

The U. S. Challenge to China on Human Rights and China's Responses

Introduction

Human rights has been a most contentious issue between the U.S. and China during the last twenty-five years, undermining mutual trust and development of more friendly relations. The issue lay dormant before the promotion of human rights became a key aspect of U.S. foreign policy. It came to the fore after China managed not only to stay united but also to rise as the only Communist-ruled global power, after the breakdown of the Soviet Union in December 1991. The growing U.S. perception of China as a political, economic and ideological rival spurred Washington to look closely into China's domestic human rights situation and to criticise it severely. This prompted Beijing to accuse the U.S. of interfering in its domestic affairs, since it considered the human rights situation inside China as strictly its own business. For its part, Washington took the position that the UN human rights law gave it the right to monitor and act on other countries' observance of the international human rights law. (Roberta Cohen, (statement by), "Integrating Human Rights in US Foreign Policy: The History, the Challenges and the Criteria for an Effective Policy, Brookings Institution – University of Bern, Project on Internal Displacement, Foreign Service Institute, 2008.) While Beijing accepted the United Nations passing judgment on its members' human rights performance, it resolutely opposed the U.S. assuming this role. In its dispute with Washington, Beijing called into question the U.S. motive in impugning China on this issue. It also saw the U.S. as a potential adversary using this issue as a cover to destabilize China. (Embassy of the People's Republic of China in the Kingdom of Norway, "China's Statements in the UN Human Rights Mechanism"). The following will be a discussion of how human rights became an important part of U.S. foreign policy and how Washington used the issue to challenge China, together with China's responses. There will also be an endeavour to

address the questions of whether the U.S. intervention in China's domestic human rights situation helped China to promote these rights, and whether it destabilized China.

The UN and Human Rights

Human rights as a category of moral claim that all humans may invoke, or as embodiment of these claims in national or international law, came to the fore in the West during the French Revolution with the revolutionaries' cry for Liberté (freedom, "civil and political" rights), Egalité (equality, "socio-economic" rights) and Fraternité (solidarity, "collective" rights). (UN Chronicle, "International Human Rights Law, A Short History." Available at <http://unchronicle.un.org/article/international-human-rights-law-short-history/>.) After recurrent struggles in Europe and two world wars, the United Nations was founded in 1945 with a charter proclaiming its determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." (Full text of UN Charter on line at <http://www.un.org/en/sections/un-charter-full-text/index/html>.) A part of its purposes as stated in Article 1, 3 of the UN Charter is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." (Ibid.) It is assumed that all UN member states are committed to the stated principles and purposes of the UN charter.

In 1948, the UN adopted the Universal Declaration of Human Rights (UDHR) that specified in detail the human rights the UN members were expected to respect and promote. (The Universal Declaration of Human Rights, available online <http://www.un.org/en/universal-declaration-human-rights/>.) As a reflection of the power of the Western democracies in the UN, the rights in the UDHR related to freedom of speech, press,

and assembly, as well as those relating to periodic elections based on universal suffrage and secret ballots, were the heritage of many Western democratic countries, but not enjoyed by people throughout the world.. Even though as a declaration it is not binding, it has become a universal yardstick on the conduct of member states regarding human rights. (Ibid.) Other major UN human rights instruments are treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) both adopted in 1966. (*UN Chronicle*, the Magazine of the United Nations. Available online, <http://unchronicle.un.org/article/international-human-rights-law-short-history/>.) These are binding only on those states that have acceded to them. The United States and China have both signed the two covenants above. Viewing the ICESCR as too socialist, the U.S. has not ratified it. (Ibid.) Not being a Western-style democracy, China has refrained from ratifying the ICCPR.

