation and the exclusion of the Dalai Lama. That morning, a South resolution, was put to the NGO Forum Plenary; “This plenary of the NGO Forum unanimously extends an invitation to his holiness the Dalai Lama to attend the Conference”. A representative of the NGO from China, the China Society for Human Rights Studies, asserted that the unanimous resolution to invite the Dalai Lama was invalid, since the Dalai Lama was not only a religious figure but a political figure who sought to split China. He said it was out of order to invite the Dalai Lama.

The Chinese NGO was well represented at the NGO Forum, particularly in the plenaries of the final day. It was one of a number of Asian NGOs described by other NGOs as GANGOs (government appointed NGOs) or GONGOs (government organized NGOs), which were seen as a new phenomenon at the Conference.⁶ The activities of the Chinese NGO were criticized by Xiao Qiang of the New York based Organization, Human Rights in China, for their clear political agenda. He commented that it had limited its participation in the Conference to supporting Chinese government policies on issues like Tibet.

An impressive attempt to bridge the views of the different state groupings was made by the UN Secretary General, Boutros Ghali, in his opening address to the

⁵ Peter da Costa and Lucy Johnson, “NGO Infighting Gives Way to patch-work compromise”, TV, 14 June 1993.

⁶ “The rights of NGOs” in Human Rights Monitor (September 1995).

Conference on 14 June.⁷ He identified the “three imperatives of the Vienna Conference” as “Universality, guarantees, democratization” and declared that “there can be no sustainable development without promoting democratization and thus, without respect for human rights”. Democracy was “the private domain of no one” and could take many forms in order to accommodate local realities more effectively.

In an even handed critique of North and South, the Secretary General observed that “some state constantly try to hijack or confiscate human rights”. But, he stated, “human rights give rise to a new legal permeability. They should thus not be considered either from the viewpoint of absolute sovereignty or from the viewpoint of political interference”. He warned that no state had the right to expect absolute respect from the International Community, “when it is tarnishing the noble concept of sovereignty by openly putting that concept to a use that is rejected by the conscience of the world and by the Law”. He continued, “When sovereignty becomes the ultimate argument invoked by authoritarian regimes to undermine the rights and liberties of men, women and children, away from public view, then I say it seriously, that sovereignty is already condemned by history”.

However, neither the procedural nor the substantive issues could be resolved by diplomatic words. A last minute invitation to the Dalai Lama from NGO's to address them brought a swift Chinese response. China warned Austria of the possible negative consequences of permitting the Dalai Lama to speak on the UN territory. China's Ministry of Foreign Affairs declared that the presence of the Dalai Lama went directly against the objectives of the event, and that to allow him to speak might endanger the

⁷ Boutros Ghali, “Expanding the system: The Vienna World Conference on Human Rights and its Follow-Up”, in *The UN and Human Rights, 1945-95* (New York: Department of public Information, UN, 1995), Blue Book Series, VII, 92-11.

continuation of the Conference.⁸ Vice Foreign Minister Liu Huaqiu, leader of China's delegation stated that "the Dalai Lama is not a religious figure. He is a political exile who wants to divide China. Austria should take notice of this". The Austrian Chancellor, Franz Vrautzky, replied that "we don't accept any criticism from China concerning the Dalai Lama's presence in Austria.

The Chinese delegation was reported to have left the building while the Dalai Lama toured the NGO area. In keeping with UN guidelines, in his speech the Dalai Lama concentrated on thematic issues and avoided specific mention of China. However, he made a veiled reference to China in his distributed address; "It is not enough to provide people with food and shelter and clothing. The deeper human nature needs to breathe the precious air of Liberty".

Amids this atmosphere of mounting political tension, while the Dalai Lama addressed an audience outside the Amnesty International tent not far from the Austrian Centre, Liu Huaqui delivered a tough statement.⁹ Although he acknowledged the work conference as "an important conference linking the past and future", he made few concessions to that future, or to China's more conciliatory post – Bangkok statement. Liu's Vienna statement also showed little sensitivity to the more cosmopolitan views of the broader international community. Its blunt, uncompromising message, for instance, differed from the sophisticated statements by Indonesia and Singapore. It presented a hard-line challenge to the outside world that offered a clear contrast both to the Bangkok Declaration and to the final Vienna Declaration, of which China was one of the key drafting members.

⁸ Lucy Johnson and Senthil Ratnasabapathy, "China Hints at pulling the plug", TR, 16 June, 1993.

⁹ "Proposals for Human Rights protection and promotion", Beijing Review, 36(28 June-4 July 1993). 8-11

The day after Liu's speech, on 16 June, the procedural issue of NGO participation in the Conference resurfaced. The Chairman of the Drafting Committee, Brazilian delegate Gilberto Vergre Saboia, ruled that NGO observers be excluded from the closed drafting session, which was to precede the committee's first formal session later in the day. He reportedly asked the NGO monitors to leave after a lengthy debate in which several country delegates, including Chile, Costa Rica, Jordan, Pakistan, and the U.S. argued in defense of the NGOs.¹⁰

The New York based NGO, Human Rights Watch, responded with a press release which "condemned the UN's willingness to submit to blackmail by the Chinese government in deciding to exclude NGOs from the Drafting Committee". The U.S. delegation head, Timothy Wirth, sharply criticized a "handful of nations" for trying to talk the drafting process "to death". He stated, "There's no question that the People's Republic has been at the forefront of that process from the start".¹¹ He added, "If these people want to walk out (of the Drafting Committee deliberations), that's fine with us".

China's preparedness to make concessions on a point of principle coincided with its expressed concern about growing criticism of its conference behavior. A US official reported that a senior Chinese diplomat had complained about press coverage that singled out China as the mastermind of moves to exclude the NGO's, insisting that there were other states taking the same position. He was reportedly told, "You can't hide behind others."¹²

Some Asian government accused the U.S. and other Western nations of unfairly blaming the Third World for the "painfully slow progress." China's senior delegate told

¹⁰ Peter da Costa and Lucy Johnson, "NGO Monitors Excluded", TR, 17 June- 4 July 1993.

¹¹ Ramon Isberto and Jim Lobe, "US slams Chinese led Go Slow", TR, 18 June, 1993.

¹² Ibid.

the Main Committee that his country's position had been unfairly presented in the media. U.S. Chairman Timothy Wirth observed that "the United States has made very clear the problems that we have with China's human rights position." He stated: "We want much greater dialogue over the issue of Tibet, we're very concerned about prison labor, child labor and about their over all performance. The women's groups are very concerned about transparency of the Chinese and whether they will allow NGOs going to the international conference on women which is scheduled in Beijing. At this point I don't think that in many ways the People's Republic is endearing itself to the human rights community worldwide. Nevertheless, he stated that "we will continue to attempt to work with China. I think we have made progress."¹³

At the same time, Asian states "led by China and Iran" were perceived by the Conference newspaper, *Terra Viva*, to be on the retreat.¹⁴ Certainly from 21 June, China ceased to be among those countries named as responsible for further obstruction in the Drafting Committee. At the discussion in the Committee on the relationship of development, democracy and human rights, the deputy leader of the Chinese delegation, Jin Yongjian, insisted on their interdependence. He warned against the one sided emphasis on civil rights adopted by some in the Conference, and at the same time identified the right to development as a basic condition of rights. Nevertheless, he stated that civil, political, economic, social, cultural and developmental rights should be given "equal emphasis".¹⁵

¹³ Jim Lobe and Ramon Isberto, "No Shootout at the Vienna Corral", TV, 19 June, 1993.

¹⁴ "A Glass half full or half empty?" TV, 22 June, 1993.

¹⁵ "Development, Democracy and Human Rights Complement Each other", Renim ribal ("People's Daily"), 18 June, 1993.

This represented a considerable concession to prevailing Conference views. The only negative report concerned China's alleged pressure on the UN to cancel a seminar on Tibet organized by Tibetan NGOs.¹⁶

Despite this, there were some positive outcomes. A few days before the end of the Conference, Asian governments as a whole acknowledged the important role of NGOs, and of international opinion, in the Vienna process. For the first time, and contrary to earlier refusals to do so, they asked for a formal meeting with Asian NGO representatives.

Post – Conference Analysis: Changing Theory:

Whether China's formal participation in the consensus of the Vienna process represented a meaningful development in its policy, or merely a contextual adaptation, may be determined by a textual analysis of China's Vienna Conference statement, by a comparison between the Chinese statement and the Vienna Declaration, and by an analysis of a number of examples of China's reaction to the Final Declaration. Finally, a comparison between China's Bangkok statements and its Vienna statement tests the longer term effectiveness of the Bangkok process and the significance of China's socialization.

China's Vienna Statement:-

Liu Huaqiu's 15 June speech at the Vienna Conference was tough and uncompromising; it represented an amalgam of the Maoist concept of human rights, the pre-Bangkok formulations in the 1991 White Paper, and elements of Jin Yongjina's Bangkok speech.¹⁷

It resurrected two crucial aspects of the Bangkok speech: the hierarchy of human rights

¹⁶ Senthil Ratnasabapathy, "NGOs Defy UN on Tibet", TV, 24 June, 1995.

¹⁷ Liu Huaqiu, "Proposals for Human Rights Protection," Renim ribao, 17 June 1993.

and priority of the principle of state sovereignty as “the basis for the realization of citizens’ human rights.” However, Liu gave state sovereignty an even greater emphasis in his insistence that the idea that human rights questions transcended state boundaries was “counter to the lofty cause of the protection of human rights.” He also declared that “nobody shall place his own rights and interest above those of the state and society” and argued that it was necessary “to maintain social stability and ensure that basic human rights of citizens do not contradict each other.” He emphasized socialist values, calling for the elimination of “colonialism, racism, apartheid, massive and gross violations of human rights as a result of foreign invasion and occupation, safeguarding the rights of small and weak countries to self determination and the right of developing countries to development.”

Unlike Ambassador Jin’s Bangkok speech, however, Liu’s Vienna statement reverted back to the priorities established in the first human rights White Paper. For the first time in the 1993 statements under analysis, it reiterated the priority of the rights to subsistence and development. Liu also returned to the interpretation of cultural relativism in the 1991 White Paper, according to which “different historical states had different human rights requirements.” He called for the guarantee of each country’s right “to formulate its own policies on human rights protection in the light of its own conditions”.

It also described China’s current human rights conditions. On the basis of the formal provisions of the Chinese constitutions, Liu claimed that every citizen already enjoyed “genuine democracy and freedom, civil and political rights.” Unlike earlier statements. He set only four “principal proposals” before the international community. They were the recommendations to: (1) give primary attention to the massive gross

violations of human rights resulting from foreign aggression, colonial rule, and apartheid; (2) establish peace and a favorable international environment for the protection of human rights; (3) respect the right to development for the protection of human rights; and (4) respect the right to each country to formulate its human rights policies. These principles represented a return to the unreconstructed socialist values of Maoist China.

