

# Does the international monitoring system succeed in changing a State's conduct on human rights issues?

**A case study of China**

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**Table of contents**

- 1 INTRODUCTION..... 1**
- 2 METHOD ..... 3**
  - 2.1 Case study ..... 5
  - 2.2 External relevance..... 6
  - 2.3 Challenges to the research..... 7
- 3 CONTEXT AND BACKGROUND ..... 7**
  - 3.1 History: China and human rights ..... 8
  - 3.2 Theory: How a State reacts to external pressure..... 13
- 4 THE INTERNATIONAL HUMAN RIGHTS SYSTEM ..... 19**
  - 4.1 Charter-based bodies..... 19
  - 4.2 Treaty-based bodies ..... 20
- 5 INTERNATIONAL MONITORING SYSTEMS ..... 22**
  - 5.1 China and the UPR..... 22
  - 5.2 China and CEDAW..... 27
  - 5.3 China and CERD..... 32
- 6 WHERE DO WE STAND TODAY?..... 37**
  - 6.1 UPR..... 38
  - 6.2 CEDAW & CERD ..... 39
  - 6.3 Discussion: Does the human rights monitoring system work as intended?..... 43
- 7 CONCLUSION ..... 45**

# 1 Introduction

*“There is no universal road for the development of human rights in the world. As an important element in the economic and social development of each country, the cause of human rights must be promoted on the basis of the national conditions and the needs of the people of that country, and cannot be defined on the basis of a single authority”*. - China<sup>1</sup>

The birth of the United Nations (UN) and the signing of the Universal Declaration of Human Rights (UDHR) mark a clear change in history regarding human rights. After World War II, the UN’s determination to reaffirm its faith in fundamental human rights<sup>2</sup> led to the UDHR being proclaimed to be a common standard of achievements for all peoples and all nations. From the 1940s up till today’s society we have seen a massive increase in nongovernmental organisations (NGOs), procedures and international law aimed at regulating and protecting human rights.<sup>3</sup> With the increase of activism we also saw an expansion of the human rights agenda – most notably at the end of the Twentieth Century, when human rights also started including children, women, indigenous people and economic & social rights.<sup>4</sup> These changes in the international community have naturally also affected China.

Historically, China’s relationship with human rights can be described as tentative at best. The sheer size of the UN and international focus on human rights have nonetheless made it impossible to ignore. During the last thirty years, China has attempted to reconnect with the international community, including through trying to change how the country is perceived in regard to human rights.<sup>5</sup> In order to accomplish this, China today takes an active part in some of the United Nations-based mechanisms, such as the Universal Periodic Review (UPR). In 2018, China went through its third cycle of the UPR (which concluded in November the same year).<sup>6</sup> Although China does interact more with the international community on human rights, they still maintain their position that “there is no universal idea of human rights”, as evi-

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<sup>1</sup> China, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21\*\* (Geneva, The UN, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/254/62/PDF/G1825462.pdf?OpenElement>

<sup>2</sup> The UN Charter, article 2.

<sup>3</sup> Cmiel, Kenneth. *The Human Rights Revolution. An International History*. Oxford University Press (2004). Page 27.

<sup>4</sup> Ibid.

<sup>5</sup> Eva Pils, *Human Rights in China* (Cambridge, Polity Press, 2018), 1.

<sup>6</sup> UN Human Rights Council, «Universal Periodic Review – China», Retrieved 1<sup>st</sup> of September

denced by their latest white paper (September 2019)<sup>7</sup>. China's rocky relationship with human rights has been the object of scrutiny and discussion amongst both scholars and other states (some of which, China has varying degrees of conflictual relationships with, such as the US and the EU). These conflicts encompass particularly trade/economy as well as political/ideological differences, but also a real power struggle of influence, particularly between China and the US. Recently China has shown eagerness to participate in the revised international human rights apparatus, pledging its commitment when presenting its candidature for membership of the Human Rights Council.

Using a human-rights based approach, this thesis seeks to understand the relationship between a State and the international monitoring system on human rights, as well as the system's effectiveness in changing a state's conduct. In using a case study of China, the aim is to illustrate this relationship when the country in question has been reluctant to incorporate certain human rights, as opposed to those states who are usually at the forefront of this agenda. Based on this, the thesis seeks to answer these research questions:

1. Does the international monitoring system succeed in changing a state's conduct on human rights issues?
  - a. How do states react to external pressure?
  - b. How has Chinese human rights legislation changed over time, and can it reasonably be linked to the monitoring processes?
2. Have international monitoring and subsequent recommendations actually affected China's conduct on human rights and promoted changes in national policy?
  - a. Have comments, criticism & feedback under CERD, CEDAW and the UPR contributed to changes in Chinese policy?

Due to the scope of the thesis, the first question does not attempt to give a definitive answer true to all states, but simply through the case study of China (in order to give insight into the relationship between the monitoring system and states) to give an indication. In order to answer this, the dissertation employs theory regarding compliance with human rights, states'

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<sup>7</sup> China White Paper: Seeking Happiness for People: 70 of Progress on Human Rights in China, (The State Council, The People's Republic of China, 22<sup>nd</sup> of Sept, 2019), [http://english.www.gov.cn/archive/whitepaper/201909/22/content\\_WS5d87752fc6d0bcf8c4c13d32.html](http://english.www.gov.cn/archive/whitepaper/201909/22/content_WS5d87752fc6d0bcf8c4c13d32.html)

reactions to external pressure, and comparisons of Chinese legislation over time. For this, the spiral model as well as the theory of the persistent power of human rights, is used.

The thesis looks at China's history with both human rights and the UN, and how this relationship has developed over the years. This introduction serves as the background for analysing human rights developments in China. The thesis mainly examines China's relationship with the multilateral human rights bodies of the UN (and with other states, through their partaking in these processes). Relationships with NGOs partaking in these processes is also considered, but to a lesser degree. To limit the scope of the thesis, it will look at the monitoring systems of The Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD), as well as the UPR. The thesis examines how international monitoring systems affect the Chinese regime and its conduct by returning to the rights of women and minorities throughout. Through textual analysis of primary and secondary sources, the thesis evaluates how monitoring bodies relate to China, and how that outside pressure has affected Chinese attitudes towards human rights (if, in fact, it has affected it at all).

## **2 Method**

This thesis is the result of a qualitative research process, consisting of two parts: a theoretical aspect, looking at how states react to outward pressure and how the international monitoring systems work; and a practical aspect, providing case study of China, its relations to human rights, and its interactions with the aforementioned monitoring systems.

The third chapter shortly relates China's history with human rights and the international human rights community, highlighting some of the more important changes in Chinese legislation and policy. This is of importance as context for later analysis of its interactions with international monitoring systems. The chapter also takes a theoretical look at how States react to external pressure, using primary and secondary literature on the subject to give an added framework to the coming analysis. Here I have mainly carried out a textual analysis of different theories through content analysis. The goal has been to understand the fundamental aspects of states' relations to international bodies, and the different ways these bodies may exert pressure on their members to ensure compliance.

Chapter Four examines the thesis' case study, looking specifically at the relationship between monitoring bodies and China. Here I give an account of the feedback given to China since

starting to participate in the monitoring systems, what changes have been proposed to Chinese legislation and/or policy, and whether or not these have been incorporated by China. Given the amount of feedback received in each UPR-session, I chose to focus on some specific areas of feedback that were repeated by many States. Criteria for the selection was that the suggestions had to be of a substantial character (requiring a clear change in Chinese law or concessions to international procedure/law), as well as being repeated by several stakeholders, NGOs or States. The case study is hypothesis-generating in its form<sup>8</sup>, mainly based on secondary literature as well as public statements and legal documents. One has to assume that in a non-democratic regime such as China there will be some discrepancy between the state of human rights as described by the government, and the actual rights as experienced by those who hold them. The lack of transparency in the Chinese regime makes secondary literature necessary in describing this.

Chapter Five expands on the previous chapter, taking an evaluative look at today's human rights situation in China, as well as attempting to see the next logical steps in this evolving agenda.

The sixth, and final, chapter extrapolates from this case study, providing a wider discussion of the actual merits of the monitoring systems: do they work as intended?

I started the process of writing this thesis with a thorough literature review. My first point of departure was searching the database Oria<sup>9</sup>, and later also JSTOR<sup>10</sup>. I used these as the starting point for further investigations (using books and bibliographies of articles & books to get a better overview of the existing literature). Relevant literature was found by searching for key terms such as "China", "human rights", "international monitoring systems" and "China's human rights policies". The search was limited by combining these key terms in different ways. I also had several conversations with professors and activists engaged in the human rights field in China. I considered for some time reaching out the Chinese Embassy in Oslo, but due to time restrictions as well as limited faith in its usefulness for the purpose of the thesis due to the previously described discrepancy between the status of human rights as described by the State and experienced by individuals, I finally opted not to do this. The literature review included sources on China's relationship with human rights, Chinese history and politics, inter-state relations, and the rights of women, minorities & indigenous peoples. As I got more comfortable with the subject matter, I was able to narrow down my research ques-

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<sup>8</sup> Harry Eckstein, "Case study and theory in political science", *Case Study Method*, ed. R. Gomm, M. Hammersley and P. Foster, (London, Sage Publications, 2000), 132.

<sup>9</sup> Oria

<sup>10</sup> JSTOR

tions. In the end I have chosen to do a case study based mainly on a qualitative documentary analysis.