Human Rights in U.S. Foreign Policy

During the early 1970s, the U.S. government did not include human rights in its foreign policy. Having so recently disengaged from a controversial war in Vietnam, the U.S. was not quite ready to offer itself as a champion for human rights. Its moral standing was also compromised by the Watergate scandal and revelations about U.S. military and economic support for oppressive regimes in many parts of the world. Moreover, human rights did not fit into the realpolitik of the then Secretary of State, Henry Kissinger. (Roberta Cohen, (statement by) “Integrating Human Rights in US Foreign Policy: the History, the Challenge and the Criteria for an Effective Policy,” the Brookings Institution – University of Bern, Foreign Service Institute, Project on Internal Displacement, 2008.) Since Kissinger regarded human rights as other countries’ domestic affair, he did not want to risk damaging American bilateral relations with allies and friends by introducing extraneous moral considerations . (Ibid.) Kissinger was putting into effect a policy of rapprochement with China and détente with the Soviet bloc. He believed that “neither the U.S. security interest nor the human rights cause would be served by singling out individual states for public obloquy.”

(Ibid.) Since the U.S. Congress would have liked human rights to play a key role in American foreign policy, Kissinger and the Congress were at odds with each other on this issue. (Ibid.)

Jimmy Carter, who became the U.S. president in 1977, was more receptive to the congressional point of view on the place of human rights in U.S. foreign policy than his predecessors. (Ibid.) The Carter administration saw eye-to-eye with the Congress that spreading human rights and democracy in the world was a way of asserting U.S. moral leadership as well as buttressing U.S. national security. (Ibid.) This was still the time of the Cold War, when Western democracies under U.S. leadership were ranged, ideologically and militarily, against the Eastern European and other Communist states under Soviet leadership. Having split from the Soviets, China was making a deal on its own with the U.S. for security and other purposes at this point.

As a democratic country, America's system of government already included those political and civil rights stipulated in the UN ICCPR such as periodic elections, freedom of speech, assembly and press, among others. In fact, as a new nation, America had been founded on democratic principles. By contrast, the Communist countries denied their peoples many of these democratic rights. America's democratic identity enabled it to claim the moral high ground to expose the human rights violations of the Soviet bloc for international censure. To counter the argument that human rights were strictly a country's domestic affair, President Carter asserted that no UN member state could claim that mistreatment of its own citizens was solely its own business. (Ibid.) Such an assertion seems to have been based on the point of view that the existence of UN human rights laws rendered human rights situation in any UN member country a matter of international concern. The Carter administration took the view that international law promulgated by the UN gave the U.S. the legal right and responsibility to promote human rights anywhere in the world. (Ibid.)

Responding to the Congress' call for U.S. leadership on human rights in the "world community", the State Department under the Carter administration began to issue, in 1977, annual Country Reports on Human Rights Practices on all states receiving U.S. assistance and all UN member states. (Council on Foreign Relations, Department of State: Country Reports on Human Rights Practices." Available at <http://www.cfc.org/human-rights/department-state-country-report-human-rights-practices/p10115>.) From then on, the U.S. government has increasingly assumed the role of a judge of other countries' human rights records, reprimanding the alleged offenders, and advising them on ways to improve their domestic human rights situations. (Roberta Cohen, Non-resident Senior Fellow, "Integrating Human Rights in US Foreign Policy: The History, The Challenges, and the Criteria for an Effective Policy," the Brookings Institution - University of Bern, Project on Internal Displacement, Foreign Service Institute, 2008.) Ironically, human rights was not an issue in Sino-American relations in the Maoist era, when the human rights situation in the PRC was truly appalling. During approximately two decades, from the Nixon-Mao rapprochement in 1971 to the Tiananmen Incident in 1989, the U.S., being primarily interested in building a united front with China against the Soviet Union, had refrained from castigating China on human rights failings.

The U.S. Human Rights Offensive Against China

In the early 1990s, the Communist-led Soviet Union broke apart into quasi democratic states, leaving the U.S. as the world's only superpower. China, Vietnam, and North Korea remained as the only countries still under Communist-party rule. This situation encouraged the U.S. to promote human rights and possibly regime change, by undermining the legitimacy of the chosen non-democratic countries through highlighting their citizens' lack of human rights and democratic freedoms, in addition to supporting forces for democracy in these countries. (The U.S. Department of State, "The Annual Human Rights Country Report". Available at <http://www.state.gov/j/drl/rls/hrrpt>).