At the same time, Liu admitted that human rights could be discussed among countries in the spirit of mutual respect and on an equal footing, and offered “to further strengthen exchanges and cooperation with other countries on human rights in the international community.” He also affirmed that “China respects and abides by the basic principles of the UN Charter and the Universal Declaration of Human Rights” and that it was “earnestly honoring the obligation” it had undertaken in ratifying eight international conventions on human rights.

China’s new hard-line position represented its basic negotiating line, which would allow it to end with the concessions it was finally prepared to make. It also represented a clear bid for leadership of the human rights diplomacy of the entire developing world, including not just the Asian but the African and Middle Eastern positions. And it was a response to the pressures of China’s growing economic power and domestic instability, mirroring its reaction against U.S. bilateral monitoring. Yet, unlike statements made by other Asian states, the Vice-Foreign Minister’s speech made no concession to the increasing sophistication of international human rights discourse. Its unyielding character, retreating well behind the line taken at Bangkok to the point of the first White Paper and before, meant that China’s concessions, when they occurred, would only be

more obvious in the eyes of the international community. By staking out so clearly the boundaries of state sovereignty, China was rendering them more vulnerable.

The Vienna Declaration and the Program of Action:-

The Vienna Declaration is a long and complex document that, although born of compromise, represented a step towards the mutual accommodation of different human rights philosophies.¹⁸ Under its rubric, developed states for the first time deliberately extended their working concept of fundamental rights to include the collective right to development. For their part, developing states accepted the universality and indivisibility of all rights, and the inseparable link between democracy, development, and human rights.

In terms of the fine print, a preliminary assessment by human rights expert Iain Guest of the views of delegates and observers identified the “winners” in the final document as women, children, and groups such as the Untouchables suffering “extreme poverty and social exclusion.”¹⁹ Those seen to have made less progress were refugees, whose rights of asylum in receiving states was not endorsed. They were also seen to include indigenous peoples, who were described as “people” rather than the collective term “peoples,” and thus seen as enjoying individual right but not the collective right of self-determination; the NGOs, whose hopes to have their rights as defenders of human rights recognized were not met, although they “should be free to carry out their human rights activities without interference”; and minorities, for whom the languages on protection was stronger, but for whom the right of self-determination was identified

¹⁸ UN Doc. A/ Conf. 157/23, 12 July 1993.

¹⁹ Iain Guest, “Winners and a Preliminary Verdict,” TR, 25 June 1995.

predominantly as freedom from foreign or colonial rule. In addition, the freedom of the press had been modified, in that its implementation was to be determined “according to law.”

From the point of view of Western states and Western and Asian NGOs, the achievement of the Declaration included the universality provisions, recognition of the human person as the central subject of development, insistence that the rights to development not be used as a justification for human rights abuses, strong support for women’s rights, the strong paragraph recognizing and supporting the role of NGOs in promoting human rights, and the number of countries forming part of its consensus. Its weaknesses were the lack of change on aid conditionality, a serious watering down of language on press freedom, and the absence of a decision on a High Commissioner for Human Rights.²⁰ One assessment by human rights lawyers considered that there had been no conceptual advances in Vienna, and that although the Program of Action contained some positive gains, it fell short of expectation for specific measures to turn accepted principles into concrete action that could address human rights violations and their causes.²¹

China became party to the consensus, in spite of fact that the final document represented the reverse of many of the priorities established in Liu Huaqiu’s Vienna statement. At least a dozen major items in the Vienna Declaration represented issues that China did not support in its policy, had taken issues with in official statements, had opposed during the drafting process in Vienna or had worked against in the drafting

²⁰ “The Deputy Leader of Our Delegation Discusses the World Conference on Human Rights”, Renmin Ribao, 27 June 1993.

²¹ Reed Brody, Donna Sullivan, Iain Guest, “The 1993 World Conference on Human Rights: A Critical Analysis” (Washington, D.C.: International Human Rights Law Group, June 1993.)

process in Vienna, and failed to endorse from the Bangkok Declaration. First and foremost was the recognition of the universality of human rights, something China had worked against in the drafting process in Vienna, and failed to endorse from the Bangkok Declaration. Second was the statement of the interdependence and mutually reinforcing nature of democracy, development, and respect for human rights. Third was the statement that “lack of development may not be invoked to justify the abridgement of internationally recognized human rights” in Paragraph 10.

In contrast, Chinese policy and statements habitually viewed the right to development primarily as a collective right of states, and used economic development and the need for political stability as a “trade-off” argument against the claims of civil and political rights. Moreover Section I, Paragraph 30 of the Vienna Declaration diluted the effect of its support for the values of antiracism, antforeign occupation, and domination, values shared by China, by including a list of other violations of which China was clearly culpable, such as torture, summary executions, religious intolerance, and a lack of the rule of law. While recognizing that “the primary responsibility for standard-setting rests with States, “a view similar to China’s Section I, Paragraph 38 of the Declaration also recognized the “contribution of non-governmental organizations to this process” as well as the “importance of continued dialogue and cooperation between governments and non-governmental organizations.” This recognition, also contained in the Bangkok Declaration, had been opposed in China’s policy, in its Vienna Conference diplomacy, and in its statements before the Human Rights Commission and Sub-Commission. In addition to acknowledging the role of NGOs, Section I, Paragraph 39

“encouraged the increased involvement of the media” in human rights activity, something that China would not have supported.

Values not respected in Chinese practice, as opposed to its formal theory, which were given extensive treatment in the Vienna Declaration, included the rights of minorities, the long section on torture, according to which freedom from torture was a “right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts” (Section II, Paragraph 56)., and the need for an independent judiciary and legal profession (Section I, Paragraph 27).

Finally, where China had called for a rationalization of the UN human rights bodies, the Vienna Declaration highlighted “the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights, and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities” (Section II, Paragraph 95).

The distance between such principles and China’s hard-line statement of 15 June made clear the concessions that China had made, if in many cases only implicitly, and the degree to which, at least within the drafting process of the Conference, it had been prepared to modify its hard-line policy in exchange for its wish to be seen as a cooperative member of the international community. Undoubtedly, part of the pressure pushing it toward the consensual position was the utilization by Western states of democratic procedures like press conferences (a mechanism used to effect by the U.S. delegation) and continuing NGO pressures, whereby China’s activity within the Drafting Committee was exposed to unfavorable publicity.

Yet, China had reportedly also been instrumental in the Drafting Committee in watering down a number of the proposals. Apart from the provisions regarding the High Commissioner, these had included efforts to avoid requests for new funding, which had been diluted in the final draft to requests for an increased proportion of the regular UN budget. In addition, China had been one of the opponents of the proposal for an International Court of Human Rights. Positive inclusions in the Declaration, from China's point of view, would have been the establishment of a Working Group on the Right to Development and Economic and Social Rights (Section 11, Paragraph 96); the weakening of the right of self determination in a way which undermined minority rights; the establishment of a Special Rapporteur on Racism; and the condition that china had insisted the Declaration should contain-namely, the reference to the role of historical conditions and development, and to the importance of state sovereignty – were mentioned in the document, but in a peripheral and diluted form.

Chinas' Formal Responses to the Vienna Declaration:

(June – December 1993)

The full significance of China's participation in the Vienna Declaration consensus process could be measure only by an analysis of its formal response to the Declaration over a substantial period. Its attitude was indicated in immediate judgements in *Renmin ribao* articles, in a more considered statement by Tain Jin, China's expert to the UN Human Rights Sub-Commission in Geneva in August 1993, an in a press conference with Zhu Muzhi, Chairman of China's human rights NGO, at the end of December 1993.

Responding to the Final Declaration on the last day of the Conference, Jin Yongjian adopted a positive approach, declaring that it indicated that "the protection of

human rights was international society's common responsibility and that it was the goal for which every government should struggle."²² He first listed the Declaration's achievement in the area of China's main concerns: in opposing racism, colonialism, foreign aggression, and attempts by a few countries to impose their human rights values on other, and in affirming the right to development and collective rights. He approved its support for the universal realization of rights and acknowledges the value of the mutual discussion and interchange at the conference. However, he also articulated the ambiguous stance China would adopt thereafter in the question of universality. In his judgement, the Final Declaration "reflected some universal understanding of states towards the question of human rights, and at the same time maintained some different viewpoint states that had facilitated the passage of the document, and in particular China's role as Vice-Chairman of the Conference. He was heartened by the support China found for its position from many countries. Regarding the drafting of the Final Document, he maintained that China had adopted "an extremely cooperative attitude." It had introduced "quite a few constructive proposals" and had encouraged the emergence of the final Declaration. Moreover, he insisted, China would "continue to take a positive attitude in its participation in international human rights activities" (6).

The *Renmin ribao* article of 29 June, also carried in the *Beijing Review*, assessed the achievements of the Final Declaration as its reflection of "some universal understanding and common views on human rights" as well as of "different viewpoints from different countries."²³ Positive development included it had described human rights

²² "An Important Conference in the field of Human Rights"), *Renim Ribao* (People's Daily), 27 June, 1997.

²³ "International Cooperation Strengthened and Human Development Promoted," *Beijing Review* 36 (12-18 July 1993).

as interdependent and indivisible; had identified poverty as an obstacle to human rights; and had reaffirmed the right to development as inalienable.

“This Conference has achieved some positive results, though there are evident limitations. The struggle over human rights between the developing countries and a few Western countries will last a long time. However, the position and proposition of the developing countries will increasingly command attention in the international arena in the long run.”²⁴ This view was reinforced in the more considered and, on the whole more negative judgement made by China’s expert, Tian Jin, before the UN Human Right Sub-Commission on 6 August 1993. He saw the final outcome as a compromise “which satisfied no one,” and predicted that there would continue to be differences of opinion on it. Zhu Muzhi maintained even more negative view of an entirely negotiable future at the end of 1993, the Chairman of the China Society for Human Rights Studies. He stated that the Vienna Conference had exposed three main issues: (1) that there were differences on human rights within the world community, particularly between North and South, and great differences in Views between Asia and the West, as illustrated in the Bangkok Declaration; (2) that developed nations were always attempting to promote their model of human rights, which they believed to be the only one, and force it on developing countries; and (3) that at Vienna China had been the main target of the West’s attack, which concentrated o criticism of human rights in Tibet, interference in China’s internal affairs, and an attempt to undermine China’s proposals, an attempt that nevertheless had been foiled by support from developing states.²⁵ Zhu did not acknowledge that the Conference may have had a constructive, positive, or lasting outcome for international

²⁴ Ibid.

²⁵ Zhu Muzhi, “Considering Human Rights from a Historical and Development Perspective”, Renim ribao (“People’s Daily”), 29 December 1993.

human rights. China's official assessments of Vienna had become progressively more negative with the passage of time.

Through the lengthy process of the Vienna Human Rights Conference, China had submitted its human rights priorities to international scrutiny, both in statement made by its Vice- Foreign Minister and its interaction with the Drafting Committee. China's involvement in the Conference and its Drafting Committee had been productive. However, the significance of its concessions was quickly rendered problematic by subsequent official judgments that the struggle over human rights would last a long time.