The thesis is multidisciplinary and contains elements from several different disciplines, e.g. law, history and political science. The literature review was carried out using textual analysis to examine the theory from different angles. The various sources consisted of legal & policy documents, political statements and other documents. This highlighted the topic both in a general and a Chinese context. In reviewing UN documents of both a legal and non-legal character, the study uses a legal, doctrinal method as such, “*a way of conducting research which is usually thought of as “typical legal research”. (...) will focus on case-law, statutes and other legal sources.*”<sup>11</sup>

## 2.1 Case study

A case study as defined by Robert Yin is “*an empirical inquiry that investigates a contemporary phenomenon (the “case”) in depth and within real-world context*”.<sup>12</sup> This thesis’ case is broad in scope: China relationship with human rights monitoring systems. Further on, Jack S. Levy creates a typology of four ideal types of case studies. These are idiographic, hypothesis-generating, hypothesis-testing and plausibility probes.<sup>13</sup> This case study will be hypothesis-generating, but it is important to emphasise that the typology of case studies is ideal and that they will naturally overlap in some places depending on the specific study. According to Levy, hypothesis generating case studies “*aim to generalise beyond the data. They examine one or more cases for the purpose of developing more general theoretical propositions*”.<sup>14</sup> In the case of this thesis, one of the overall research questions I am answering is whether or not international human rights monitoring systems succeed in changing a state’s conduct. For practical purposes, due to the limits in size of this thesis, I have therefore chosen to look at one case, hoping that the conclusions will either be transferable to other states or give a reasonable starting point for further investigations in to the field. Hopefully the case can serve as a sample of a broader research into the validity and functionality of today’s human rights monitoring systems. Hypothesis-generating case studies have also been credited as contributing to the specification of causal mechanisms, where an intense analysis of the development

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<sup>11</sup> UWE ASC LLM, *Research Methods: Doctrinal Methodology*, retrieved 11<sup>th</sup> of November at: <https://uweascllmsupport.wordpress.com/2017/01/18/research-methods-doctrinal-methodology/>

<sup>12</sup> Robert K. Yin, *Case Study Research*, (London, Sage Publications, 2014) 16.

<sup>13</sup> Jack S. Levy, “Case Studies: Types, Designs and Logics of Inference”, *Conflict Management and Peace Science* 25:1-18 (2008)

<sup>14</sup> Ibid

of a sequence of events over time will uncover certain casual mechanisms.<sup>15</sup> Here we are able to make generalising conclusions about the decision-making of an actor, as well as their perceptions of the events, in what Brady *et al.* call “casual process observations”.<sup>16</sup>

China is an interesting case for many reasons, particularly because of their commitment to changing their perceived relation to human rights by partaking in the revised human rights apparatus. This is at the same time as still having what could be called an “image challenge” in the world when it comes to human rights. As one of the most powerful states in today’s world, China must also be said to have a large impact on the international stage, specifically in Asia, (economically, security & military-wise, and in the shaping of norms). A small study into whether China has internalised and/or implemented international human rights standards is interesting, precisely *because* of their own impact on the world and the relationship between China’s impact on the international community (and vice-versa).

## **2.2 External relevance**

This section assesses the relevance and external validity of the thesis, or the degree to which the case can be generalisable to other scenarios. The case study carried out in this thesis is useful to get a sense of how States have responded to the expansion of the international human rights apparatus, and how particularly larger, more powerful States such as China have chosen to interact with new schemes to ensure implementation of human rights. As far as being generalisable to other scenarios, the account of interaction between China and the Committees of CERD and CEDAW, as well as the UPR might be able to shed some light on general challenges to the international work with human rights. The thesis addresses whether or not China has changed its conduct on human rights as a result of international recommendations and pressure, a question which answers’ might be transferable also to other nations. As the case study only covers one State it will not be able to give a full answer as to whether or not the international system as a whole work as intended, but it will be able to give insight to the internal processes that governs a State’s interaction with the system. Finally, the case study carried out in this thesis is useful to give a sense of the effectiveness of today’s international human rights monitoring system, and the work done in this thesis may be of analytical value to others research on the subject.

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<sup>15</sup> Ibid

<sup>16</sup> Henry E. Brady and David Collier, “Rethinking Social Inquiry: Diverse Tools, Shared Standards”, (Plymouth, Rowman & Littlefield Publishers, 2010), page 4

### **2.3 Challenges to the research**

Researching this topic has certainly been a rewarding and educational experience, but also had its challenges. At first, I was hoping to do a broader case study on China's relationship with international monitoring systems in general, but I quickly realised this would be too large a task for one thesis. I therefore had to narrow down the research to only deal with the monitoring systems of CERD and CEDAW, as well as the UPR. I chose CERD and CEDAW as they were the first to be ratified by China, as such giving me the most content to work with when analysing. When starting the research, I quickly saw a discrepancy between the status of human rights as accounted for by the Chinese government, and as observed by external parties (particularly from the US). The unconscious bias of the writer therefore needed to be taken in to account and evaluated when reviewing my sources. This was especially important, given that my thesis is largely based on theoretical and secondary sources. As mentioned earlier, the lack of transparency in a non-democratic state such as China also makes it difficult to get a clear picture of the actual state of human rights in that society. This is exemplified for example by Chinese white papers, which outline some postulated great advances in human rights in their society. However, it is difficult to examine the reality of this claim for all groups in society, such as minorities. Collecting unbiased information from the Chinese government proved to be a near impossible task. China is also a country that invokes strong feelings and opinions for people, whether they are a "supporter" or "critic" of the regime and current government. This makes it difficult to obtain nonpartisan information. For example, a lot of the sources I used were written by Americans, who obviously risk having their own biases in their view of China on account of their own nationality and the relationship between the US and China. Early in my research, I also had to confront my own bias as a Norwegian and European, having grown up in a Western culture. I had lived in China for a short period of five months in 2018, working in academia, and this gave me somewhat of a better understanding of Chinese culture and rationale. Still, there was and is undoubtedly unconscious bias in my experiences of the world that would colour my understanding of the material I was working with. I have strived to approach the literature and information with an open mind and hope I have succeeded.

## **3 Context and background**

In order for us to assess the effect of international monitoring systems on China's relationship with human rights, we must first consider the relevant history. It is also necessary to take a closer look at the Chinese concept of rights, how this has evolved through time and how this

may influence the State's actions. For the scope of the thesis we will only concern ourselves with the broader strokes of history, looking in to the big changes in Chinese law and rights. This chapter also investigates theory surrounding development of human rights in States and how States react to external pressure.

### **3.1 History: China and human rights**

There are many philosophies that have influenced China's concept of rights, such as Buddhism, Daoism and Moism. Most notably today is probably the influence of Confucianism and Marxism. This chapter examines these different influences on Chinese rights thinking. As argued by Robert Weatherley, it could be said that Confucianism worked as China's state ideology for close to two millennia, and as such has had the greatest impact on Chinese social, moral and legal life.<sup>17</sup>

These early influences on Chinese rights thinking is mixed with the influence of Marxism in later years, specifically since the birth of socialist China in 1949. As the Chinese communists had been influenced by Marxist thinking, it is natural to believe that Marxism also influenced the further development of rights in China. Marx was sceptical about rights, as he saw them as separational in nature, advocating that one needed protection from other human beings. As scarcity of resources became a thing of the past, so would the need for a rights-based system.<sup>18</sup> Still, he conceded to the necessity of rights in earlier stages of society, such as lower phases of socialism. A point of departure for communist China in relation to rights, was the thinking of how rights were intrinsically connected to one's class status, as opposed to human rights who are supposed to be equal for all. This is similar to the Soviet concept of rights, where the "proletariat" such as workers and farmers are offered rights, where as members of the "bourgeois" such as land-owners and private traders were not offered constitutional rights.<sup>19</sup>

Another feature of Marxist States' approach to rights is the importance of socio-economic rights as opposed to political rights. The conditions of mass poverty made it absolutely neces-

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<sup>17</sup> Robert Weatherley, «The Discourse of Human Rights in China», (New York, Palgrave Publishers Ltd, 1999) page 38.

<sup>18</sup> Betty Sichel «Karl Marx and the Rights of Man», *Philosophy and phenomenological Research*, vol 32, (1972), p. 355-357.

<sup>19</sup> Thomas E. Towe, «Fundamental Rights in the Soviet Union: A Comparative Approach», *University of Pennsylvania Law Review*, vol. 115, (1967), p 1252-1253.

sary to focus on social and economic development, thus ensuring such rights.<sup>20</sup> This can also be seen in the development of rights-thinking in China.

### 3.1.1 Imperial and late imperial China

Confucianism has a strong belief in hierarchy, and as a consequence also a high degree of inequality. One's place in the hierarchy was determined by several factors such as age and sex. In addition to determining one's social and familial status, Weatherley also argues that it determined a person's position in a "moral hierarchy".<sup>21</sup> Fathers were considered morally superior to their sons on account of their age, and husbands morally superior to their wives on account of their sex. Still Confucian mindset did advocate a sort of natural equality, referring to the equal human capacity to determine right from wrong.

Human rights were created on the principle of equal worth, and therefore on the equal treatment of all individuals. This is theoretically highly incompatible with Confucianism, where one's moral worth largely depends on your hierarchical status. Henry Rosemont points out how there is no room for a "me" in early Confucianism. Instead, one is "*the totality of roles I live in relation to specific others*".<sup>22</sup> There is no focus on the individual, and therefore no notion of individual rights either. Instead, Confucianism focuses greatly on obligations and duties, as well as putting the interest of the collective above the interests of the individual. This can be seen as implicitly advocating rights, as one would have obligations *towards* someone, but again Weatherley argues that because the stress on duties was so overwhelming, there was no perception of people having rights of their own.<sup>23</sup>

### 3.1.2 Qing China and Republican China

China's meeting with the West was one of humiliation, where war and defeat to the British in the mid-19<sup>th</sup> century and the Treaty of Nanking at the end of the opium wars coloured the State's future conduct.<sup>24</sup> As a reaction to the impact of the West, Chinese scholars started searching for a way to ensure national survival. Several scholars of influence concluded that there would be a need to adopt Western methods, both of a military and industrial note, as

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<sup>20</sup> Ibid, Weatherley, p. 97

<sup>21</sup> Ibid

<sup>22</sup> Henry Rosemont «Why take rights seriously?: A Confucian critique», *Human Rights and the World's Religions*, Leroy Rouner (1988), p 167-82.

<sup>23</sup> Ibid, Robert Weatherley.