The targets of the U.S. offensive on human rights violation have been highly selective, sparing allies, such as Saudi Arabia, Turkey, the Pinochet regime in Chile, and the Marcos regime in the Philippines (anti-Communist allies), and other notorious offenders of human rights, for reasons connected with U.S. political or economic interests, while bearing down on China after the PRC's crackdown on pro-democracy demonstrators in Tiananmen Square in 1989. (Asia for Educators, Columbia University, "U.S.-China Relations Since 1949." Available at http://afe.easia.columbia.edu/special/china_1950_us_china.htm.)

Since the 1990s, China's economy has been expanding phenomenally, making it possible for China to play a more powerful and influential role in world affairs. This development has caused the U.S. to become increasingly concerned about China's growing global reach, and the future challenges it might pose, both ideological and geopolitical, to the U.S. position and interests in the world. (CRS Report for Congress, Derry Dembaugh, China-U.S. Relations: Current Issues and Implications for the U.S. Policy, Updated March 24, 2005.) China's rise as a global power and its leaders' determination to keep the country intact under CCP rule rendered it a prime target of the U.S. offensive on human rights violation, if not also on regime change. For reasons connected with its political or economic interests, the U.S. has not been even-handed in its choice of which country's human rights offenses it was going to expose. While censuring China, the U.S. has shielded its allies, such as Saudi Arabia, Turkey, the Pinochet regime in Chile, and the Marcos regime in the Philippines (anti-Communist allies) as well as other notorious offenders of human rights, from international opprobrium. (Roberta Cohen, Non-resident Senior Fellow, "Integrating Human Rights in U.S. Foreign Policy: The History, the Challenge, and the Criteria for an Effective Policy", The Brookings Institution – University of Bern, Project on Internal Displacement, Foreign Service Institute, 2008).

From the early 1990s onwards, the U.S. government, supported by the American media and many non-government organizations (NGOs), has been criticizing the PRC strongly as a regime violating the human

rights of not only the Tibetan and Uyghur separatists, but also Chinese political dissidents, religious groups, adherents of Falun Gong, accused criminals, prisoners, workers, and married couples being limited to one-child per family, among others. (See Congressional Research Service report, Thomas Lum, “Human Rights in China and U.S. Policy: Issues for the 114th Congress,” September 17, 2015.) The U.S. has employed a variety of policy instruments on the human rights issue in relation to China: issuing reports, public shaming, trade sanctions, quiet and public diplomacy, international broadcasting through the Voice of America and Radio Free Asia, bilateral dialogue, and repeatedly sponsoring resolutions moving the United Nations Human Rights Commission to censure China. (Congressional Research Service report by Thomas Lun above.) In addition to the executive branch of the U.S. government, the U.S. Congress has also put itself forward confronting China energetically on human rights issues. (Ibid.) The Congress has been “sponsoring legislation, holding hearings, and authorizing reports that call attention to human rights abuses in the PRC, writing letters to PRC leaders in support of Chinese prisoners of conscience, and inviting Chinese human rights attorneys and other members of Chinese civil society to Capitol Hill for staff briefings.” (Ibid). (For an example of U.S. Congress’ activity on China’s human rights’ situation, see the record of the roundtable discussion of the Congressional-Executive Commission on China in the House Hearing of the 109 Congress. It is titled “China’s Changing Strategic Concerns: The Impact on Human Rights in Xinjiang.” November 16, 2005.)

China’s Responses

Since the Chinese government has valued having a high standing and being respected in the U.N., its officials have been vexed by the repeated U.S. attempts to move the U.N. Commission on Human Rights to censure China on its alleged human rights violations. (Embassy of the People’s Republic of China in the Kingdom of Norway, “China’s Statements in UN Human Rights Mechanism”, 2004/05/17. The statements were made by H.E. Ambassador Qiao Zonghuai, head of the Chinese delegation, before the vote on the draft resolution entitled “Situation of Human Rights in China”, April 23, 1999. Available at <http://no.china->