Chapter III

China's Evolving Human Rights Diplomacy: (1990 -2003)

The Sessions of the Human Rights Commission and Sub-commission: (March 1990- March 1993)

The three and a half year period following the 1989 Sub-Commission was marked by complicated political maneuvering, the outcome of which was partly determined by the changing balance of global power. Changing political coalitions within the Commission and Sub-commission reflected the collapse of communism in the former Soviet Union and Eastern Europe, while the effects of that change were partly counterbalanced by global economic forces that saw China's emergence as a power to be reckoned with both regionally and internationally. In the first few years, the results of this larger political change militated against China's expectation of support from state of the South. However, by 1992, as its economy began to boom, and as its defensive diplomacy in human rights forums became more effective, China began to find the support it had been anticipating from the countries of the South, and began to exploit the divisions within the West/North. Two sessions in particular exemplified this trend, the August 1991 Sub-Commission and the February-March 1992 Commission. The former demonstrated, on one hand, the strength of the Sub-Commission as a body of experts in which individual agency still had an important role, and the latter indicated, on the other, the political weakness of the Commission as a forum representing governments.

China's delegates went into the autumn 1989 UN General Assembly session in a defensive mood. In an angry protest, which they circulated as an official document under

Item 12 of the agenda, they asserted that the Sub-Commission's China resolution had "brazenly interfered in China's affairs" and violated the UN Charter and international relations norms; they declared it "null and void."¹ At the forty-sixth session of the UN Commission on Human Rights in February –March 1990, a large Chinese delegation of more than forty diplomats lobbied "in not always courteous ways."² They anticipated an increase in Third World support, particularly in view of the trend towards a united front of all countries of the South. Both the lead up to the vote and the subsequent successful outcome of the vote for China, however, undermined these expectations. As in the case of the Third World bloc was not an undifferentiated mass. The draft resolution had solid Western co sponsorship and the European Community also lobbied. The text of the draft resolution was written by Australia, Canada and Sweden. However, in a meeting organized by Australia and cosponsored by the United States, the Japanese deputy also took an interest and removed any items the Chinese government might have found objectionable. When the Chinese representatives lobbied states parties of the Commission, including Australia, to have the Secretary General's report struck out, the Filipino Chairman would not allow it. Other tactics further undermined China's standing, as its representatives tried to prevent delegates from speaking and were overruled.

The final form of the draft resolution was a mildly worded document.³ Voting on the draft took place a day before it was expected, and Western lobbying was weak. China called for a "no" motion, and a procedural no-action vote was proposed by Pakistan, which succeeded by a narrow margin of 17 in favor, 15 against, and 11 abstentions.

¹ U.N. Doc. A / A44 / 504 (6 September 1989).

² Adrien-Claude Zoller, "North-South Tension and Human Rights," Human Rights Monitor (April 1990).

³ UN Doc. E/ CN.4/1990/ L. 47, at 12.

China's response was to stop a handful of people from violating the law and order with 'violation of human rights'."

At the forty-third Sub-Commission session in August 1991, China's human rights conditions were the subject of a second resolution. By this point, NGOs had reached an informal arrangement whereby the China issue would alternate every second year with the Tibet issue. The resulting resolution on the human rights situation in Tibet was regarded as the most notable of the session, as well as the closest vote. It was also regarded by some as more significant than the 1989 resolution, since it related to long-standing Chinese policy in Tibet rather than to a single incident.⁴ It expressed concern at the "continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people" and requested the Chinese government to "fully respect the fundamental rights and freedoms of the Tibetan people".

Draft Resolution E/CN.4 /Sub2. /1991 L.19 was then adopted by secret ballot by 9 votes to 7, with 4 abstentions. Ambassador Fan Guoxiang rejected the resolution unequivocally and asserted that it was "null and void". Although this formula was identical to China's response to the 1989 resolution, an observer at the session has commented that, unlike the case in 1989, in 1991 China's delegates within the Sub-Commission took their defeat "on the chin." Nevertheless, from Beijing, a spokesman for the Chinese Foreign Ministry issued a sharp protest, claiming that the resolution violated the principles of state sovereignty and noninterference respected in UN Charter and International law.

⁴ Karen Rierson and David Weissbrodt, "The Forty-Third Session of the UN Sub-Commission of Prevention of Discrimination and Protection of Minorities: the Sub-commission under Scrutiny," *Human Rights Quarterly* 14 (May 1992) 2: 232, 246.

The China issue demonstrated the newly unified South position on human rights in this session, as well as the division within the North / West. Before the Commission was a weighty note from the Secretary-General information on the situation in Tibet. However, a majority of African states had reportedly arrived in Geneva with instruction not to support the China resolution.⁵ In the subsequent vote, almost all African countries supported the Pakistani no-action motion, with only Senegal and Gabon abstaining. Among the Latin American delegation, only Costa Rica voted against the motion. In contrast, Western states were divided. Paradoxically, this was partly because it was also the first opportunity for the European Community to exercise the coordinated approach implicit in the Treaty of Maastricht.⁶ Depending heavily on the approach suggested by the Tibetan lobby, which made the draft resolution “politically problematic,” the European Community, led by Germany, sponsored a resolution that had not been coordinated with other WEOG (Western Europe and Others Group) States. The U.S., Australian, and Japanese delegations expressed unhappiness with this resolution particularly because it conflicted with the “one China” policy. The U.S. delegation thus suggested a general China resolution that also encompassed Tibet. For the next few weeks there were acrimonious exchanges within the Western group, but at the last minute the European Community gave in to U.S. demands.

Having lobbied hard to obtain a modification of the draft, the U.S. delegation appeared to lose interest when it came to getting the results of its efforts adopted. It was widely believed that this ambiguous behavior served the purposes of the then Bush

⁵ Adrien-Claude Zoller, “The UN Human Rights Commission 1992,” *Human Rights Monitor* (April 1992) 16:24.

⁶ Joe W. (Chip) Pitts and Weissbrodt, “Major Developments at the UN Commission on Human Rights in 1992,” *Human Rights Quarterly*, 15 (February 1993) 1:122,142.

administration in providing an indication of continuing U.S concern for the human rights situation in China, despite the President's Veto of Congressional legislation setting conditions for the renewal of China's MFN, invoked on 2 March 1992.⁷ The resultant resolution was entitled "Situation in China/Tibet," and the original preamble and operative paragraphs were broadened to refer more generally to China.⁸

The prophecy of observers from the 1992 Commission proved self-fulfilling. In the 1992 Sub-Commission Session, the Tibetan NGO coalition had prepared several oral statements and provided experts with a dossier covering all events. However, in deference to the informal agreement, priority was given to China in this session. Although the China issue was not, like the Tibetan issue, complicated by the difficult issue of Self-determination, attempts by the NGO coalition to persuade the experts to table a resolution on China were not successful.⁹ At this session, China's expert, Tian Jin, went on the offensive, targeting the recent Los Angeles riots and arguing the need for rethinking human rights in ways which did not marginalize the Third World.

The draft resolution, "The Situation for Human Rights in China", expressed concern over the continuing reports of violations of human rights and fundamental freedoms in China, called upon the Chinese government to take measures to ensure the observance of human rights and improve the administration of justice, invited the government to continue to cooperate with the special rapporteurs and working groups and

⁷ Adrien-Claude Zoller, "The UN Human Rights Commission 1992," Human Rights Monitor (April 1992), 16:24.

⁸ UN Doc. Decision 1992/166, ch. 11 in E/1992/22E/ CN.4/1992/84, Supp. No 2.

⁹ Adrien-Claude Zoller, "Analytical Report of the 44th Session of the Sub-Commission," Human Rights Monitor (September 1992) 17-18:21.

requested the Secretary-General to bring the resolution to the attention of the Chinese government and prepare a report for the Commission on Human Rights on the basis of available information.¹⁰

Shortly before the vote, and as an indication of its new assertiveness, the Chinese delegation took the initiative, launched an attack on its opponents, and introduced a procedural motion requesting the Commission to take no decision on the draft resolution. The motion was adopted by a narrow margin of five, with 22 votes in favor, 17 against, and 12 abstentions. Abstentions were mostly from Latin American countries, whereas Bulgaria, the Czech Republic, Japan, Poland, Romania and the Russian Federation were among those who joined the Western states voting against.

The 1993 vote saw the defection of Chile, Cambodia, and Lesotho from a vote in favor in 1992 to an abstention in 1993. Six states that had voted in favor in 1992 were not in the 1993 Commission, as against the addition of four new states voting in favor in 1993. Two other new countries, Bulgaria and Poland, voted against in the 1993 vote. This accounted for the contrast between the margins of China's success of five in the 1993 vote as against the margin of twelve in the 1992 vote. Observing this positive comparison, the NGO adviser, Adrien-Claude Zoller of the International Service for Human Rights, commented that the Chinese had "lost considerable ground."¹¹

¹⁰ Un Doc. E/CN.4/1993/L.104.

¹¹ Adrien-Claude Zoller, "The UN Human Rights Commission 1993," *Human Rights Monitor* (April 1993), 20: 37.

Monitoring after Vienna: Swing to the Multilateral (1993-1994)

Only six months later, in March 1994, both the multilateral UN mechanisms and the bilateral MFN mechanism were simultaneously put the test. At the fiftieth session of the Human Rights Commission in February-March, the draft resolution, "Situation of Human Rights in China," called upon the government of China to take further measures to ensure the observance of all human rights, invited the government to continue to cooperate with all special rapporteurs and working groups and requested the Secretary – General to bring the resolution to the attention of China's government and prepare a report for the Commission at its Fifty-first Session on the situation of human rights in China.¹² As at the preceding Commission Session, the Chinese themselves proposed a no-action motion, which was carried on 9 March by 20 votes to 16, with 17 abstentions. The narrow majority of four was one less than the preceding year. An analysis of the vote suggests that, had Poland and Romania continued to vote against the motion as in 1993, instead of abstaining, and had two Latin American states also voted against it, the result would have been a tie of 20 against and 20 in favor, first time in Commission history. The contingent nature of China's success was underlined by the fact that up until the vote, the Polish delegation had insisted it intended to vote against the no-action motion-but at the last minute China's Foreign Minister had persuaded Poland's Foreign Minister to change. Poland in turn persuaded Romania.

Thus, although one NGO observer complained that the narrow margin of the vote could not be regarded as "any great success" for the China lobby group, it nevertheless suggested that the Human Rights Commission was becoming a more likely forum for the

¹² UN Doc. E / CN.4 / 1994 / L. 83.

successful monitoring of China's human rights than the Sub-Commission. Over a period of three years the Commission vote had changed from 27 in favor of the no-action motion to 15 against with 10 abstentions (1992), to 22 in favor, 17 against, and 12 abstentions (1993), to 20 votes in favor, 16 against, and 17 abstentions (1994). The decreasing majority was due not to the change in numbers against, which remained reasonably constant, but to an increase in the number abstaining rather than voting in favor. That change mainly reflected the alteration in the Eastern European and Latin American vote away from support for China. But the changing margin did not detract from continuing success of the no-action motion.