<sup>24</sup> David C. Wright «The history of China» (Westport, Greenwood Press, 2001) p. 99- 107

well as Western values and political ideas. This naturally included the ideas of individual rights, but Confucianism still coloured the understanding of such rights. For example, in concurrence with the Chinese tradition of Mencian theory of benevolent government, there was no need for the individual to hold rights against the State, a principle that in Western liberal tradition was essential.<sup>25</sup> It was believed that the Western peoples strong notion of their own rights was what gave the West domination of the international arena, and as such we see the emerge of individual rights in China as well. The individual rights were not revered for their own virtue but were of an instrumental character. Especially political rights were seen as a means to uniting the people and the State.<sup>26</sup> As the dynasty fell and the birth of the Republic of China was a fact, the theory surrounding Chinese rights evolved greatly. The rights that emerged at this time in China were limited, as was Chinas experimentation with democracy.

### 3.1.3 The People's Republic of China

As the communists and Mao declared victory in Beijing in 1949 a new era of Chinese government, and also rights-thinking, began. Since the establishment of the People's Republic of China, the world has seen gross human rights violations committed by the State, (such as the cultural revolution under Mao in 1966-1976, and later the events of Tiananmen Square in 1989). Still, all four of China's constitutions (1954, 1975, 1978 and finally 1982) has mentioned the rights of Chinese people. China has also been an important contributor to several human rights treaties – including the Convention on the Rights of Children and the Convention of the Protection of Workers' Rights, as well as being integral to the development of the Declaration of the Right to development.<sup>27</sup> An important feature of Chinese rights thinking in this period is the weight put on collective rights as more important than individual rights. Arguments were made that only when collective rights and interests were ensured could one start to guarantee the rights of the individual. The focus on the collective can be traced back to traditional Confucianism.<sup>28</sup> Under Mao, human rights were rejected as bourgeois, instead focusing on collective rights in the form of people's rights (rights emerging from one's membership as part of the people), which where praised.<sup>29</sup>

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<sup>25</sup> Ibid, Wetaherley. 71.

<sup>26</sup> Ibid

<sup>27</sup> Ibid, Weatherley. P. 101

<sup>28</sup> Ibid

<sup>29</sup> Sarah Biddulph and Joshua Rosenweig, *Handbook on Human Rights in China*, (Cheltenham, Edward Elgar Publishing Limited, 2019) p. 3

In the post-Mao era individual rights have gradually received more importance, with the latest Constitution (1982) using a much more direct language in describing also individual rights. This was also a time of institution-building domestically, with a rapidly expanding market economy. According to Biddulph and Rosenweig, the 1990s marked a huge effort from the Chinese government to “domesticise” human rights, among other things by moving international human rights criticism from the open stage, into “*bilateral human rights ‘dialogue’ held behind closed doors*”.<sup>30</sup> China marked the end of the 20<sup>th</sup> century by signing the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1997, which it later ratified in 2001.

### 3.1.4 A new millennium

Some see the history of human rights as an evolution of sorts. Through learning and developing, things slowly get “better” – meaning that as States become more enlightened, the respect and protection of human rights also grows. For others, there is no linear development for human rights in history, but simply battles to be won or lost (possibly sparked by one specific event). In relation to China, many scholar-discussions have revolved around precisely this: by engagement over time, will China slowly come to see the “Western” or UN way of viewing human rights as the correct way?

In the Twenty-First Century, China has played an active role on the international stage and engaged in many human rights processes. According to Pils, the State has taken active part in some of the UN-based mechanisms (such as the Universal Periodic Review, they have produced two five-year Human Rights Action plans) and actively argued that their contribution has helped by “lifting millions out of poverty”.<sup>31</sup> They have produced white papers, held international conferences, and generally engaged with the global community to a much larger extent than before. There can be no doubt that for large parts of the Chinese population, their quality of life has greatly improved with the economic growth the country has seen in the past 20 years. According to the State, The People’s Republic of China (PRC) has chosen to promote collective rights, such as the right to development before tackling other human rights-related issues. As such, it would seem the “evolutionists” of human rights are right, things do get better. On the other hand, China’s depiction of the status of human rights in their own lands have been met with criticism on several fronts. The treatment of minorities, both in Ti-

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<sup>30</sup> Ibid, Biddulph and Rosenweig. P. 3

<sup>31</sup> Ibid, Eva Pils, 1.

bet and later also with the Uyghurs of the Xinjiang-region shows a significant lack of minority rights in the country.<sup>32</sup> The state's censure of media and the internet, as well as the introduction of the new social credit system, also poses a threat to basic human rights. The social credit system has been piloted in different regions since 2009, but in 2018 efforts were centralised to make the scheme nation-wide and standardised.<sup>33</sup> The State's reaction to activist Liu Xiaobo being awarded the 2010 Nobel Peace Prize was a stark example of the censorship of the PRC. The announcement of diplomatic and economic consequences for those attending the ceremony, and the subsequent deterioration of the State's relationship to award-host Norway, demonstrated for the global community China's willingness to silence its critics. Norway's later attempts to repair the relationship (including through the Prime Minister's decision not to meet with the Dalai Lama when he visited the country), and the economic implications of the aftermath, pointed to the frailty of the development and protection of human rights. Indeed, most activists viewed this episode as a loss for proponents of human rights.

The difference in priority between individual and collective rights has proven a point of contention, not only between the West and China, but generally between the West and non-Western States. China has continued to argue that there is no such thing as a universal idea of human rights. The argument goes that the Western, liberal human rights ideas are incompatible with the traditional ideas of justice and order in non-Western countries, and as such they idea of human rights needs to be understood in a particularistic way.<sup>34</sup> This position, coupled with a broader engagement with international human rights processes and the revelations that follow some of these processes (Uyghurs, Tibetans, social credit system), gives a mixed picture of human rights in China today. While there has been a significant increase in standard of living for many Chinese, minorities, "undesirables" and opponents of the State still suffer vast violations of their human rights. In later chapters we will take a closer look at this through the UPR, CEDAW and CERD, but for now it suffices to say that it is clear the PRC has made large advances with regards to the right to development and other socio-economic rights, while civil and political rights (individual rights) have taken a backseat so far in the 21<sup>st</sup> century.

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<sup>32</sup> International Consortium of Investigative Journalists, retrieved 24<sup>th</sup> of April, [https://www.icij.org/investigations/china-cables/exposed-chinas-operating-manuals-for-mass-internment-and-arrest-by-algorithm/?gclid=EAIaIQobChMIqdOYgKeD6QIVyasYCh3X7QDDEAAYASAAEgL0KfD\\_BwE](https://www.icij.org/investigations/china-cables/exposed-chinas-operating-manuals-for-mass-internment-and-arrest-by-algorithm/?gclid=EAIaIQobChMIqdOYgKeD6QIVyasYCh3X7QDDEAAYASAAEgL0KfD_BwE)

<sup>33</sup> Yuhao Zhong & Xiaodong Ding "Rethinking the Social Credit System: A Long Road to Establishing Trust in Chinese Society", *The 2<sup>nd</sup> Symposium of Applications of Contextual Integrity – Symposium Report*, 2019

<sup>34</sup> *Ibid*, Eva Pils, 21.

## 3.2 Theory: How a State reacts to external pressure

As shown previously in this chapter, China has had a tremendous development in regard to rights-thinking and engaging with other States on the international arena. This development has not occurred in a vacuum. As the world steadily has grown smaller with technological advances, States have also been subject to more influence from each other. Where in previous centuries, war and trade were the main reasons for contact between States, today the world is open to most people through the internet, and States interact at a much higher pace than earlier.

With this backdrop, it is interesting to see how States react to external pressure from other States. Are changes in Chinese law and human rights a result of internal discussions and progress, or a result of international pressure and expectations? The answer is most likely a mix of the two, combined with specific events that work as catalysts for change. To explore these questions, the dissertation will employ two different theories – namely, the theory of the persistent power of human rights and its predecessor, the Spiral Model.

### 3.2.1 The theory of the persistent power of human rights

The persistent power of human rights is a theory developed by Thomas Risse, Stephen Ropp and Kathryn Sikkink on the basis of their previous work titled *The Power of Human Rights*. Here they amend some of the theories in their previous work, but before we can dive into their newer work it is imperative that we have a basic understanding of their previous model of human rights change, the *Spiral Model*.

#### 3.2.1.1 *The Spiral Model*

The spiral model attempts to show the various processes a country goes through from simply observing human rights to internalising them and complying. Here they define three types of socialisation processes at work to socialise non-compliant States to human rights norms, namely instrumental adaptation, argumentation and habitualisation.<sup>35</sup> These work together in five distinct phases: 1) Repression, where leaders of authoritarian regimes engage in repression, creating an informational vacuum making it difficult for opposition to exert any pressure. 2) Denial, where opposition, though still weak, manages to gather enough information to initiate an advocacy process, leading to the inevitable denial from officials of the State. 3) Tactical concessions, where a repressive State would use tactical concessions such as releas-

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<sup>35</sup> Risse et al., ed. *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge, Cambridge University Press, 2013), 5.

ing political prisoners in order to appease the international human rights community. These concessions are seen as “low cost”. 4) Prescriptive status, where human rights norms are granted prescriptive status by actions such as ratifying international treaties or changing domestic laws. Finally, 5) Rule-consistent behaviour, which signifies behavioural change and sustained compliance with human rights.<sup>36</sup>

The model was based on comparative case studies. In later work they correct several of these assumptions, as the basis of the model was the assumption of fully functioning States, as well as omitting powerful States such as the US and China. One could argue that China finds itself somewhere between Phases 3 and 4, but this would be a gross over-simplification of the political, societal, military and economic factors that comprises China’s current relationship with the international community as well as human rights. The authors have also themselves acknowledged that the model lacks some dimensions in order to correctly mirror the reality of States as China. Still, the model work as a base-ground for further investigations of the persistent power of human rights.