embassy.org/eng/wjzc/gjzzy/zgyllh/rqly/t110863.htm.) Chinese scholars and officials concerned with this matter have devoted a great deal of effort to defending China and to persuading other members of the UN not to support the U.S. proposed resolutions. (Ibid.) A typical example involved a case of three individuals arrested and tried by China, reportedly for subversive activities that endangered state security. (Ibid.) Accusing China of abusing their human rights, the U.S. brought the case, in 1998, to the UN Commission of Human Rights. (Ibid.) China defended its actions as proper law enforcement, and won the case. (Ibid.) Over the years, the Chinese have been able to rally sufficient support from members of the UN commission, including sometimes even the EU representatives, to defeat the U.S. motions seven times. (Ibid.)

In response to the U.S. government's annual reports criticizing China's human rights failings, the Chinese government has been issuing white papers annually since 1991 on its own efforts to promote and improve human rights in China. (Information Office of the State Council of the PRC, "Human Rights in China," November 1991, Beijing. Available at <http://china.org.cn/e-white/7/index.htm>. "Fifty Years of Progress in China's Human Rights," Published by Xinhuanet in 2002. Available at http://news.xinhuanet.com/zhengfu/2002-11/18/content_633173.htm. The Information Office of the State Council of the PRC's annual white papers on human rights are available online.) In these white papers, Beijing has endeavoured to explain its approach to human rights, as well as to inform the world about the Chinese achievements in this area. (Ibid.)

During the course of China's decades-long struggle against the U.S. which represented the West in the human rights discourse, the Chinese have developed an alternative, or Eastern approach to human rights both in theory and practice. (Lucienne Bamford, "East vs West Conceptions of Human Rights," New World Politics, Final Essay. Available at <http://www.uts.edu.au/sites/default/files/com-student-work-lucienne-bamford.pdf>. Weatherly, R., *The Discourse of Human Rights in China*, Macmillan Press, London, 1999.) Although the U.S. and other Western governments have so far refused to recognize the legitimacy of the

Chinese approach, a growing number of modern Western theorists on human rights have come to accept the validity of China's human rights discourse. (Ibid.)

Evidently, China has been approaching the human rights principles as embodied in the UN treaties as lofty ideals that China has aspired to realize in the course of its development from a poor underdeveloped country to an advanced modern nation, implying that China's human rights record must be judged with reference to its stage of development. (Sonya Sceats with Shaun Breslin, "China and the International Human Rights System," published by Chatham House (The Royal Institute of International Affairs), London, 2012.) Looking at the different countries of the world with their different historical experiences, the Chinese have argued for a flexible approach, allowing the different nations of the world to realize such a difficult and complex thing as human rights in a realistic way, taking into account their particular stages of development, and in the light of their culture, philosophy, value system, and tradition. (Embassy of the People's Republic of China in the Kingdom of Norway, "China's Statements in the UN Human Rights Mechanism", 05/17/2004, available online.) If this approach were followed, it would appear presumptuous for any nation to pass judgement on another's human rights situation in total disregard of that country's history and national conditions. (China State Council White Paper on Human Rights (excerpt) 1991. Available online)

It has not been China's intention to establish a different human rights discourse in order to challenge the Western one that has emphasized individual freedom and civil and political human rights. The U.S. publicity on China's shortcoming on human rights has created an image problem for China. The Chinese human rights discourse seems to be an effort to redeem its image in the eyes of the world, and to inform the world about the Chinese government's achievements in transforming China from a poor backward country to a moderately well-off one. (Embassy of the People's Republic of New Zealand, (Cook Islands, Niue) "White Paper – Fifty Years of Progress in China's Human Rights, 2003/11/20. Available at <http://www.chinaembassy.org.nz/eng/ztbd/rqwt/t44286.htm>.) It could also be regarded as an appeal for the

world's understanding of the difficulty the PRC has had and the effort it has made to realize human rights in such a large and populous country at its stage of development. (Ibid.)

Taking China's reality into account, the Chinese regime has given priority to the rights of subsistence and development. This emphasis has also been in line with Chinese traditional governance based on Confucianism. This philosophy taught that the state had a responsibility for its people's livelihood. The following are statements provided by the Chinese government to explain why it has chosen this particular approach to human rights.