In Geneva, the Chinese diplomats had worked extremely hard and been very effective in their lobbying, organizing supporters to speak on their behalf. In contrast, the American and European group had misjudged the Commission's mood and, two days before the vote, were still certain that a no-action motion would be defeated by perhaps majority of four against China.¹³ Some NGO observers and journalists claimed that the U.S. State Department was not sufficiently determined to criticize China's human rights record, since the U.S. could have obtained the numbers to defeat the no-action motion. On the U.S. side, diplomats claimed that they had lobbied vigorously but, owing to the difficulty of obtaining a draft acceptable to all, had once again been faced with a problem of inadequate time.

It was ironic that at this time there was criticism within the U.S. that the State Department was too committed to monitoring China's human rights on a bilateral basis.¹⁴

¹³ Ann Kent, "China, the United Nations, and Human Rights: The Limits of Compliance, University of Pennsylvania Press, Philadelphia, 1999.

¹⁴ Elaine Sciolino, "U.S. Big Business Urges Renewal of China's Trade Ties," New York Times, 14 March 1994.

Detailed examination of U.S. monitoring of China's human rights suggests that, contrary to general belief, since 1990 China had indeed complied with some of the conditions laid down by the U.S. for the renewal of MFN, even if often only on paper. Over a period of five years, as the 1993 executive order and previous congressional bills had required, Chinese authorities had released political prisoners, often through the good offices of U.S. businessman in Hong Kong, John Kamm, in timing that revealed a direct correlation with looming congressional voting, or with the final point of the Presidential decision to renew MFN, on 3 June each year. China had also agreed to ensure that goods made with prison labor were not exported to the U.S., had arranged the emigration of some political prisoners, and had agreed to discuss Red Cross visits to Chinese political prisoners.¹⁵ The success of U.S. pressures in eliciting compliance in specific areas, notably with political prisoners, was also measurable negatively, by reference to China's diminishing cooperation once MFN and human rights had been delinked.¹⁶

Nevertheless, the debate over the linkage between human rights and MFN in the United States in late 1993 and early 1994 demonstrated the lack of domestic unity on the issue, with the business community in particular opposed to the linkage. This lack of unity was perceived by China's leadership as underscoring China's vital importance to the U.S. economy. Furthermore, as the introduction of market reforms made China increasingly powerful in economic and strategic terms, its hold on domestic stability diminished. A swing to a more nationalistic stance reflected the increasing power of the

¹⁵ Ann Kent, "China, the U.S. and MFN", 26 July 1995, 34.

¹⁶ "China and Tibet," in Human Rights Watch Report 1995: Events of 1994 (New York: Human Rights Watch, 1995), 142-149.

military, which, from April 1993, signed a number of anti U.S. petitions that strongly opposed bartering away China's independence in exchange of MFN.¹⁷

These push-me-pull-you tactics came to an end on 26 May 1994 with President Clinton's announcement of the formal delinkage of human rights and MFN. A new area in Sino-U.S. relations began in which the pursuit of U.S. human rights objectives took a different turn. The most notable positive outcome of the 1994 Clinton decision was a renewed U.S. focus on multilateral forums, partly in reaction to China's triumphalist response to the delinkage. As early as December 1994, U.S. diplomats began channeling their energies into lobbying for the forthcoming vote on China at the 1995 Human Rights Commission. When U.S. National Security Adviser Anthony Lake visited Zimbabwe, Gabon, and Ethiopia, the Geneva resolution was on his agenda. So it was for Geraldine Ferraro, then head of the U.S. delegation to the Commission, when she visited Latin American capitals.¹⁸ This expression of renewed U.S. political will, in part aimed at undermining domestic criticism of the President's decision, had a powerful effect. For almost six weeks in the Commission, China was "the most intensively discussed and lobbied issue."¹⁹ In a dramatic roll call, on the morning of 8 March 1995, the no-action vote on the draft China resolution was overturned for the first time. It was rejected by 22 votes to 22, with 9 abstentions, and because it required a majority to pass, it failed on the tie. This failure highlighted the weaknesses of this procedural motion and its inability to shield its attention from bilateral monitoring mechanisms to multilateral ones.

¹⁷ Documented in Samuel S. Kim, "China's Pacific Policy: Reconciling the Irreconcilable," *International Journal* 50 (Summer 1995), 475.

¹⁸ John R. Crook, "The Fifty-first Session of the UN Commission on Human Rights," *American Journal of International Law* 90, 1 (1993), 127-28.

¹⁹ John R. Crook, "The Fifty-first Session of the UN Commission on Human Rights," *American Journal of International Law* 90, 1 (1993), 127-28.

The 1995 vote, in contrast to that of 1994, saw growing opposition to non-action and a decrease in the numbers abstaining. This time those voting against the motion included former communist states (Poland, Romania, and the Russian Federation) and Latin American states (Ecuador, El Salvador, and Nicaragua) as well as the Philippines. The results suggested the success of the Ferraro visit, if not that of Anthony Lake. The unprecedented failure of the no-action motion was attributed to the strength and the sustained nature of U.S. lobbying; the number of countries in the 1995 Commission favorable to the West, compared with the past; and specific problems in China's bilateral relations, such as its strategic disagreement with the Philippines over the Spratlys. It indicated that the condition of China's human rights was now deemed by the Commission to be requiring its attention, even though the draft resolution, "situation of Human Rights in China," was subsequently narrowly rejected by a margin of one, in a vote of 21 to 20, with 12 abstentions²⁰ the Russian Federation, which had opposed the no-action motion, had subsequently changed its vote to oppose the substantive resolution.

²⁰ For vote on no-action motion, and for vote on draft resolution E/Cn.4/ 1995/L.86. See UN Doc. E/CN.4/1995/176.

China on the Offensive Diplomacy (1995- 2003):

Back to the Bilateral:

The narrowness of its victory in the 1995 Commission changed China's tactics to ones combining more aggressive lobbying of all states members of the Commission and observers to the Sub-Commission with more frequent use to the right of reply during sessions. Attack became the best form of defense. The period coincided with a move by authoritarian states of the South to combine to challenge the UN monitoring mechanisms. This challenge was conducted on two fronts, overturning customary procedures. First was the change in the role of the Sub-Commission in relation to Item 6 on human rights violations. Keen to avoid the political pressures associated with Item 6, experts decided to forgo discussion on country situation already being dealt with by the commission. This decision undermined the Sub-Commission's role to circumvent conflicts within the Commission. It also meant that the China issue would no longer be discussed in the more objective and rarified forum of the human rights experts, but was now more highly politicized and relegated to discussion by states members of the Commission. Already, the replacement in 1994 of mild-mannered expert Tian Jin with the forthright former UN Ambassador Fan Guoxiang had made it less likely that the China issue would get a hearing in the Sub-Commission.

Second was a more insidious move to introduce the idea of "cooperation" to replace "confrontation" on human rights, specifically by moving away from country specific resolution and toward bilateral human rights dialogue. During the 1996 session of the Commission, China clarified the purpose behind its championing of this new approach. Ambassador Wu Jianmin stated that "the correct way to promote human rights was through dialogue and cooperation. However, under agenda item 10, 67 countries,

almost all developing countries, had been 'put in the dock' since 1992. In considering country situations, the Commission should oppose double standards and put an end to North-South confrontation. In principle, China did not favor country resolution; if deemed necessary, they should be the object of consensus."²¹

The most publicized challenge in this period, however, was China's extension of the open lobbying tactics it had hitherto used only towards the states of the South, to those of the North. Its main goal was to drive a wedge within the WEOG states, primarily between the European Union and the U.S., on the China resolution. Already, as analysis of the 1993 Sub-Commission reveals, human rights experts from the North had been threatened with commercial consequences to their state of origin should they vote against China. These threats, however, had been carried out circumspectly and behind closed doors. Increasingly, China's treatment of Western states became more openly threatening and blatant, with no pretense of respecting diplomatic conventions. Its tactics constituted a mix of diplomacy, with the use of both carrot and stick in the form of manipulation of the West's historical guilt about treatment of China and commercial promises and threats. The response of the West was not, as could have occurred, the formation of a coordinated united front but, on the contrary, utter disarray and confusion in Western ranks.

Thus, in the 1996 session of Commission, Chinese diplomats attempted to portray the draft resolution on China as an example of Western hegemonism. Throughout 1995, Chinese Leaders visited Europe, finalizing the China-EU Airbus sale, to the dismay of Boeing in the U.S. and offering to sign and ratify both International Covenants if the Commission resolution could be dropped. This offer was reportedly in response to a list of ten requirements put to China by the European Union at the Bangkok meeting of the

²¹ UN Doc Press release HR/CN/96/41, April 1996, at 5.

Euro-Asia Summit in March 1996, which included the ratification of the two International Covenants and invitation to the High Commissioner for Human Rights and the UN Working Group on Arbitrary Detention to visit China.²² Subsequent failure to sign the Covenants, however, meant that the French-initiated push to drop the resolution failed.²³

Nevertheless, the late start to European lobbying, and the lack of enthusiasm on the U.S. side, contributed to the substantial loss of support for the resolution in 1996 as compared with 1995. The draft resolution, as tabled by the European Union, was inspired by the reports of the special rapporteurs on torture, extrajudicial executions, and religious intolerance and the working Group on Enforced Disappearances. As before, China presented a procedural motion to prevent voting on the draft resolution. The no-action motion was adopted by 27 votes to 20, with 6 abstentions.²⁴ On this occasion there was a noticeable increase in the numbers supporting the no-action motion, with the addition of Belarus, Benin, Guinea, Madagascar, Mali, Uganda, and Ukraine, and the departure of Togo and Sudan, which had previously supported the motion, from the Commission.

It was the 1997 commission; however, that China's political pressure on the West reached a climax. The pre-Commission politics and the politics of the session form a study in themselves.²⁵ As early as November 1996, Western power placed the onus on China to initiate concrete steps to avoid confrontation. This allowed China to engage in delaying diplomatic tactics and to withhold its response until the last minute, thus

²² Human Rights in China, HRIC Participation in the 1996 UN Commission on Human Rights, 52nd Session, Geneva (New York, 1996),4.

²³ Human Rights Watch / Asia, "Chinese Diplomacy," 4.

²⁴ "Report on the 52nd Session of the Commission on Human Rights (Geneva, 18 March –26 April 1996)," Human Rights Monitor (1996) 32-33:43. For vote, see UN Doc. E/CN.4/1996/177

²⁵ See Human Rights Watch/ Asia, "Chinese Diplomacy," 12-14.

facilitating its own room for maneuver in its lobbying sweep through Africa, Latin America, Asia, and Europe, while ensuring that American and European leaders themselves had little time left to lobby. For the first time, the united front in EU human rights policy in the Commission was formally breached. Despite common expectation that the European Union would as usual table a draft resolution on China, France expressed its opposition to the draft prepared by the Dutch presidency and was quickly supported in its arguments by Germany, Italy, and Spain. The Dutch delegation decided not to present a draft resolution on China on behalf of the European Union unless its members could agree on a text. Finally, the Danish Minister for Foreign Affairs announced that Denmark would sponsor the resolution.