### 3.2.1.2 *The persistent power of human rights*

Instead of looking at the whole process of States’ socialising to human rights, the theory of the Persistent Power of Human Rights deals with the process from commitment to compliance. As every State in the world has ratified at least one human rights treaty, and there is an acceptance of fundamental human rights as *jus cogens*, this provides a different frame for the development of human rights than in the previous century. Commitment in this setting is defined as *actors accepting international human rights values as valid and binding for themselves*, while compliance is defined as *sustained behaviour and domestic practices that conform to the international human rights norms*.<sup>37</sup> To examine this process, Risse et al. starts by identifying four mechanisms for social action that interact to bring forth human rights change and induce compliance. These are 1) Coercion: use of force and legal enforcement, 2) Changing incentives: sanctions and rewards, 3) Persuasion and discourse and 4) Capacity building.<sup>38</sup> From this they identify five scope conditions under which these social actions can induce compliance with human rights, relating to different types of regimes, states and degree of vulnerability.

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<sup>36</sup> Ibid, Risse et al., 7

<sup>37</sup> Ibid, Risse et al., 10

<sup>38</sup> Ibid

The first is *Democratic vs. authoritarian regimes*, where they claim improvements of human rights often result from regime change and democratisation processes. In other words, democratic States are more likely to comply with human rights. Democratic regimes are here defined by the degree of competition for executive office and citizen participation. Not only does regime type matter, it also affects which of the four aforementioned mechanisms for social action comes into play. Legal enforcement and mechanisms of persuasion such as “naming and shaming” should be particularly effective in democratic regimes where human rights are an institutionalised part of society.<sup>39</sup>

The second is *Consolidated vs. limited statehood*, looking at States’ institutional capacity. Non-compliance is not always the result of willed policy, but could also be a result of limited statehood, in which a State lacks control and is considered a weak/fragile State. In that case, the social action of capacity building would be required in order to achieve compliance.<sup>40</sup>

The third is *Centralised vs. decentralised rule implementation*, where the theory is that compliance is more likely if the actors committed to human rights norms are also those who comply with them directly. Likewise, if decisions are made after collaborative or conflict-ridden negotiations between decentralised actors, meaning that those who commit to human rights are not exclusively the rule targets, compliance is harder to achieve.<sup>41</sup>

The fourth, *Material Vulnerability*, considers a States’ vulnerability to external pressure. Normally, a State with powerful economic and/or military resources would be less vulnerable to external pressure to comply with human rights. This is not to say they are immune to such pressure, only that social action mechanisms such as coercion and negative incentives have lesser effect on powerful actors.<sup>42</sup>

The fifth and final condition is *Social Vulnerability*, looking at the degree to which a State cares about their social standing in the international community, thus being affected by social pressure. Some States have enough social resources to fight external pressure, as demonstrated by the Asian value debates, where some States command enough social resources to establish a counter-discourse to the Western debate.<sup>43</sup>

In sum these conditions affect the processes of States’ moving towards compliance with human rights.

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<sup>39</sup> Ibid, Risse et al., 17

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid, Risse et al., 20

<sup>43</sup> Ibid

### 3.2.1.3 China and the persistent power of human rights

So, how does China relate to the aforementioned social actions and scope conditions? Quoting Katrin Kinzelbach, “*International human rights policies vis-à-vis China coincide, by and large, with the mechanisms [...] Only coercion is not an option, because China’s material power is too great.*”<sup>44</sup> As China is an authoritarian regime (scope condition one), it follows the theory of the persistent power of human rights that use of force and legal enforcements would be less effective as human rights are not an institutionalised part of society. At the same time, China’s sheer size, combined with great military and economic powers, makes it very unlikely that anyone would have the power to force the State in any way. This leaves us with sanctions/rewards, incentive and capacity building as social actions to further the development of human rights. According to Kinzelbach, the window of opportunity to use incentives as bargaining chips with China has been gradually closing. In the early 2000s, several tactical concessions were made by China, for example by releasing political prisoners, in advance of upcoming meetings with US officials. Later in the Twenty-First Century we have seen decreasing amounts of this – a phenomenon she explains partially by the benefits not outweighing the costs for China anymore, and partially because the domestic view of international human rights criticism has changed. When Tiananmen (1989) was still fresh in people’s minds, international criticisms held a chime of truth for large portions of the Chinese public. These days much of the criticism revolves around Tibet, the Uyghurs and the treatment of members of Falun Gong, all groups the average Chinese feel they have little in common with.<sup>45</sup> Instead, Beijing openly opposes interference with their domestic affairs – invoking the norm of sovereignty and, at the same time, questioning the motives of those criticising China (stating that they seek to damage China’s rise). This is possible for several reasons, as the majority of the population feel little kinship with those experiencing the hardest violations of their human rights, and as the population as a whole has experienced a rapid economic development in a short time period, which might work to placate anyone internally who would otherwise take issue with the State’s conduct.

As far as capacity-building goes, several western States have funded different cooperation programs with China in an attempt to promote compliance with human rights. Sophia Woodman looked at several western countries’ aid to legal projects in China, concluding that overall, they were not beneficial to the furtherment of human rights, while “*poorly thought out and*

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<sup>44</sup> Katrin Kinzelbach, “Resisting the power of human rights: the People’s Republic of China”, *The Persistent Power of Human Rights*, ed. Risse et. al., (Cambridge, Cambridge University Press, 2013). 172

<sup>45</sup> Ibid, Kinzelbach. 175

*executed assistance can actually be harmful*".<sup>46</sup> At the same time, many of the cooperation programs funded by other States does not have a specific human rights dimension, instead hoping that by enhancing capacity in fields like commercial law or controlment of corruption, there will be a "trickle down"-effect also for human rights. This is discarded by Kinzelbach as unlikely, both because of China's size limiting the impact of such programs, and due to the heavy politicisation of the legal apparatus and proposed reforms in China.<sup>47</sup> However, programs may be successful in furthering compliance with certain human rights, namely those which does not pose a threat to the regimes possibility to exercise control, for example prohibition of torture.

The final social action to be mentioned is persuasion. As explained by Risse et al., persuasion does not require vulnerability of the receiver to be successful, instead it operates with the logic of appropriateness.<sup>48</sup> It is said to be a more long-lasting socialisation mechanism but is also extremely rare as it operates only with a "better argument" approach, leaving out the actors' interests. There are instances where on the surface, persuasion seem to have worked with China, for example in 2005 when the Special Rapporteur on Torture was finally admitted into the country after a long stand-off. But, as shown by Kinzelbach, in the backdrop played an important factor: US pressure. Setting the admittance of the special rapporteur as a requirement for resuming US-China human rights dialogue, there was enough *incentive* for China to concede.

What is obvious from the past 50 years is that human rights have developed and gained strength in China. However, which of these social mechanisms have been at play is sometimes unclear. An important factor for any major shift in Chinese policy seems to be that of *domestic demand*, in line with the previous spiral model.

### 3.2.2 Summary

So, do these theories give us a reasonable understanding of how China will conduct itself in future human rights dealings? While it definitely doesn't provide a full understanding, both theories carry elements that would be reasonable to expect in the future. The same way as the winners of war gets to write history, from a realist perspective, the strongest get to set the agenda. As such, it is difficult to say that either theory gives a map of future human rights

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<sup>46</sup> Sophia Woodman "Bilateral Aid to Improve Human Rights", *China Perspectives*, issue 51, 2004, 8.

<sup>47</sup> Ibid Kinzelbach, 173.

<sup>48</sup> Ibid Risse et al., 14.

developments in China. However, there are some clear indications we can base our theories of.

This chapter started with a question: Is changes in Chinese law and human rights approach a result of internal discussions and progress, or a result of international pressure and expectations? If we think to the fourth scope condition of the PPHR, a State as powerful as China both in military and economic terms should not be particularly vulnerable to external pressure. As shown by Kinzelbach's work as well, as China got more powerful, becoming the largest foreign holder of US treasury bonds, the concern around what the US public might think about their lack of compliance with human rights became less important to the State.<sup>49</sup>

An important feature of the persistent power of human rights is the belief that it will get better. That somehow, the world is moving steadily albeit slowly towards more human rights. It is an optimistic view, and although it may be the comforting position to take, there is also evidence to the contrary. As shown earlier, Chinese compliance with human rights seems to be heavily linked to domestic demand. This can be interpreted as external pressure and international dialogue having little to none effect on Chinese law and human rights compliance. Simply put, China is big and powerful. As a result of this, it has the opportunity to withstand international and external pressure to a large degree, even starting counter-discourses to western led debates if it sees fit, where other, smaller States might would have been forced to conform. Western States and scholars do talk about universal human rights, but it is clear the emphasis is put on civil and political rights. Universalism however, has been promoted by China on several occasions. Focus has been put on the Chinese way of seeing human rights, with emphasis on rights such as the right to development and other social and economic rights. This also relates to domestic demand, where the Chinese population have been far more concerned with economic growth than voting rights or freedom of speech.

If we accept the initial statement by Kinzelbach, that coercion is not an option when attempting to further human rights in China, this should be reflected in bilateral and international communication between China and others. While the UPR and other monitoring bodies will show what issues and rights the international community is focusing on, it will not display how States may go about creating real change in another State once the "show" of a meeting is over. We should see examples of sanction/rewards, persuasion/discourse and capacity building, both in terms of the language used by the UN/other nations in their written state-

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<sup>49</sup> Ibid, Kinzelbach, 174

ments, and by the actual steps taken by the international community when faced with human rights violations in China. Chapter 5 of this thesis will look into this, tracking the communication between the UN and China on human rights developments. First, there is a need to take a quick look at the international system for human rights.

## **4 The international human rights system**

Today, there exists a myriad of measures and mechanisms intended to ensure, develop, protect and monitor human rights in the world. On a broad spectrum, these are usually divided into two types of human rights bodies in the United Nations system: charter-based bodies, and treaty-based bodies. Charter-based bodies are bodies established from provisions in the UN Charter, while treaty-based bodies are bodies established from the different UN treaties.