“China is a developing country in the East with a long history and a huge population, but with a relative shortage of resources and wealth. To promote human rights in such a country, China cannot copy the mode of human rights development of the Western countries, nor can it copy the mode of development of other developing countries. China can only start from its own reality and explore a road with its own characteristics. Since the introduction of the policy of reform and opening-up, China has, on the basis of summing up its historical experiences and drawing lessons from them, found a road...to promoting and developing human rights which is in line with its own reality. This means putting rights to subsistence and development in the first place, under the conditions of reform, development and stability, and thus promoting human rights development in an overall way.” (White Paper – Fifty Years of Progress in China's Human rights,” put out by the Embassy of the People's Republic of China in New Zealand (Cook Island, Nieu) 11/20/2003. Available at <http://www.chinaembassy.org.nz/eng/ztbd/rqwt/t44286.htm>.)

Confucianism had little to say about the rights of an individual. With ethical social relationships as its chief concern, a discussion based on Confucianism would regard an individual as a member of a collective group: starting with the family, then the society, and the country to which the person belonged. Since the individual owed his life, security and sustenance to his family, society and state, one had an obligation toward this collective entity. The PRC's stress on social stability and national unity as core collective values has deep roots in Chinese traditional culture and history. The PRC has defended its authority to enact and

enforce laws that have put a limit on rights of the individual in the interest of the unity and stability of the collective entity, which is the Chinese state.

Since, as we have seen, China has prioritized the right to subsistence and development, it has been able to lay claim to a praiseworthy human rights record based on the enormous amount of progress made in feeding, clothing, housing, transporting, educating, and providing medical care to its people. (“Fifty Years of Progress in China’s Human Rights,” published by Xinhuanet, in 2002.) Poverty has been greatly reduced. (Ibid.) Even the harshest critics of the Chinese regime cannot deny the fact that the standard of living of the people of the world’s most populous country has been lifted to a significantly higher level. (Ibid.)

In support of this view, a Pew Global Attitudes Project survey in the spring of 2008 found that “86% of Chinese people said they were content with their country’s direction – doubling the percentage of those who said the same in 2002.” (Howard W. French, “Despite Flaws, Rights in China have Expanded”, New York Times, August 2, 2008.) This result seems to suggest that having had 2,000 years of paternalistic rule, the Chinese people were willing to bear with the slow incremental political reform offered by their modernizing rulers, for the sake of economic and social improvements.

Its white papers have also provided details of the improvements in the civil and political rights of all people in China. From the time of Deng Xiaoping’s reform and opening up in 1978, China became far less restrictive domestically and much more open to the outside world. The regime no longer demanded that individuals conform to prescribed political views and personal lifestyle. Chinese people could move freely within the country, and go abroad as students and tourists, or even to work as long as they had the means to do so. They could speak their mind and write what they liked on the internet, as long as they did not become publicly known for expressing subversive or secessionist views. Notwithstanding official censorship, a large number of newspapers and magazines have been published by private citizens and groups. Private ownership of homes and businesses has become widespread. The number of adherents to

the major world religions – Protestant and Catholic Christianity, Islam, Buddhism, and the indigenous Taoism – has grown by leaps and bounds.

Besides defending China's human rights situation, Beijing has been hitting back by publishing annual reports calling attention to human rights abuses in the U.S. since 1999. (See the annual reports on the human rights record of the United States published online by the Information Office of the State Council of the PRC.) These reports have cited police violence, maltreatment of prisoners, violence against women, hunger and homelessness, and racial discrimination against ethnic minorities, especially Blacks and Latino Americans. (Ibid.)

Since the U.S. has ignored its own and its allies' human rights violations, while singling out China for criticism, it has been accused by the Chinese of hypocrisy and having double standards on the human rights issue. (Information Office of the State Council of the PRC, "Human Rights Record of the United States in 2001," pp. 10-11.) The close relationship between this issue and U.S. geopolitical power politics has lent support to China's contention that the U.S. had "ulterior motives" in pressing China on it. (Embassy of the People's Republic of China in the Kingdom of Norway, "China's Statements in UN Human Rights Mechanism", 5/17/2004. Available at <http://no.china-embassy.org/eng/wjzc/gjzzy/zgylhg/rqly/t110863.htm>.) According to Beijing, the human rights issue has been used by the U.S. as a political tool for various purposes, including asserting U.S. hegemony, undermining China's stability, and lowering China's international standing.