In response to this political imbroglio, China held out both stick and carrot. To those preparing to cosponsor the draft resolution, it openly threatened loss of trading and diplomatic opportunities; to those deciding to abandon their co sponsorship, it offered the promise of future dialogue, as well as the renewed possibility that China might sign the International Covenants. In particular, the Danish Ambassador was told that he “would regret” his country’s efforts; and China published a list of Danish corporations it intended to exclude from future contracts.²⁶ It also circulated a position paper in the United Nations, arguing that tabling the draft resolution on China was improper, as it was not “pursuant to the purposes and principles and rules of procedure” and was intended to exert political pressure on China. As it turned out Australia, Canada, France, Germany, Italy, Spain, and Japan failed to cosponsor the resolution as they had in previous year,

²⁶ Adrien-Claude Zoller, “The Draft Resolution on the Human Rights Situation in China and China’s Attempts to Suppress It: Will its Tactics Succeed?” (Geneva, International Service for Human Rights 14 April 1997).

even though those that were members of the Commission subsequently voted against China's no-action motion. By a tactic of divide and rule, China had succeeded in bilateralizing a multilateral process. Consistent with its policy of open threats, China immediately announced measures of economic reprisal against Denmark and the Netherlands after the vote, Vice-Premier Zhu Rongji cancelled a planned trip to The Hague and traveled to Australia instead.

The results of the vote on the no-action motion on the 1997 China resolution 27 in favor, 17 against, and 9 abstentions was not very different from the same vote in the 1996 Commission 27 in favor, 20 against, and 6 abstentions. Crucial to the abstentions was the swinging Latin American vote. Of eight Latin American states visited by Chinese Trade Minister Wu Yi and Premier Ki Peng between June and November 1996, all but Peru were members of the 1997 Commission. Of these, only Chile eventually supported the West in the no-action motion. Cuba and Colombia (which in 1996 had abstained) voted with China, and five others, including Brazil (which in 1996 had voted with the West), abstained. Part of the Eastern European vote was also supportive of China, marking a partial swing back to the situation existing before the collapse of communism in Eastern Europe. In both the 1996 and 1997 sessions of the Commission, Belarus and the Ukraine voted with China, whereas the Russian Federation abstained, even though it has voted with the West on the no-action motion in 1995.²⁷ The diplomatic triumph proclaimed for China was thus more a reflection of the number of Western, Eastern European, and Latin American states now troubled about the China resolution, and the priority China gave the proceeding, than a function of the numerical margin of its success.

²⁷ See Human Rights Watch/Asia, "Chinese Diplomacy," 6, 10. In 1997.

However, the politics surrounding the vote clearly had a profound impact on the effectiveness of the UN human rights system as it applied to China, and perhaps even beyond. The means by which success was obtained, the openly threatening nature of China's response to those sponsoring and cosponsoring the resolution, the compliant attitude of some Western states, including Australia, Canada, France and Germany, toward China's tactics, and their failure to express solidarity with the beleaguered northern European states reflected a qualitative change from the past that had disturbing implications for the continued credibility of Commission resolutions. In particular, China's painfully public claims to the right to special treatment and special exemption on human rights in the UN system represented a rejection of the values of universality and nonselectivity of human rights finally adopted by consensus at the UN World Human Rights Conference in Vienna in June 1993. That China made the claim in the name of developing states, moreover, carried with it the possibility of future collective claims to exemption. The decision by both the European Union and the U.S. not to sponsor a resolution against China in the 1998 session of the Commission represented the final nail in the coffin of Commission credibility vis-à-vis that state.

The paradox was that the split within the European Union was engineered by Western states, under pressure from China, who argued the greater effectiveness of cooperative dialogue with China. By this divisive action, they were effectively transferring their faith and their monitoring energies away from the multilateral arena and back to the bilateral. The decision not to sponsor a resolution in the 1998 Commission did not serve to heal that breach; rather, by uniting the European Union behind a policy that weakened UN procedures, it highlighted it. Yet the fact that China was prepared to go to

the extremes of challenging the entire global community to avoid the resolution, and that, in subsequent bilateral dialogue with countries such as Australia, it was still busy trying to persuade Western states not to sponsor the China resolution in the 1998 Commission session, simply underlined the importance China placed on the vote and, conversely, undermined the West's excuse that the annual Commission resolution was not "Effective." So too did the human rights concessions China offered to avert a resolution. Its promises in 1996 to sign the International Covenants in exchange for a promise to drop the resolution were not honored immediately, but in all probability influenced its final decision to sign the ICESCR in 1997 and the ICCPR in 1998. These seemingly hopeful signs, welcomed by NGOs and governments alike, were partially offset by Chinese Foreign Minister Qian Qichen's simultaneous statement that China was committed to the pacts but needed more time to research their implication before they could be fully implemented.²⁸ A senior Chinese Foreign Ministry official also noted the lengthy NPC discussions that were required before ratification of the Covenants could take place.

Other indications of cooperation included China's decision in 1997 to invite the UN High Commissioner for Human Rights, Jose Ayala Lasso, and the China visit of the Rapporteur on Religious Intolerance in 1995, and the invitation to the UN Working Group on Arbitrary Detention to visit China in October 1997.²⁹ Human rights dialogues were commenced with a number of cooperating states, Australia, Brazil, Canada, the

²⁸ Scoot Hillis, "UN Chief Says Pleased with China Rights Moves," Reuters News Service, 31 March 1998.

²⁹ Stephanie Nebehay, "UN Rights Boss Ready to Start Talks with China," Reuters "China" News, 21 January 1998.

European Union, Norway, and Sweden.³⁰ China first proposed the idea of dialogue to Brazil, which in the 1996 Commission had changed its vote on China to opposing the no-action motion, before the 1997 Commission, and dialogue took place from 18-27 February 1997, just prior to the beginning of the session. Immediately after the Commission session, in 10 April Australia announced the beginning of dialogue with China, on 14 April Canada announced dialogue, and in September 1997 discussions were resumed with the European Union. The release of Wei Jingsheng, and his emigration to the United States in November 1997, was associated with China's effort to head off a China resolution in the 1998 Commission session. Finally, China's invitation in January 1998 to the new UN High Commissioner of Human Rights, Mary Robinson, to visit China, was associated with the European Union's effort to present a lateral method of monitoring China, other than through a China resolution.³¹ Such concessions appeared to suggest that the UN-China trade-off might be effective. At the same time, there was a real danger that if the resolution were to be permanently, as opposed to temporarily, removed as a source of pressure on China, China would cease making concessions, just as it had after 1994 once MFN and human rights were delinked.

Thus, astute observer Adrien-Claude Zoller, Director of the International Service for Human Rights, dourly commented at the end of the 1997 session: "The decisions of the Commission are now removed from the concern and needs of human rights defenders throughout the world. The dominance of commercial relations over human rights concerns, falsely described as 'constructive dialogue', creates a distance between the Commission and such realities. The States that follow this logic, whether they be

³⁰ Human Rights in China, From Principle to Pragmatism: Can Dialogue Improve China's Human Rights Situation? (New York, 1998).

³¹ Justin Jin, "China Issues Formal Invitation to UN Rights Head," 20 January 1998, Reuters "China" News

manufacturers of Airbus or the beneficiaries of Chinese aid, bear responsibility for the Commission's loss of credibility.³²

A split between the U.S. and the E.U., traditional cosponsors of resolutions on China at the U.N. Commission on Human Rights, enabled China to once again escape U.N. scrutiny during the Commission's annual meeting in April. Under intense domestic pressure, the Clinton Administration tabled a last minute resolution which was blocked by a Chinese no-action motion. That motion was adopted by a vote of twenty-two to seventeen, with fourteen abstentions. The E.U. and individual member states refused to cosponsor the measure; Poland agreed to serve as a cosponsor.

China made no progress in ratifying the International Covenant on Economic Social and Cultural Rights or the International Covenant on Civil and Political Rights. Both were under review by the Standing Committee of the National People's Congress. U.N. High Commissioner for Human Rights Mary Robinson sent a technical mission to China in March to follow up her visit to China in September 1998. The results of the mission were inconclusive. The High Commissioner was publicly silent about the crackdown on the Falun Gong movement in July, despite appeals to intervene, although she did raise concerns privately with Chinese authorities. The U.N. Committee reviewing China's compliance with the Convention to Eliminate Discrimination Against Women issued a report in February and recommended that China invite the Special Rapporteur on Violence Against Women to visit China. It listed among its concerns domestic violence

³² Joanne Lee-Young, "Fears the Premier May Be Let Off Lightly," South China Morning Post, 30 March 1998.

and custodial abuse, sexual harassment in the workplace, and various aspects of the implementation of China's population policy.³³

Germany, in the presidency of the E.U. in the first half of 1999, made no effort to overcome E.U. opposition to sponsorship of the resolution on China at the U.N. Commission on Human Rights meeting in Geneva. At the E.U. General Affairs Council meeting on March 22, the foreign ministers decided that maintaining unity within the E.U. was a higher priority than criticizing China.³⁴ It also prevented individual E.U. states from cosponsoring any measure put forward by the U.S. (The E.U. did oppose China's no-action motion.) On February 7-8, Germany hosted an E.U.-China dialogue in Berlin on human rights focused on China's relationship to various U.N. human rights mechanisms, the recent crackdown on political activists, and Tibet. NGOs were invited to attend part of the meeting, but most declined to participate. There was no public report on the results of the dialogue. An E.U.-China summit planned for May was called off after the NATO bombing of the Chinese embassy in Belgrade. Instead German Chancellor Gerhard Schroeder went to Beijing in an effort to apologize to China's leaders on behalf of NATO for the alliance's deadly mistake. The E.U. strongly supported China's entry into the World Trade Organization, and this was expected to be the major focus of a visit by Jiang Zemin to London, Brussels, and other European capitals in October.

A dialogue with China took place in Washington, D.C. in mid-January, in which State Department officials pressed for an end to administrative detention, made a request (which was denied) for access to the Panchen Lama, and objected to arrests of political

³³ UN. Doc.E/CN.4/1998/22.