### **4.1 Charter-based bodies**

The UN Charter was not designed to address human rights but was mainly intended to maintain international peace and security. Although not created to protect human rights, according to scholars Bantekas and Oette, the UN as a whole has had a shift away from state sovereignty over to a more visible human rights approach since the end of the Cold war in the 1990s.<sup>50</sup> The charter-based bodies include the Human Rights Council (HRC) and several mechanisms operating under its wing, such as the HRC's complaint procedures, the Special Procedures of the Human Rights Council, and the Universal Periodic Review (UPR).

#### **4.1.1 The UPR**

For the purpose of this thesis the UPR holds particular interest. The UPR was born out of a United Nations General Assembly (UNGA) resolution as a separate reporting mechanism. It was stressed that this should not duplicate existing human rights reporting obligations, but instead should add value to the promotion of human rights through holistic, honest and non-confrontational discussions of member States' human rights issues.<sup>51</sup> According to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the UPR is a unique process involving review of the human rights records of all UN Member States. As the process is so-called state-driven, it is supposed to give States an opportunity to declare their ac-

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<sup>50</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, (Cambridge, Cambridge University Press, 2016) 155

<sup>51</sup> *Ibid*, Bantekas and Oette. 164

tions to improve and ensure human rights in their countries.<sup>52</sup> One review cycle is a four-and-half year period, the latest being ongoing from 2017 – 2022. The reviews are based on a vast collection of documents, such as information prepared by the State concerned, reports from treaty bodies, special procedures and other official UN documents, or information provided by “other relevant stakeholders”, such as NGOs, NHRIs, academic or research institutions.<sup>53</sup>

## 4.2 Treaty-based bodies

Treaty bodies mark a considerable change in the international attitude towards State sovereignty, contrary to a realist approach to international relations, which claims States use institutions to exercise power. Treaty bodies have been given a mandate to monitor States’ compliance with human rights, making them the only entities within the UN system with this authority.<sup>54</sup> Today there are ten human rights treaty bodies that monitor implementation of the nine core international human rights treaties. The bodies consist of independent experts. The first two treaty bodies to be set up was CERD, as well as the Human Rights Committee (HRCtee). By ratifying a treaty, the State in question assumes a legal obligation to implement the rights specified in that treaty. In addition to this, there also follows an obligation to submit periodic reviews to the relevant treaty body, giving an account of how the rights are being implemented.<sup>55</sup> The treaty body may also receive information about the status of human rights within a State from other sources, both other UN entities, other NHRIs, NGOs and academic institutions. Based on all this information, as well as constructive dialogue with the State in question, the treaty body will then publish what they call “concluding observations”, relating its concerns and recommendations.

### 4.2.1 Committee on the elimination of Racial Discrimination - CERD

CERD consists of independent experts tasked with monitoring the implementation of the Convention on the Elimination of All Forms of Racial Discrimination in its member states.

According to CERD’s own webpage

*“All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention*

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<sup>52</sup> United Nations Human Rights Council, “Universal periodic review”, retrieved 27 March from <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

<sup>53</sup> Ibid, UNHRC webpage, 27 March

<sup>54</sup> Ibid

<sup>55</sup> United Nations Human Rights Office of the high commissioner “monitoring the core international human rights treaties” retrieved 17<sup>th</sup> of April. <https://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>

*and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”*”.<sup>56</sup>

In addition to this procedure, CERD also deals with three other mechanisms for monitoring human rights in its party States: 1) the early-warning procedure, 2) the examination of inter-state complaints and 3) the examination of individual complaints. Early-warning measures are meant to prevent the escalation of conflicts into full-blown human rights violations and can come in the form of decisions, statements, resolutions or letters, and can also include confidence-building measures to reinforce racial tolerance.<sup>57</sup> Inter-State complaints are not often used because of the obvious possible implications for one’s own relationship to other States. However, for the first time in history, in 2018 CERD received three inter-state communications under the Convention’s article 11.<sup>58</sup> Finally we have individual complaints, but this option depends on the State Party having recognised the competence of the committee under article 14 of the Convention. As such, not all citizens of State Parties have the opportunity to lodge an individual complaint.

In addition to this work, the Committee is also publishing general recommendations, describing how a specific provision of the Convention is supposed to be interpreted, and organising thematic discussions.

#### 4.2.2 Committee on the Elimination of Discrimination against Women - CEDAW

CEDAW, like CERD, consists of independent experts tasked with monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The body totals 23 experts on women’s rights from around the world. Much the same as with CERD, States parties are obliged to submit regular reports to the Committee on the progress of implementation on the rights in the Convention. During sessions, each State party’s report is considered, and the Committee adopts concerns and recommendations in the form of concluding observations.<sup>59</sup> The Committee also formulates general recommendations guiding the interpretation of provisions in the Convention.

CEDAW has an optional protocol, mandating the receiving of complaints/claims of violations of the Convention from individuals or groups of individuals. It also mandates that the Committee can initiate inquiries into situations of grave or systematic violations of women’s

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<sup>56</sup> UN, CERD homepage, retrieved 28<sup>th</sup> of March

<sup>57</sup> UN HR OHC, “Early-warning measures and Urgent Procedures”, retrieved 22<sup>nd</sup> of April, <https://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx#about>

<sup>58</sup> UN HR OHC, “Complaints Procedures”, retrieved 22<sup>nd</sup> of April, <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

<sup>59</sup> UN HR OHC, “Committee on the Elimination of Discrimination against Women”, retrieved 27<sup>th</sup> of April. <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>

rights. The optional protocol, as any other, demands ratification in order to be applicable to any State.

## **5 International monitoring systems**

International monitoring systems may refer to all the aforementioned and other methods the international human rights community, and the UN have for monitoring, fact-finding and investigation of the human rights situation in a State on a general level, or in connection to one of the specific human rights treaties. When monitoring the core international human rights treaties, the treaty bodies perform a number of functions such as considering State parties' periodic reports, considering individual complaints, conducting country inquiries and sometimes adopting general comments to interpret parts of the treaties.<sup>60</sup> This chapter will examine such communications between China and the monitoring systems in relation to the UPR, CEDAW and CERD.

### **5.1 China and the UPR**

As mentioned, China has concluded three cycles of the UPR, the first in 2009, the second in 2013 and lastly in 2018. Every cycle starts with the gathering of information. This consists of the national reports, as well as a compilation of UN information and information from several stakeholders. There is also the possibility to submit questions in advance. Once the review is to take place, one normally starts with a presentation of the National Report by a representative of the State in question.<sup>61</sup> This is often followed by the floor opening to other States, who will make comments, give commendations and criticisms, ask questions and offer recommendations, which the State in question will be given an opportunity to address together with some closing remarks. Once the State report is adopted, containing recommendations from other States, the State being reviewed will be given a timeframe to consider and respond to the recommendations.<sup>62</sup>

#### **5.1.1 First cycle – 2009**

In their first national report to the UPR, China underlined their basic position on human rights and their observance of them within China.

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<sup>60</sup> United Nations Human Rights, Office of the High Commissioner. Retrieved 27<sup>th</sup> of March 2020

<sup>61</sup> UN Human Rights Council, *Universal Periodic Review*, retrieved 13<sup>th</sup> of June

<sup>62</sup> Ibid

*“China respects the principle of the universality of human rights [...]. The international community should respect the principle of the indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development.”*<sup>63</sup>

The focus on the indivisibility of human rights is interesting, as it serves an important purpose for China. By Western standards, civil and political rights have often been seen as the most important ones, signifying a democratic State in line with many Western values. By equating economic, social and cultural rights with these, China is undercutting this argument, clarifying that their work on human rights is of equal importance, but simply of a different character. The report goes on to accentuate China’s work on bringing people out of poverty, progress made in social spheres such as education, culture and public health, and improvements in democracy and rule of law.

In advance of the date of consideration, several States had submitted questions for China. Some of the recurring questions revolved around the ratification of the ICCPR, the use of death penalty in China, the use of “reform through labour”-camps, the use of torture when detaining people, and several questions about conditions for the people of Tibet and the Uighur Muslims.<sup>64</sup>

In the working group’s report, we see the interactive dialogue between China and other States, where 60 delegations made statements responding to the Chinese national report. On the basis of this dialogue, conclusions and/or recommendations were made, being categorised by whether they 1) enjoyed the support of China, 2) were noted by China, but indicating they are already implemented or pertaining to measures being implemented, and 3) would be examined and responded to at a later time.<sup>65</sup> Some of the recommendations enjoying the support of China included ratifying the ICCPR, facilitate visits from several human rights entities such as Special Rapporteurs and the High Commissioner of Human Rights, and continue efforts to ensure ethnic minorities the full range of human rights including cultural rights. Questions of implementing a legal definition of discrimination in its national law and reducing the number of crimes carrying the death penalty were tabled for a later response.<sup>66</sup>

All in all, the first cycle of the UPR gave the impression of being a well put-on show. Several States took the opportunity to commend China for their efforts in eradicating poverty and bridging the gap between rural and urban areas, but any real discussion or progress on topics

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<sup>63</sup> China, National Report UPR, 2009. 5

<sup>64</sup> UN Universal Periodic Review, first cycle (2009), “Questions submitted in Advance”.

<sup>65</sup> UN UPR, first cycle (2009), «Report of the Working Group»

<sup>66</sup> Ibid

brought forth in the questions in advance was omitted from the final report of the Working group.

### 5.1.2 Second cycle – 2013

In accordance with the national report from the first cycle, China underlined its respect for the universality of human rights in 2013. Indivisibility was still the point of focus, as well as promotion of collective as well as individual rights. In understanding human rights, they point out that China,

*“Is of the view that all countries have a duty to take measures, commensurate with their national conditions, continuously to promote and protect human rights in accordance with the purposes and principles of the Charter of the United Nations and the basic spirit of the Universal Declaration of Human Rights”<sup>67</sup>*

This is an interesting wording coming from China, particularly when referring to understanding and promoting the spirit of the UDHR, which as with much of human rights theory have been somewhat critiqued for being based too heavily on western values. This universalist phrasing could possibly have been seen as a sign of a change in attitude from China, however, the report went on to state that

*“The Chinese Government is working to explore paths for human rights development, establishing a robust system of human rights safeguards, and continuously enriching the theory of human rights, all within the framework of socialism with Chinese characters.”<sup>68</sup>*

After establishing the support for universality of human rights, there is a clear indication of desire to expand the theory surrounding human rights, more in line with Chinese thinking and values. As mentioned, it is generally recognised that much of the human rights theory is based on traditional western values, an issue here being addressed by China. A theoretical framework for human rights-thinking more in line with Chinese traditional values would give China more room to manoeuvre critique from particularly western states.