Conclusion

During the quarter of a century since the early 1990s to the present, when the U.S. has pursued a policy of relentless criticism of China domestic human rights situation, China has remained relatively stable, and

China's domestic human rights situation has improved significantly in many ways. The noticeable improvement in China's human rights situation has been a consequence of China's domestic reform and opening up policy, not a response to foreign pressure.

Paying scant attention to the improvement, the U.S. has continued to focus on China's human rights violations and to expose them. (See the annual U.S. Department of State's annual Country Reports on human rights practices in China for various years from 1993 to 2015 available online.) Without an independent judiciary, China's law enforcement has been manifestly deficient (U.S. Department of State's Country Report on Human Rights Practices for 2015: "China (Includes Tibet, Hong Kong, and Macau) 2015 Human Rights Report.") Even though the Chinese leaders of the reform era have become far less restrictive than Mao, fear of domestic instability and of foreign instigated subversion has led them to keep a relatively tight rein on their peoples' freedom. Hence it has not been difficult for the U.S. to find instances of the Chinese authorities' violations of the civil and political rights of their people, particularly those suspected or convicted of engaging in subversive or secessionist activities.

Although the U.S. criticism of China's human rights failings has not led the Chinese government to become less repressive towards its political critics or adversaries, it has provided a stimulus for the Chinese government to publish China's annual human rights report and to implement a National Human Rights Action Plan from 2009-2010 and another one from 2012-2015. (Information Office of the State Council of China's cabinet, "Full Text: National Human Rights Action Plan of China (2009-2010)" and "Full Text: National Human Rights Action Plan of China (2012-2015).") These reports and plans must have helped the Chinese leaders to focus more attention on China's human rights situation than they otherwise would have done. The present Chinese government admits that China has "a long way to go to realize higher-level

protection of human rights.” (*China Daily USA*, “Assessment Report on the Implementation of the National Human Rights Action Plan of China (2012-2015)” June 15, 2016.

Since the human rights situation in the U.S. has not been above criticism, it has given Beijing the opportunity to expose the U.S. failings in this area, and to carry on a tit-for-tat exchange of mutual denunciation. The lofty principles of human rights have thus become mired in the geopolitical power politics between the two competing world powers.

In the international arena, China has expressed a distaste for confrontation and a preference for bilateral dialogues and cooperation in the field of human rights. (The Information Office of the State Council, “Progress in China’s Human Rights in 2014, (Full Text),” Xinhuanet, 06/08/2015. Available at http://english.gov.cn/archive/white_paper/2015/06/08/content_281475123202380.htm.)

In 2014, China held human rights dialogues with the EU, UK, Germany, Australia and New Zealand for the sake of improving understanding on matters relating to this subject. It also shared experiences gained in international human rights work with Laos and Sri Lanka. (Ibid.) The Chinese government has expressed a strong desire for the U.S. and China to move away from confrontation and to resolve their differences through dialogue. (Embassy of the People’s Republic of China in the Kingdom of Norway, “China’s Statement in UN Human Rights Mechanism”, 2002/05/17. Available at <http://no.china-embassy.org/eng/wjzc/gjzzyh/zgylhg/rqly/t110863.htm>.) After a six-year break before 2008, the Obama administration argued for reactivating the bilateral Human Rights Dialogue between the U.S. and China as a forum for “thorough discussion of this sensitive and contentious issue.” (Congressional Research Service, Susan V. Lawrence, “U.S.-China Relations: An Overview of Policy Issues,” August 1, 2003. Available on line.) Since then to 2015, although the U.S. and China have continued the annual reports on each others’ failings on human rights, they have also tried to engage each other through the bilateral Human Rights Dialogue.