³⁴ World Tibet Network News, Monday, March 22nd 1999.

activists. Further meetings were suspended by China after the Belgrade bombing.³⁵ In mid-February, Secretary of State Madeleine Albright visited Beijing; a prominent journalist, Gao Yu, was released just prior to her visit. Albright urged human rights improvements, but received no specific promises in preparation for Premier Zhu Rongji's first official visit to the U.S. later in the spring. Zhu Rongji's visit in April was dominated by the debate on China's bid to join the WTO. Human rights concerns and Tibet were raised in his talks with President Clinton but without apparent results. Clinton also urged Zhu to pursue China's dialogue with the Vatican. Despite major concessions by Zhu on the WTO, the White House turned down a bilateral agreement. The visit was considered a failure by both governments, and WTO talks with the U.S. were cut off after the Belgrade bombing. In June, Undersecretary of State Thomas Pickering traveled to China to explain the NATO bombing of the Belgrade embassy. The U.S. subsequently agreed to pay \$4.5 million in compensation for the three people killed and twenty-seven wounded, opening the way for the restoration of high-level contacts.³⁶

Once again, the U.N. Commission on Human Rights failed to hold China accountable. A "no action" motion by China, to keep the U.S.-sponsored resolution off the commission's agenda, was adopted on April 18, 2000 by a vote of 22 to 18, with twelve abstentions and one delegation (Romania) absent.³⁷ During a March visit to Beijing for an Asia-Pacific regional workshop on human rights, U.N. High Commissioner for Human Rights Mary Robinson held a press conference and strongly condemned the deterioration of human rights in China. She held talks with senior officials on a technical

³⁵ <http://www.cnn.com/WORLD/asiapcf/9906/17/us.china/>

³⁶ *ibid.*

³⁷ <http://www.tibet.com/UNHRC/tb-16.html>

cooperation agreement aimed at helping China to bring its laws into conformity with treaty standards. In May, the U.N.'s Committee Against Torture reviewed China's compliance with its obligations under the treaty. The committee acknowledged greater transparency in publishing information about claims of torture against Chinese police and security officials and limited efforts at prosecution. It emphasized, however, that early access to detainees and other safeguards were urgently needed to curb the widespread practice of torture. The U.N.'s special rapporteur on torture continued to negotiate with the government on the terms of a mission to China, without success. Similarly, the International Committee of the Red Cross made no headway in its long-standing effort to gain access to Chinese prisons and detention facilities. The International Labor Organization's Committee on Freedom of Association ruled in June that provisions of China's Trade Union Act were in violation of ILO principles of free association, called for the release of several detained trade union leaders, and urged China to accept an ILO "direct contact" mission. There was no response from Beijing. The U.N. capitulated to Chinese pressure in August when it barred the Dalai Lama from attending the World Millennium Peace Summit.

The E.U.'s relations with China, the E.U.'s third largest trading partner, focused heavily on expanding commercial relations, including completion of an agreement on China's entry into the WTO. Despite pressure from the European Parliament and admissions by E.U. officials that its human rights dialogue with China since 1998 had failed to produce substantive results, the E.U. refused to cosponsor a resolution at the

U.N. Commission on Human Rights in March.³⁸ Its members opposed China's "no action" motion at the Commission, however, but failed to convince all E.U. association countries to do the same, and Romania was absent during the vote.

U.S.-China relations were dominated by the issue of China's WTO entry and a promise by President Bill Clinton to give China PNTR.³⁹ In late March, the White House's top national security adviser, Sandy Berger, went to Beijing to explain to Chinese officials the U.S. decision to sponsor a resolution on China in the U.N. Commission on Human Rights. After the Geneva vote, the foreign ministry urged the U.S. to end the "anti-China farce," linking restoration of a bilateral human rights dialogue to a U.S. pledge of no future action in Geneva. The State Department was outspoken in condemning the crackdown on Falun Gong, restrictions on religious freedom, and repression in Tibet. Reports issued by the government-created Commission on International Religious Freedom in May and by the State Department in September were sharply critical of abuses of religious freedom. Admiral Joseph Prueher, who was posted to China as the U.S. ambassador in November 1999, made his first visit to Tibet in August. He pressed for access to the Panchen Lama and the release of Tibetan prisoners, including Nwagang Choepel. China refused to allow either the State Department's special coordinator on Tibet, Julia Taft, or members of the Commission on International Religious Freedom, to visit China.

On February 28th 2001, China ratified the International Covenant on Economic, Social and Cultural Rights but took a reservation on the right to freely organize and join

³⁸ Avery Goldstein, the Diplomatic face of China's grand Strategy: A rising power's emerging Choice, *The China Quarterly*, No.168, December, 2001.

³⁹ <http://usinfo.state.gov/regional/ea/uschina/pntrpres.htm>

trade unions. In May, the International Labor Organization signed an agreement to provide assistance with social security, job retraining, and worker health and safety concerns, but did not address the right of free association. China still had not ratified the International Covenant on Civil and Political Rights, which it signed in 1998. Mary Robinson, the U.N. High Commissioner for Human Rights, visited Beijing in February and November for workshops on punishment of minor crimes and human rights education, respectively. In her November visit, Robinson also met with Jiang Zemin, pressed for access for the U.N. special rapporteur on torture, warned China not to use the war on terrorism to justify its crackdown in Xinjiang, and signed a Memorandum of Understanding for expanded technical cooperation. In August, the U.N. held a workshop in Beijing on human rights and the police.

On April 19th 2001, the U.N. Commission on Human Rights adopted China's no-action motion, twenty-three to seventeen with twelve abstentions and one absence, blocking debate of a U.S.-sponsored resolution critical of China's rights record.⁴⁰ No other governments co-sponsored the resolution. In August, the U.N. Committee on the Elimination of Racial Discrimination issued "concluding observations" following review of China's report on its implementation of the convention. The committee expressed concern about restrictions on freedom of religion for national minorities in Tibet and Xinjiang, and discrimination in education, particularly in Tibet. In May, the Committee reviewed Hong Kong's record under the Convention, noting the SAR's failure to enact an anti-racial discrimination law.

⁴⁰ World Tibet Network News, Wednesday, April 18th 2001.

China waged an aggressive campaign on behalf of Beijing's bid to host the Olympics in 2008. Human rights were raised in the international debate leading up to the July 17 decision in Moscow to award the games to Beijing, but the IOC set no human rights preconditions and ignored appeals from Human Rights Watch and others to set up an independent monitoring committee.⁴¹ Chinese officials publicly pledged to allow foreign journalists covering the games unrestricted access to the country.

The Bush administration's policy towards China shifted from a confrontational posture early on, to cordial by mid-year, to cooperative in the post-September 11 climate. Bush put a heavy emphasis on religious freedom. But after September 11, it was unclear how effectively the administration would balance human rights concerns, trade, and cooperation with China on anti-terrorism initiatives. The administration embraced expanded trade with China, and supported China's formal entry into membership of the World Trade Organization on November 10 at the Doha, Qatar ministerial meeting.⁴² The National People's Congress had not ratified the accession agreement by mid-November. In late October, Bush met Jiang Zemin for the first time for bilateral talks at the Shanghai APEC summit. Bush reportedly raised human rights issues, urged dialogue with the Dalai Lama, and publicly said that no government should use the anti-terrorism campaign "as an excuse to persecute minorities within their borders." When U.S. military strikes began against Afghanistan, China had appealed for international support for its crackdown in Xinjiang.

⁴¹ Peoples Daily, April 19th 2002.

⁴² <http://hongkong.usconsulate.gov/uscn/wto.htm>

In 2002, China's diplomacy succeeded in deflecting human rights criticism, preventing attempts to censure China's record at the U.N., and using the global anti-terrorist agenda to justify its crackdown at home. As a new member of the World Trade Organization with an attractive commercial market, China was able to ignore international concerns about labor unrest and worker rights violations without significant repercussions. Although Internet censorship created problems for some major U.S.-based Internet companies, the business community failed to mount an effective counter-strategy.

For only the second time since 1990, no country sponsored a resolution condemning China's human rights record at the United Nations Commission on Human Rights meeting (March 18-April 26). The U.S. lost its seat on the commission in 2002 and no European nation was willing to place China on the commission's agenda.⁴³ In August, then U.N. High Commissioner for Human Rights Mary Robinson opened a U.N. workshop on judicial independence in Beijing at which she observed that Chinese law and practice still falls short of international human rights standards. In meetings with Vice-Premier Qian Qichen and other officials, Robinson raised a number of individual cases, including Xu Wenli, Rebiya Kadeer, and those of labor leaders in China's northeast. She noted that the treatment of Tibetans and Uighur Muslims was of particular concern and that China had used anti-terrorism laws to crackdown on these groups.⁴⁴ In October, Secretary-General Kofi Annan emphasized the need for "complete mobilization of society" to combat an escalating AIDS epidemic in China.

⁴³ "U.S. Loses Spot on Human Rights Commission," by Rachel Stohl and Michael Stohl, *Weekly Defense Monitor*, May 10, 2001).

⁴⁴ *World Tibet Network News*, Tuesday, August 20th 2002.

Chinese authorities continued to work with several U.N. agencies, among them the U.N. Development Programme (UNDP), the U.N. Children's Fund (UNICEF), and the U.N. Education, Social, and Cultural Organization (UNESCO). Programs included AIDS prevention, poverty reduction, health and hygiene improvement, and rural education for girls. China made no progress towards ratifying the International Covenant on Civil and Political Rights (ICCPR), which it signed in October 1998. In June, the International Confederation of Free Trade Unions (ICFTU) asked the International Labor Organization's (ILO) Committee on Freedom of Association to take up the cases of the labor activists detained in the northeast. Although the ILO is already involved in several technical assistance programs in China, including development of a social security project, China still has not responded to a June 2000 ILO request to send a direct contact mission to discuss freedom of association.

The E.U. continued to stress engagement and dialogue, but refrained from overt pressure on Chinese officials to improve human rights. In March, the European Commission approved a strategy document setting out a framework for E.U.-China cooperation over the next five years. Although it focused on economic reform, the E.U. expressed concern over restrictions on civil and political rights in China and the rights of ethnic minorities. On March 5 and 6, the Spanish Presidency hosted an E.U.-China human rights dialogue in Madrid. The General Affairs Council (E.U. foreign ministers) later made several recommendations to China for improvement of human rights, including ratifying the ICCPR; limiting the use of the death penalty while moving toward its total elimination; working more closely with U.N. human rights mechanisms; respecting the rights of prisoners and ending torture; respecting freedom of expression,

religion, and association; and respecting cultural rights and religious freedom in Tibet and Xinjiang.

E.U. External Affairs Minister Chris Patten visited China in late March. He met with President Jiang Zemin, and noted the E.U.'s concern about China's human rights practices, particularly its treatment of Tibet and the use of the death penalty.

Counter-terrorism was high on the agenda of the January Shanghai Cooperation Organization (SCO) meeting. The five Central Asian members and China agreed to step up campaigns against militant Muslim groups and "extremists" and to form a regional counter-terrorism agency. In January, Premier Zhu Rongji made China's first state visit to India in over a decade. Human rights were not on the agenda of Zhu's New Delhi meeting with Indian Prime Minister Atal Behari Vajpayee. The two pledged cooperation on counter-terrorism efforts and Zhu urged India to resume dialogue with Pakistan.⁴⁵

During a visit to Beijing by Japanese Foreign Minister Yoriko Kawaguchi in September, Chinese officials agreed to schedule a bilateral human rights dialogue meeting before the end of the year. The last such meeting had taken place in October 2000. Japan hoped to raise the dialogue talks to a higher level in the foreign ministry. During Kawaguchi's visit, Japanese officials announced a likely reduction in Japan's Official Development Assistance (ODA) to China, a follow up to last year's 25 percent cut. Japanese public and political opinion is strongly opposed to large scale ODA to China in light of Beijing's military build-up and its continued economic growth.

⁴⁵ Frontline, Volume 19, Issue 03, February 02 – 15, 2002. (India's National Newspaper, from the publishers of The Hindu.)