Similar to the first cycle, advance questions related to death penalty, the ratification of the ICCPR, the facilitating of visits from special rapporteurs, the “re-education through labour” camps and general religious freedom for minorities were put forth. The questions exhibit a clear divide between the States engaged in the process, where most Western States put forth

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<sup>67</sup> China, National Report UPR, 2013. 3.

<sup>68</sup> China, National Report UPR, 2013. 3.

critical questions, while more “supporting” States such as Cuba or Sri Lanka would use the opportunity to commend China’s work in different fields, asking them to share its good practices.<sup>69</sup>

This time, 137 state delegations made statements in the interactive dialogue during the working group. While in 2009, of all the adopted conclusions and recommendations, China tabled four for a later response. In 2013, the State chose to not immediately support any recommendations at this time but respond at a later time no later than the twenty-fifth session of the Human Rights Council in March 2014.<sup>70</sup> In total, the report from the working group adopted 252 conclusions or recommendations in 2013, a much larger number than in the previous cycle. As such, it is to be suspected that the level of agitation on the part of China was also bigger this time around.

For the second cycle, a matrix of recommendations including China’s position on each was included at a later stage. Here the position was either labelled as “supported” or “noted”, depending on China’s position on the suggestion. In the end, the Chinese Government accepted 204 of the 252 recommendations put forward.<sup>71</sup>

### 5.1.3 Third cycle – 2018

Early in the third-cycle national report, China points to its follow-up to the second-cycle review. Here they emphasise the importance they put on carrying through on the follow-up work, describing how the Ministry of Foreign Affairs set up a working group on the implementation of the recommendations from the second cycle, leading to the implementation of the Second National Human Rights Action Plan of China (2012-2015), and later the issuing of the Third National Human Rights Action Plan of China for the 2016 – 2020 period.<sup>72</sup>

In previous cycles, when phrasing their view on human rights, China have been careful to make small jabs at for example the inconsistency in expressing indivisibility of human rights while at the same time it has been obvious that particularly Western states put more emphasis on civil and political rights. At the same time, they have made sure to express support for the international agenda of human rights, potentially in an attempt to calm adversaries. In the third cycle, the expression of China’s view on human rights is more refined in line with what we may expect is their internal communication, going deeper into what they describe as human rights with Chinese characteristics. The report states that

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<sup>69</sup> UN Universal Periodic Review, second cycle (2013) “Questions submitted in advance”.

<sup>70</sup> UN UPR, second cycle (2013) «Report of the Working Group»

<sup>71</sup> UN UPR, third cycle (2018) «National Report of China»

<sup>72</sup> Ibid

*There is no universal road for the development of human rights in the world. As an important element in the economic and social development of each country, the cause of human rights must be promoted on the basis of the national conditions and the needs of the people of that country, and cannot be defined on the basis of a single authority.”<sup>73</sup>*

Further on, referencing “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era” as a guide in their work on advocating, promoting and developing human rights with Chinese characteristics. The road they speak of is one with national conditions as the foundation, referencing five thousand years of cultural tradition, 170 years of continuous development, the great practice established by New China over the past 69 years, and especially the past 40 years of reform.<sup>74</sup> In this is a clear indication that China will define and understand its own human rights record in a light more in accordance with traditional Chinese values.

As in previous cycles, questions were prepared in advance from a number of States. They revolved around many of the same issues as before, with many Western States raising the issue of cultural and religious rights, in particular in reference to minorities such as the people of Tibet and the Uyghurs in the Xinjiang region.<sup>75</sup> Other issues repeated often revolved around the protection of activists, human rights lawyers, journalists and others, unlawful detention, the ratification of the ICCPR, the use of death penalty and allowing UN Special Rapporteurs to visit the country.<sup>76</sup> Again, the overall trend was that Western States would pose critical questions of a civil and/or political character, whereas “friendlier” States would pose questions of a social, cultural or economic character, asking China to showcase good examples of improved housing conditions or general achievements of development.

During the interactive dialogue, 150 delegations made statements, showing the growing interest for the UPR since China's first cycle in 2009. Similar to in the second cycle, China opted to examine all conclusions and recommendations, and get back to the UN at a later time, no later than the fortieth session of the Human Rights Council.<sup>77</sup> In total 346 recommendations were submitted during the session. While some recommendations were accepted, some were “not accepted”. Of those not accepted, some received an additional explanation, explaining China's position on the issue. This was the instance for example with death penalty. In total, 62 of the

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<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> UN Universal Periodic Review, third cycle (2018) “Questions submitted in advance”.

<sup>76</sup> Ibid

<sup>77</sup> UN UPR, third cycle (2018), «Working Group Report»

recommendations were not accepted, most of them pertaining to death penalty, restrictions of individual freedoms or the subjugation of ethnic minorities in Xinjiang and Tibet.<sup>78</sup>

#### 5.1.4 Common threads – a summary

It is obvious that the apparatus of the UPR has gradually grown, the number of participating States increasing heavily since China's first review in 2009. There has also been a distinct development in regard to how China expresses their views on human rights, refining their points on human rights needing to be contextualised to each country. Since Xi Jinping entered office, there has been a clear shift towards clarifying Chinese Socialism. Instead of changing its conduct, China seems to be attempting to change the international conversation on human rights, claiming Western values should not dictate what rights are promoted. At the same time, China has always upheld the idea that the right to development is a core human right, as well as a necessity in order to achieve other human rights. As such they can claim large achievements as millions of Chinese people have been brought out of extreme poverty.

There are several similarities in the three UPR cycles China has been through. Most notably, many of the recommendations put forth by other States in 2009 were repeated in 2013 and again in 2018, such as the ratification of the ICCPR, protection of ethnic and religious minorities and the protection of activists and journalists. In some areas it is clear that little has changed since the first cycle. The ICCPR for example, was not ratified in 2009, and is still not ratified today. In other areas, such as protection of ethnic and religious minorities, the development is harder to decipher, as some international organisations claim a worsening of the situation, while China claims this to be untruthful.<sup>79</sup> Another common thread is the divide between States participating in the UPR, where Western states focus largely on civil and political rights, while other countries are more interested in learning from China's rapid development. With every cycle, China also seems more assured in their own communication, laying down a new way to see and understand human rights as a concept, with a clear intention of expanding the theoretical framework for its development and promotion.

## 5.2 China and CEDAW

China has participated in five reporting cycles on CEDAW submitting in total eight periodic reports, the first in 1984, and later in 1992, 1999, 2006 and 2014.<sup>80</sup> Indeed, 2014 was the last time China delivered a periodic report on the implementation of CEDAW, where they com-

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<sup>78</sup> Ibid

<sup>79</sup> Ben Westcott, CNN, *China denies having "concentration camps"*, retrieved 13<sup>th</sup> of June

<sup>80</sup> UN Treaty Body Database, Reporting Status for China

bined their seventh and eight periodic report. CEDAWs official webpage indicates that a report was due to be submitted 1<sup>st</sup> of November 2018, but no documents accompany the deadline. As such, China has yet to deliver its ninth periodic report.

Concerning the optional protocol on individual complaints and the mandate for the Committee to initiate inquiries into situations of grave violations of women's rights, China has taken no action, meaning they have not signed the optional protocol or recognised the competence of the committee in such matters.<sup>81</sup> This is not surprising as it relates to China's emphasis on State sovereignty, not recognising competence on such matters outside of the State apparatus.

In these early years of the Convention, emphasis was put on tangible numbers, and discrimination against women was often seen in light of legal rights versus no legal rights and areas easily measured in percentages, for example the percentage of women in schools, in work, as CEOs and holding elected office. This has evolved in the Twenty-First Century, now encompassing more hidden barriers to female participation in society as well. The documentation available from the 1984 and 1992 sessions are limited to the summary records and concluding observations on the UN Treaty Body Database.<sup>82</sup> In this first and second cycle the representatives from China focused on practical statistics regarding female participation in different parts of Chinese social life such as education, the workforce and elected positions in parliament, and referred to the Constitution of 1982 as ensuring in unequivocal terms the general principle of equality between the sexes.<sup>83</sup> With the main focus being on statistics, China displayed the rapid development that has happened in the country, showing for example the participation of women in parliament, which was 15 percent higher than average. While the number of illiterate persons in the country was still high, especially among women, compulsory education proved positive as 97 percent of school-age children attended school in 1989, with a 95 percent attendance rate for girls.<sup>84</sup> As mentioned, these early reports were less voluminous than later reports, displaying the growth and change in the UN apparatus.

### 5.2.1 The third and fourth periodic reports

1998 marked the submission of Chinas third and fourth periodic reports to the Committee. The report was initially seen as insufficient, as it lacked statistical data disaggregated by sex

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<sup>81</sup> UN Human Rights, Status of Ratification Interactive Dashboard

<sup>82</sup> Ibid, 78

<sup>83</sup> UN Treaty Body Database, CEDAW, China, Reporting Cycle I, *State party report*, 1984

<sup>84</sup> Ibid

to compare the current situation to that at the time of the previous report in 1992.<sup>85</sup> This was amended in the oral and written replies to questions posed by the Committee. In positive aspects the Committee commended China for its commitment to implement the Convention, while reaffirming that the Convention on the Elimination of all Forms of Discrimination Against Women included civil, political, economic, social and cultural rights, which are inalienable and indivisible. Although framed in a positive language, there was a clear appeal for the State to also ratify the ICCPR as a matter of combating discrimination of women.<sup>86</sup> Furthermore, they commended China for strengthening their legislative framework, for implementing programmes to ensure the implementation of non-discrimination laws and for increasing the availability and access to family planning and primary healthcare for women. The Committee also acknowledged the difficulty in realising equality between men and women in a country of China's size and diversity.