Chinese Foreign Minister Tang Jiaxuan visited Australia in March, urged Australia to crack down on Falungong followers and to refuse to meet the Dalai Lama during his upcoming May visit. Prime Minister John Howard and Foreign Affairs Minister Alexander Downer did refuse to see the exiled Tibetan leader, but other senior Foreign Affairs Ministry officials met with him. Downer declared his meeting with Tang to be productive. Dialogue ranged from consular issues to human rights. Howard toured China only days after the Dalai Lama's visit.⁴⁶ Meetings with President Jiang Zemin and other officials focused on business.

Human rights and religious freedom remained on the U.S. agenda, but terrorism and China's cooperation on strategic issues became the major issues. Seeking to further stabilize political and economic relations, President George W. Bush made his first official visit to Beijing in February. Bush focused heavily on religious freedom in his private talks with Jiang Zemin, and later called on China to embrace democracy and religious freedom in a speech at Qinghua University. Bush said nothing publicly about China's attempt to justify its crackdown in Xinjiang on anti-terrorism grounds although when the two leaders met again in late October in Crawford, Texas, he did comment on repression of ethnic minorities. Jiang's successor, Vice-President Hu Jintao, visited the U.S. in early May. In his meeting with Hu, Bush reiterated his concern for religious freedom. There was lengthy discussion about Tibet, with Hu reiterating the party line. The two agreed on trade and terrorism.⁴⁷ Hu snubbed congressional leaders by refusing to accept four letters appealing for the release of political prisoners and for progress on

⁴⁶ Howard 'Pressured to Snub' Dalai Lama, Australia Tibet Council, 29th March 2002.

⁴⁷ <http://news.bbc.co.uk/1/hi/world/asia-pacific/1955726.stm>

human rights. Secretary of State Colin Powell also raised human rights and Tibet in a working session with Hu.

The U.S. Commission on International Religious Freedom in its annual report in May issued a scathing assessment of the current state of religious freedom in China, which later denied access to a commission delegation. The newly appointed Ambassador-at-Large for International Religious Freedom John Hanford visited China in early August and met with government and officially sanctioned religious groups. In August, during Deputy Secretary of State Richard Armitage's trip to Beijing, the State Department added the East Turkestan Islamic Movement to its list of terrorist organizations. The move was a major coup for China, expected to use the designation to justify its broad repression of ethnic Uighurs. Armitage urged China to "respect minority rights, particularly the Uighurs" and raised the cases of individual political prisoners.

Leadership changes early in 2003 sparked optimism that respect for human rights in China would improve. Although China did take steps to advance legal reform and to address the HIV/AIDS epidemic, the overall rights situation remained unchanged and even deteriorated in some respects. The Ministry of Culture announced new measures to increase Internet surveillance and increased censorship led to an upsurge in arrests of those using the medium to express political opinions. Arbitrary forced evictions were more frequent in both rural and urban areas, including in Beijing where construction of Olympics sites was getting underway. In Tibet and Xinjiang, officials further narrowed space for dissent and cultural expression.

President Hu Jintao's and Premier Wen Jiabao's responses to the systemic political and institutional weaknesses exposed by a Severe Acute Respiratory Syndrome (SARS) epidemic promised increasing openness, transparency, and accountability for government officials. However, China's poorly functioning justice system, widespread official corruption, intolerance for dissenting political views, and a culture of impunity for officials and their families all made the implied promises difficult to realize. China's ruling Communist Party bans opposition political parties and religious organizations independent of government control. China's ethnic minorities face political repression and cultural control by the state, with some of the worst abuses reported in Tibet and Xinjiang. China used its support for the U.S.-led "war against terrorism" to leverage international support for, or at least acquiescence in, its own crackdown on ethnic Uighurs in the northwestern Xinjiang Uighur Autonomous Region. Xinjiang is home to Turkic-speaking Muslims. Along with other ethnic groups on China's borders, Uighurs struggle for cultural survival. Some Uighur groups peacefully press for genuine political autonomy, some for independence, and some resort to violence. Chinese authorities do not distinguish between peaceful and violent dissent, or between separatism and international terrorism. The state's crackdown on Uighurs has been characterized by systematic human rights violations including arbitrary arrests, closed trials, extensive use of the death penalty, religious discrimination, and restrictions on observation of traditional holidays and use of the Uighur language.

For China, the term "Tibet" is reserved for the Tibetan Autonomous Region. However, many Tibetans speak of a "greater Tibet," including Tibetan areas in Qinghai, Yunnan, Gansu, and Sichuan. More than 50 percent of ethnic Tibetans under Chinese

authority live in these regions. The Chinese leadership continues to limit Tibetan religious and cultural expression and seeks to curtail the Dalai Lama's political and religious influence in all Tibetan areas. Severely repressive measures limit any display of support for an independent Tibet. The Chinese government encourages migration of ethnic Chinese to Tibetan areas.⁴⁸

In 2002 a Sichuan provincial court sentenced Tenzin Delek Rinpoche, a locally prominent lama, to death with a two-year suspended sentence for "causing explosions and inciting the separation of the state." His alleged co-conspirator, Lobsang Dondrup, was executed in January 2003.⁴⁹ Tenzin Delek's arrest and conviction represented the culmination of a decade-long effort by Chinese authorities to curb his efforts to foster Tibetan Buddhism and develop Tibetan social institutions. His case has become a focal point for Tibetans struggling to retain their cultural identity. Although the government permits some environmental and HIV/AIDS-related non-governmental organizations (NGOs) to operate, most other NGOs are government-controlled. China prohibits domestic human rights groups and bars entry to international human rights groups. Chinese citizens who contact international rights groups risk imprisonment.

2003 saw China's first visit by the United Nations Special Rapporteur on the Right to Education, Katarina Tomasevski. Tomasevski's report condemned China's record on education, asserting that Beijing has failed to provide education for children of migrant workers and does not provide adequate funding for education.⁵⁰ China has extended an invitation to the U.N. Special Rapporteur on Torture. However, terms consistent with his

⁴⁸ Tibetan Center for Human Rights and Democracy, 2002 Annual Report, Dharamsala, H.P, India

⁴⁹ Ibid.

⁵⁰ Kate Saunders, "UN mission to China critical of poor education standards in Tibet," Published by Canada Tibet Committee, Tuesday, 23rd December 2003.

mandate have not yet been agreed upon. No country tabled a resolution condemning China's human rights record at the 2003 annual meeting of the U.N. Commission for Human Rights. China has ratified a number of international human rights treaties including the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. It has signed but not ratified the International Covenant on Civil and Political Rights. China submitted its first report to the Committee on Economic, Social and Cultural Rights in 2003.

(Chapter IV)

Conclusion

The crushing of the Democracy Movement in June 1989 represented watershed in China's interaction with the regime and to a large extent undermined its control over the nature of its participation. It brought a swift multilateral response, with the imposition of sanctions by international financial institutions and multilateral forums and the adoption of measures by a variety of UN bodies. Ironically, it was the previous phase of China's active and voluntary participation in UN human rights bodies that facilitated the new international critique and encouraged international action.

China's domestic behavior altered its hitherto benign image in the eyes of foreign governments, particularly those of the West. Under the umbrella of the multilateral response, measures were also adopted by a number of states. Initially, the effect of this joint action was China's total rejection of the regime's norms, its denial of their applicability to itself, and the mobilization of arguments invoking highly legalistic interpretations of sovereignty. By 1990, however, with the gradual easing of sanctions, and the resumption by the U.S. of the main responsibility for their continuation, Chinese attention was drawn away from the multilateral monitoring process, and the majority of its protests relating to state sovereignty and interference were targeted at bilateral monitoring, in particular the MFN mechanism wielded by the U.S.

By the end of 1990, a new and more positive sub-phase in the post – 1989 era began, with the Chinese government's decision to actively engage in the international

human rights debate and to embark on vigorous human rights diplomacy. This decision involved strong domestic support for human rights research, conferences and scholarly and official human rights publication, the hosting of visiting government delegations, and heightened activity in UN human rights forums. Much energy was expended on forums that attracted maximum international attention and that had the potential to subject China's human rights conditions to unfavorable international publicity. The paradoxical effect such activity was that in order to reassert its sovereignty and retain the diplomatic initiative on human rights, China was obliged to admit that it was subject both to the norms and mechanisms of the international regime in general and to the jurisdiction of UN human rights bodies in particular.

This positive phase lasted for three year. At a vital point in the strong application of the human rights regime, changes occurred that affected both China's readiness to comply with its obligations and the monitoring ability of the total regime. Already foreshadowed in internal leadership communication in April 1993, in Liu Huaqui's Vienna statement in June 1993, and in China's stance in the Human Rights Sub-commission in August 1993, a third and more negative sub phase was unequivocally proclaimed during the meeting between President Jiang Zemin and President Clinton at the Asia Pacific Economic Cooperation (APEC) meeting in Seattle in November 1993.¹ As in the first phase of interaction, internal developments began to prevail over China's foreign policy interests to inhibit its human rights responses, and even to interfere with its procedural compliance. The rapid expansion of Chinese economic and strategic power by 1992 coincided with continued low growth in developed economies. These changes

¹ Samuel S. Kim, "China's Pacific Policy: Reconciling the Irreconcilable," *International Journal* 50 (Summer 1995).

enhanced the confidence of the leadership, with was increasingly dominated by senior military figures, that, rather than engaging the world on human rights, it could afford to turn its back on the issue. The gradual shift in the world power balance in Asia's favor bolstered its faith in this new direction. The growth in China's power also coincided with a leadership struggle brought on by Deng Xiaoping's failing health. In addition, frequent manifestations of unrest by large numbers of Chinese workers and peasants aroused fears of social instability. A potent mix of external strength and internal weakness made China resistant to change pressured from outside. Concerns for state security, regime maintenance, and national status were intermeshed in its articulation of the principles of sovereignty and noninterference and repeated expressions of nationalism.

As a result of these developments, continued acceptance of the changing dictates of American bilateral monitoring – an acceptance fragile at best and hitherto borne principally for the sake of economic self-interest – was now seen by China as incompatible with its sovereignty. The subsequent delinkage of MFN and human rights by President Clinton in May 1994, influenced as it was by clear indications of Chinese obduracy as well as by a split in U.S. domestic opinion, served to justify the arguments of Chinese hard-liners and to confirm the leaders in their uncooperative stance. The virtual suspension of effective bilateral monitoring brought to an end specific and open pressure on China to release leading intellectual prisoners of conscience.

The cessation of bilateral monitoring refocused international attention on UN mechanisms. U.S. energies in particular shifted to the coalition building activities necessary to ensure the success of a resolution on China in the March 1995 Human Rights Commission. Its lobbying was carried on throughout 1994, with senior U.S.

envoys visiting different African capitals to obtain pledges of support. The results of this renewed political will in the United Nations was the overturning for the first time of the no-action motion on the resolution on China in the 1995 Commission. Thus, although the forms of monitoring-and their particular focus-changed, the strength of the application of the overall human rights regime was not substantially impaired. U.S. energies were simply shifted back to the multilateral arena of the regime. However, the avenue to the release of political prisoners was now foreclosed, and, in those aspects of the UN regime that required prior Chinese consent or cooperation to succeed, such as reporting obligations to the Committee Against Torture (CAT), even China's procedural compliance has come under question by 1994. China had thus, in some area, successfully tested its ability to resist regime pressure and direct pressure outward.