On concerns and recommendations, the Committee expressed concern that China's approach to implementing the Convention was that of *protecting* women rather than *empowering* them.<sup>87</sup> For example, that the State's National Working Committee on Women and Children perpetuated the identification of women with children, or that when focusing on women's health, the main issue was mother-child health, limiting female health issues to those of women's reproductive organs. As such the Committee recommended re-examining the approach to realising gender equality, with a greater emphasis on the empowerment of women. Other recommendations included the adaptation of legislation that prohibits unintentional and indirect discrimination, a re-examination of laws on violence against women, the possibility of inviting the Special Rapporteur on Violence against Women into the country, decriminalising prostitution, gendered violence, and to analyse from a gender perspective the effects of its economic policies in transitioning from a centrally planned to a market economy.<sup>88</sup> It also discussed how greater challenges fell on rural women, as traditional attitudes and prejudices against women were more prominent.

## 5.2.2 The fifth and sixth periodic reports

In 2006, China submitted its fifth and sixth periodic reports. As in the previous cycle, the initial report did not contain sufficient statistical data on the de facto situation of women in Chi-

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<sup>85</sup> UN Treaty Body Database, CEDAW, China, Reporting Cycle III-IV, *Concluding Observations*, 1999

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> Ibid, China, Reporting Cycle III-IV

na (which was in part clarified in oral and written replies). In this cycle, the Committee commended China for a range of legal reforms happening in the country to achieve gender equality, such as amendments to the Law on the Protection of Rights and Interests of Women, and amendments to the Marriage Law.<sup>89</sup> The latter adding provisions in a number of areas earlier recommended by the Committee, such as on domestic violence, property of couples and relations among family members. In the Law of Contracting of Rural Land, provisions were in 2002 made for the allocation of land to married, divorces and widowed women, a very important step for the empowering of women in rural China. On a general note, China was commended for having taken huge steps in securing women's rights in their legal system.<sup>90</sup>

Although a lot had changed to empower women in the legal system, the Committee still expressed concern that there was no definition of discrimination against women in Chinese domestic legislation. It was also noted that while steps had been taken to protect the rights of women, there was still an absence of provisions for effective legal remedies, making the access to justice in cases of discrimination limited.<sup>91</sup> Concern for rural women was reiterated, referring to the uneven distribution of benefits from the economic growth the country was experiencing. The same was true for recommendations regarding concern for the trafficking of girls and women, and how continued criminalisation of prostitution put a disproportionate impact on prostitutes, as well as the need for legislation criminalising violence against women. The Committee urged the State to set clear numerical goals for the involvement of women in politics and policy, and in future cycles to include statistical data disaggregated by sex, particularly relating to the situation of rural women and ethnic minority women.<sup>92</sup>

### 5.2.3 The seventh and eighth periodic reports

As mentioned, 2014 was the last time China submitted a periodical report on CEDAW. As was evident with the UPR, the apparatus surrounding the periodical reports have grown since their beginning. For the first time, extensive information from Civil Society Organisations was included in the cycle, such as information from independent NGOs, universities and labour organisations. There is also a State Party report on Follow-up to the Concluding Observations from the cycle.<sup>93</sup>

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<sup>89</sup> UN Treaty Body Database, CEDAW, China, Reporting Cycle V-VI, *Concluding Observations*, 2006

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> UN Treaty Body Database, Reporting Status for China

In the concluding observations, the Committee commends China for several legislative reforms, such as adopting a law on social insurance on maternity insurance, a labour contract law prohibiting firing a woman from her job for being pregnant, and a law on promotion of employment which made it illegal to discriminate in employment on the grounds of ethnicity or gender.<sup>94</sup> At the same time, the Committee underlined the importance of China ratifying or acceding to the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially women and Children, the Convention on the Rights of Persons with disabilities and the ILO Discrimination Convention.

In its recommendations the Committee reiterated the necessity of giving women effective access to justice, for example by providing legal aid and by supporting relevant NGO's. They also advised on the establishment of an independent national human rights institution to work broadly on promoting human rights, including the rights of women.<sup>95</sup> Once again, traditionalistic views on women was brought up, exemplified by the preference for sons in Chinese culture with the consequence of sex-selective abortion or forced abortions, resulting in an adverse sex ratio in Chinese society. Recommendations asked for bigger efforts in changing social norms preferring men to women, and to intensify the implementation of legal measures addressing such issues as mentioned. Gender based violence and the exploitation of prostitution was also addressed, with a wish for the next periodic report to provide information on anti-trafficking legislation and its compliance with international standards.<sup>96</sup>

Different to earlier cycles, the Committee touched on more general human rights issues in China, although seen with gender in mind. The "re-education through labour" system was critiqued as a means to justify the arbitrary detention of women, while China was called upon to protect women human rights defenders. Rural and minority women were again mentioned, and this time Tibetan and Uyghurs women were specifically mentioned as women at risk of discrimination.<sup>97</sup> As the committee broadened its scope of issues, we have moved past the trend of previous cycles where the focus had been mostly on statistics and development of legislation. All in all, the cycle of 2014 was more comprehensive, and covered a broader scope of women's issues than previous cycles had done.

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<sup>94</sup> UN Treaty Body Database, CEDAW, China, Reporting Cycle VII-VIII, *Concluding Observations*, 2014

<sup>95</sup> Ibid

<sup>96</sup> Ibid

<sup>97</sup> Ibid

### 5.3 China and CERD

China has participated in seven reporting cycles on CERD, submitting in total seventeen periodic reports, the first in 1983, and later in 1986, 1990, 1996, 2001, 2009 and 2018. 2018 was the last time China delivered a periodic report on the implementation of CERD, where they combined their fourteenth to seventeenth periodic report. CERD's official webpage indicates that the next cycle, which will combine the eighteenth to twentieth period reports is due on the 28<sup>th</sup> of January 2023.<sup>98</sup>

Concerning the optional protocol on individual communications alleging violations of the Convention, China has not recognised the competence of the committee in such matters.<sup>99</sup> As with CEDAW, this is not surprising as China for years has been promoting the importance of national sovereignty in all matters, including human rights.

Similar to the periodic reports in CEDAW, the early reports in CERD are less voluminous and cover a more limited range of issues. The first four reporting cycles, covering the periodic reports number one (1983) till seven (1996) gives us access to the State party's report and some concluding observations/summary records, but contain nowhere near the amount of information from the range of actors that we see in later reporting cycles.<sup>100</sup> Also in questions of discrimination and minority representation, the early focus was on tangible numbers and percentages. In its first periodic report China focused on listing the minority nationalities in the country, their population and living conditions, referencing several autonomous regions which in theory should give the minority nationalities the opportunity to be self-governing in many issues. They also referenced the Constitutions from 1954, 1975 and 1978 as including explicit provisions regarding equality of nationalities and the equal rights of all citizens.<sup>101</sup> The report also laid out the basic policies and regulations related to the autonomous regions in China, such as stating

*“The administrative head of an autonomous region, prefecture or county shall be a citizen of the nationality, or of one of the nationalities, exercising regional autonomy in the area concerned”.*<sup>102</sup>

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<sup>98</sup> UN Treaty Body Database, Reporting Status for China

<sup>99</sup> Ibid

<sup>100</sup> UN Treaty Body Database – retrieved 29<sup>th</sup> of July

<sup>101</sup> UN Treaty Body Database, CERD, China, Reporting Cycle I, State party's report, 1983.

<sup>102</sup> Ibid

The second reporting cycle started in 1985 with the submission of the State party's report and had its concluding observations in 1987. According to the concluding observations, China's representatives referred to a broad spectre of policies, principles and decrees, all with the aim of "*eliminating all vestiges of national oppression and discrimination and putting an end to economic and cultural backwardness in minority areas*".<sup>103</sup> To this end it was presented how the value of gross industrial and agricultural output of the five national autonomous regions had increased by 22.2 percent in the time from 1984 till 1985. The state report was commended for its comprehensiveness, while more information was requested for the almost 900 000 Chinese citizens that were labelled as "unknown nationalities". China was particularly commended for its unreserved implementation of article 3 regarding racial segregation as an important contribution to the fight against apartheid, while questions were posed as to how the civil and political rights covered in article 5 of CERD was being protected.<sup>104</sup> The members of the Committee also asked whether China would consider making the optional declaration provided for in article 14 on individual communications. While the Chinese representatives did not directly answer the question, they referred to the Constitution guaranteeing equal rights for all minorities, stating that the Chinese courts so far had not dealt with any cases of racial discrimination because such issues were solved at an earlier state through conciliation procedures.<sup>105</sup>

The third (periodic reports III-IV) and fourth (periodic reports V-VII) reporting cycles brought up many of the same issues as the previous reports. The reports provided valuable information about the implementation of the Convention in China, while there was still a lack of information pertaining to certain minorities. In the third reporting cycle great concern was expressed for the people of Tibet, citing third-party information from NGOs and others claiming vast practices of discrimination practices against Tibetans, especially in relation to article 5 of the Convention. As expected, the Chinese representatives denied any exploitation of the natural resources in Tibet, and any discrimination in housing or employment.<sup>106</sup> The concerns were repeated in the fourth reporting cycle, this time also including the region Xinjiang where the Uyghurs live. While the strong economic growth was seen as positive, the Committee expressed great concern with the policy encouraging members of the Han nationality to settle

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<sup>103</sup> UN Treaty Body Database, CERD, China, Reporting Cycle II, Concluding observations, 1987.