This ability was not affected by financial collapse in the Asia-Pacific region in late 1997. Consonant with the greater political stability at the elite level following Deng Xiaoping's death, a new and more peaceful Chinese foreign policy emerged at the Fifteenth Party Congress in September 1997. This change was the outcome of a number of developments, including the demonstrable diplomatic failure of earlier hard-line military tactics, greater domestic political confidence and an awareness that the country faced substantial financial problems which could very well require the goodwill and support of the U.S. and European Union. Paradoxically, neither this consciousness of a loss in its bargaining power vis-à-vis the West, nor the subsequent collapse of the Thai and other regional economies served to undermine China's diplomatic effectiveness. Whereas previously it had been seen as the powerhouse of Asia, it now became the bulwark of global financial stability. The need to ensure that China did not devalue its

currency meant that developed states and international financial institutions continued to court it. Indeed, China's responsible attitude and cooperation in the face of its temptation to devalue were involved by its negotiators at the World Trade Organization as one of the arguments for China's right to be accepted into the organization. Consequently, the West continued to be responsive to China's assertive human rights diplomacy. Despite its new foreign policy of peace, China maintained its efforts to influence UN norms and procedures and, in 1997, succeeded in making changes that had a significant and detrimental impact on the effectiveness of the UN Human Rights Commission and the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.²

Human rights concerns dropped even lower on the agenda of China's major trading partners in 1999 as Beijing used the Belgrade embassy bombing to create a crisis in its overseas relations. The Chinese government suspended a bilateral human rights dialogue with the U.S., put off a planned visit by the German chancellor until later in the year, and delayed talks on China's entry into the World Trade Organization (WTO). International protests against the banning of Falun Gong and the crackdown on activists prior to the June 4 and October 1 anniversaries were mild or nonexistent. At the U.N. Commission on Human Rights in April, China sustained its successful campaign to prevent a debate on its human rights record, persuading the European Union (E.U.) and other governments to refrain from backing a last-minute resolution by the U.S., dooming it to failure. Meanwhile, the E.U., Australia, and Canada continued human rights dialogues and rule of law seminars; the exchanges were sometimes useful, but they appeared to have little direct impact on the human rights situation. Jiang Zemin visited Australia in September

² Ann Kent, "China and the Universal Declaration: Breaker or Shaper of Norms?," (Canberra: Australian National University, 1998).

and European capitals in October. Except for a brief visit to the U.S. by the Chinese labor minister in March and a Canadian-led seminar in July, concerns about violations of worker rights' were largely absent from the agenda.

The government systematically suppressed independent political activities. From October 25 1999 through July 2000, courts in four cities sentenced ten leaders of the dissident-led China Democracy Party (CDP) to heavy prison terms, primarily on subversion charges. Wu Yilong, who helped set up CDP provincial preparatory committees, received eleven years; Tong Shidong, who put together the only on-campus CDP branch, and Zhu Zhengming, who took part in drafting the CDP's founding documents, received ten-year terms. Other members received sentences ranging from five and a half to eight years.

In December 1999, one of the most senior religious figures in Tibetan Buddhism, the then fourteen-year-old 17th Karmapa, fled Tibet for India. In the wake of his escape, authorities moved his parents out of Lhasa, capital of the Tibet Autonomous Region (TAR); detained several people at Tsurphu, the Karmapa's monastery; and replaced some monks.³ The same week as the escape, Chinese authorities announced their recognition of another high-ranking figure, the two-year-old 7th Reting Rinpoche, thereby once again asserting a government role in the selection and installation of Tibetan religious figures. In May, authorities detained eight Reting Monks who protested the choice.⁴

Chinese authorities struggled to gain control of the Internet, with its estimated 16 million users. By the end of 1999, regulations had already banned web operators from

³ Tibetan Bulletin, Volume 04, Issue 03, July – August, 2000.

⁴ Ibid.

linking to foreign news sites, and companies operating websites from hiring their own reporters. New regulations issued in March 2000 forbade China-based websites from reporting news from "independent news organizations," thus limiting them to state-controlled sources. In January 2000, the Ministry of State Security announced the closure of web sites, chat rooms, and Internet news groups posting undefined "state secrets," and expressly banned the use of e-mail in that context. The government also announced regulations limiting the use of encryption programs.

Political and religious repression was evident in Xinjiang, but the Chinese government also faced a genuine security threat from armed groups. Premier Zhu Rongji visited in September and called for an "iron fist" stance against splittists, religious fundamentalists, and terrorists. At least twenty-four alleged terrorists, most of them ethnic Uighur Muslims, were executed during the year.

China revised its overall Tibetan policy in June 2001, the fourth such change since it took command of the region in 1950. Goals for 2001-2006 included accelerated economic development and tightened control over alleged "secessionist" activities. During a July visit, Vice-President Hu Jintao stated that it was "essential to fight unequivocally against separatist activities by the Dalai clique and anti-China forces in the world." Efforts to engage the Chinese leadership in a dialogue with representatives of the Dalai Lama were unsuccessful in 2001. Following the Dalai Lama's criticism of Chinese policy during a speech to the European Parliament general assembly on October 24, Chinese officials reiterated their position that talks could take place only if the Dalai Lama renounced his "separatist stand" and openly acknowledged that Tibet was an inalienable part of China, Taiwan merely a province, and "the government of the People's

Republic of China the sole legitimate government representing the whole of China." At the beginning of the Tibetan New Year in February, government workers, cadres, and school children were banned from attending prayer festivals at monasteries or from contributing to temples and monasteries. During Monlam Chemo, formerly a festival of great religious significance, monks at Lhasa's major monasteries were not permitted to leave their respective complexes, and government authorities banned certain rites.

The Strike Hard campaign in Tibet had a decidedly political focus. At a May meeting in Lhasa, capital of the Tibet Autonomous Region (TAR), courts were ordered to carry out the campaign forcefully against "those whose crimes endanger state security," and "those who guide people illegally across borders," in other words, against those who help Tibetans reach Nepal or Dharamsala, India, the Dalai Lama's home in exile.⁵ During the first month of the campaign, 254 people were caught trying to leave or reenter the TAR, many allegedly carrying "reactionary propaganda materials." In June, police in the Lhasa region detained hundreds of Tibetans who burned incense, said prayers, or threw *tsampa* (roasted barley) into the air in defiance of an order banning celebration of the Dalai Lama's birthday. Some twenty Tibetans were arrested or sentenced in 2001 for "splittist" activities. In October, at least three foreign tourists and three Tibetans were detained in Lhasa in October for displaying the banned Tibetan flag and shouting pro-independence slogans.

Authorities cut back the number of nuns and monks from 8,000 to 1,400 at the Buddhist Study Center Larung Gar near Serthar in Sichuan province, destroying their housing as they left. A similar order was put into effect at Yachen, another encampment

⁵ Tibetan Center for Human Rights and Democracy, "Annual Report 2002," Dharamsala, H.P, India.

in Sichuan. Authorities continued to deny access to the Panchen Lama, the second most important figure in Tibetan Buddhism. The boy, now twelve years old, disappeared from public view in 1995 after Beijing chose another child as the reincarnation. Chadrel Rinpoche, the senior lama who led the search, was still in prison. He was last seen in mid-May 1995 shortly before he was sentenced to a six-year prison term.

Even before September 18, when the Chinese government publicly equated Uighur calls for autonomy or independence with global terrorism, Beijing had instituted strict measures to crush "separatism" and "religious extremism" in Xinjiang. In April, at the beginning of the nationwide Strike Hard campaign, Ablat Abdureshit, chairman of the region, was explicit as to targets in Xinjiang: "national splittists," "violent terrorists," and "religious extremists." At the same time, the leadership reiterated its determination to develop the region economically. Both campaigns were entrusted to patriotic Party cadres working at the grassroots, kept in check by a local law passed in May threatening punishment should they sympathize with Uighur aims. In June, the Shanghai Cooperation Organization (formerly the Shanghai Five), composed of China, Russia and four republics in Central Asia, reiterated its pledge of cooperation to combat "terrorism, separatism and extremists" and to establish "a regular anti-terrorist structure."

Preparations for the 16th Chinese Communist Party Congress and the accompanying change in China's top leadership colored human rights practices in China in 2002. Concerned with maintaining economic and social stability as the transition unfolded, leaders in Beijing appeared to calculate carefully when to tread lightly and when to crack down hard. They responded to major, well-coordinated, and sustained worker protests in China's northeast with only minimum force; moderated the response to

disclosures of their failure to tackle the HIV/AIDS crisis effectively; and, when accused of abusing psychiatric science by incarcerating political offenders in mental hospitals, expressed some willingness to cooperate with the World Psychiatric Association. Chinese authorities continued to reform the legal system and professionalize judicial personnel, and agreed to include human rights training for law enforcement officials as part of a technical cooperation program with the U.N. The leadership moved unequivocally, however, to limit free expression and build a firewall around the Internet, to destroy Falungong even beyond China's borders, and to eliminate dissident challenges. In Tibet, the government welcomed representatives of the exiled Dalai Lama for the first time since 1993, even as it continued to repress religious belief and expression. In Xinjiang, however, the regime tightened all restrictions, citing alleged Uighur collaboration with al-Qaeda. In October 2002, Secretary-General Kofi Annan emphasized the need for "complete mobilization of society" to combat an escalating AIDS epidemic in China.

The formal business of the 59th Session of the United Nations Commission for Human Rights from March 17-April 25 2003, concluded without the tabling of a resolution on China. In the lights of ongoing and serious Chinese government political crackdowns in the name of fighting terrorism or separatism in Tibet and Xinjiang, and the suppression of peaceful political dissent, underground churches, religious groups and labor activists, the failure of UNCHR to exercise any meaningful scrutiny of these human rights abuses raises troubling questions about the future role and efficacy of human rights mechanisms and bodies in the multilateral system.

The failure of any nation or body, particularly the United States and the European Union in light of their past positions, to put forward a Commission motion on China also

reinforces a growing trend towards closed door bilateral dialogues between individual governments and China. In the early 1990's a number of Western countries, including France, Australia, the UK, Switzerland and the U.S., sent high level delegations to China. These formal contacts evolved in many cases into bilateral dialogues resumed or were initiated in the 1997, at a time when many nations were reviewing their relationships with China and the failure of the UNCHR at that time to pass resolutions on China. As of 2003, China's dialogue partners include: Australia, Brazil, Canada, Chile, the European Union, Germany, Hungary, Japan, Norway, Switzerland, the United Kingdom and the United States.

In the light of the limited efficacy of a highly politicized Commission, these closed-door bilateral dialogue require more critical attention.

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