<sup>104</sup> Ibid

<sup>105</sup> Ibid

<sup>106</sup> UN Treaty Body Database, CERD, China, Reporting Cycle III-IV, Concluding observations, 1990

in autonomous areas, as this could greatly change the demographic composition of the areas.<sup>107</sup>

### 5.3.1 The eighth and ninth periodic reports

The eighth and ninth periodic reports were submitted in 2000, with concluding observations in 2001. The state report focused on advances made by China, while stating that China had resumed exercise of sovereignty over Hong Kong and Macau, establishing Special Administrative Regions for both.<sup>108</sup> The committee took issue with the lack of anti-discrimination legislation in the Hong Kong region, a topic that gave lengthy discussion in the Committee. The report mentions more flexible family planning programmes for minority groups, improvements in living standards leading to a drop in mortality rate, as well as efforts to improve the ethnic-related legal system. A main point of focus was, as previously, the “pursuit of common prosperity for all ethnic groups”. This ties in to China’s continuous focus on the right to development, often stating the right to development as the foundation for the pursuit of other human rights. The report goes on later to state that

*“There was no conflict between the right to development of ethnic minorities and preservation of their cultures because ethnic minorities were encouraged to use their own cultural resources in developing their economy while at the same time they were given every opportunity to preserve their traditional culture.”<sup>109</sup>*

From the summary records of the meeting (1469<sup>th</sup> meeting of the Committee on the Elimination of Racial Discrimination) we can see Chinese representatives denying that it had ever been government policy to promote migration of Han Chinese to ethnic regions in order to change the demographic composition of an area, clearly referencing the last report cycle where this concern was expressed by the Committee.<sup>110</sup>

### 5.3.2 The tenth till thirteenth periodic reports

In 2009, China submitted its tenth till thirteenth periodic reports on the implementation of CERD. This time, in addition to the information provided by the State, a lot of information was submitted from Civil Society Organisations, such as the Hong Kong Bar Association and several institutes from universities. The concluding observations start by welcoming the submission of the reports, appreciating the offer to resume dialogue between the Committee and

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<sup>107</sup> UN Treaty Body Database, CERD, China, Reporting Cycle V-VII, Concluding observations, 1996

<sup>108</sup> UN Treaty Body Database, CERD, China, Reporting Cycle VIII-IX, State Party’s report, 1990

<sup>109</sup> UN Treaty Body Database, CERD, China, Reporting Cycle VIII-IX, State party’s report, 2000

<sup>110</sup> Ibid

the State party, signalling a breach of communications for a period of time since their last submission.<sup>111</sup> The Committee also commended China for their efforts in the adoption of a range of laws protecting minorities, as well as the adoption of programmes and policies aimed at the advancement of minorities, such as the 11<sup>th</sup> Five-Year Programme for the Ethnic Minority Cause. Similar to reports submitted regarding CEDAW, the CERD Committee commented a lack of disaggregated statistical data, specifically related to the socio-economic status of members of ethnic minorities.<sup>112</sup> Other main concerns were the lack of a comprehensive definition of racial discrimination in Chinese legislation as well as the continuation of policies that could result in substantial alteration of the demographic composition of areas populated by ethnic minorities, such as the autonomous regions.

This reporting cycle, the Committee also commented on the “re-education through labour” camps, asking that these measures were used restrictively, and not disproportionately against members of minority communities.<sup>113</sup> In other words, the Committee was engaging in a broader set of topics than in its early years, relying more on information from third parties in addition to the State reports. It also becomes clear that there is a broader understanding of the indivisibility of human rights in civil society, linking civil and political rights to the rights of minorities and women. The sessions also brought attention to the issue of minority women not being an active part of Chinese public life, citing its own general recommendation No. 25 (2000)<sup>114</sup> on gender-related dimensions of racial discrimination.

In 2011 China reported on follow-up to the concluding observations of the Committee. Here they addressed the concerns about administrative detention and labour camps, denying that the labour camps were used predominantly towards members of minority groups, and stating that the measure of administrative detention was applied mainly to individuals having committed fairly serious violations of the law, citing public security as the *raison d’être* for the detention centres and the labour camps.<sup>115</sup>

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<sup>111</sup> UN Treaty Body Database, CERD, China, Reporting Cycle X-XIII, Concluding observations, 2009

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> CERD, General Recommendation No. 25 (200) – gender-related dimensions of racial discrimination

<sup>115</sup> UN Treaty Body Database, CERD, China, Reporting Cycle VIII-IX, State Party report on Follow-up to Concluding Observations, 2011.

### 5.3.3 The fourteenth till seventeenth periodic reports

Finally, the last reporting cycle China participated in so far started with the submission of state reports fourteen till seventeen in 2017. While the Committee regretted the delay in submitting the reports, they commended China on several efforts to amend its own legislations, such as the implementation of the second and third National Human Rights Action Plans, a plan for supporting the development of small population ethnic groups, and especially the repeal of legislation on re-education through labour, which was repealed in 2013 by the Standing Committee of the National People's Congress.<sup>116</sup> Reduction in poverty was also highlighted as a positive development for minorities in the state.

However, many of the concerns presented in the previous cycle of reporting were still current in 2018. The Committee reiterated its concern for the lack of a clear definition of racial discrimination, complying with article 1 of the Convention. The participation of minority women in society was still a concern, as well as the lack of basic infrastructure and public services in rural areas mostly populated by minorities. Similar to proceedings with the Committee on CEDAW, there was concern about the access to education, particularly for minority children.<sup>117</sup> While China in their previous communications with the Committee had underlined that minority children had equal or preferential opportunity to attend for example higher education, the Committee pointed to the need to increase human and financial resources to schools in disadvantaged ethnic minority areas.<sup>118</sup>

The Committee also focused on broader topics such as torture and ill-treatment, recommending strengthened measures against torture and ill-treatment of minorities, for example by improving their access to lawyers. Own sections were set off for the Xinjiang Uyghurs Autonomous region and Tibet, specifically addressing reports claiming the detention of large numbers of ethnic Uyghurs under the pretext of countering religious extremism, mass surveillance of the population and unlawful detentions. Regarding Tibet the concerns revolved around severe restriction of movement both within the region and beyond, as well as claimed efforts to eradicate the Tibetan language by restricting its use in schools.<sup>119</sup>

Several civil society organisations participated in this reporting cycle, particularly many organisations working with issues in Tibet, Mongolia and Xinjiang, and organisations such as

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<sup>116</sup> UN Treaty Body Database, CERD, China, Reporting Cycle XIV - XVII, State party's report, 2018

<sup>117</sup> Ibid

<sup>118</sup> UN Treaty Body Database, CERD, China, Reporting Cycle XIV - XVII, Concluding Observations, 2018

<sup>119</sup> Ibid

Human Rights Watch (HRW). In a follow-up to the proceedings, HRW submitted a report claiming new evidence of the Chinese Government using arbitrary mass detention, and torturing and mistreating Muslims in Xinjiang. While the Chinese government has repeatedly denied such allegations, HRW claims to have evidence of approximately one million Uyghurs being held in “political education” camps without due process and fair trial.<sup>120</sup> Considering the reporting cycle started with the Committee commending China for its abolition of re-education camps, the information from civil society organisations was particularly disheartening.

## 6 Where do we stand today?

Leaning on the writings of Stephen C. Angle we can distinguish between three different approaches to how Chinese tradition has, and still does, affect human rights: 1) as an obstacle, 2) as an alternative, or 3) as a source.<sup>121</sup> Angle himself argues that all three contains some element of truth, as there is nothing about Chinese tradition that determines how modern Chinese citizens should view human rights, but that it still undoubtedly influences also modern-day thinking.<sup>122</sup> And although Chinese tradition should not dictate modern Chinese thinking on human rights, as argued by Angle himself, there are some obstacles related to Confucianism that makes it difficult to argue that the tradition is ready to adopt modern notions of human rights, especially linked to its hierarchical nature. As China has taken a more active part in international human rights mechanisms, they have displayed the Chinese take on human rights as an alternative to the western led debate on human rights. The rights of collective, the right to development, and the importance of State sovereignty combined with a developing theory around Chinese socialist human rights clearly presents an alternative to the “common” western ideas of universal, indivisible human rights. At the same time, these factors present a clear obstacle for those fighting for equality and human rights in the western understanding of those terms, whether it be national organisations or international NGO’s. As displayed earlier in this thesis, China has undoubtedly made huge strides towards a society more in compliance with modern human rights compared to the situation in the 19<sup>th</sup> century. This however, is not synonymous with a high degree of compliance with human rights today, it simply shows progression. Also, whether this development is a result of a wish to ensure and comply with human

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<sup>120</sup> Un Treaty Body Database, CERD, Human Rights Watch (HRW), Follow-up Information from other sources, 2020.

<sup>121</sup> Stephen C. Angle, «Human rights in Chinese tradition», *Handbook on Human Rights in China*, ed. Biddulph & Rosenzweig (Cheltenham, Edward Elgar Publishing Limited, 2019), 14.

<sup>122</sup> Ibid

rights, or happenstance as a result of economic development and other events acting as catalysts, is harder to decipher. As we look at China's communication with different human rights monitoring systems, the latter seems the most likely. China also proves an excellent example of how a change in leadership may change the entire direction of a country. The trend of positive development regarding human rights in China may seem to have changed since Xi Jinping took power in the country. Eva Pils points to the current era of Xi Jinping's leadership as one where repression of civil society groups has reached an unprecedented level.<sup>123</sup> This is obviously challenging, and whether the monitoring systems are equipped to handle such strong, authoritarian leaders is highly unsure.

## 6.1 UPR

China's involvement in the UPR has been a testament to its expressed desire to take an active part in more of the United Nations based human rights mechanisms. Still, a desire to take active part in a process does not equal an interest in obtaining the same thing as the others partaking in that process. The UPR offers an international stage for China to communicate their victories in their own terms, both when it comes to economic development and on human rights. On the surface the UPR might seem like an opportunity to put human rights offenders on "trial" before an international stage, but in reality, it is also a great opportunity for a strong State such as China to display their efforts on human rights and explain their rationale for certain actions. This is an opportunity China most certainly has taken advantage of, expanding and clarifying their theory on human rights and how Chinese socialism will influence its future work on expanding human rights. As with most large, international stages such as the UPR one can get the feeling of watching a well-rehearsed show, where everyone has been given a role. The expected parties criticise, the expected parties applaud, China accepts several low-stake recommendations, potentially even promising some changes, and everyone leaves "happy". This is not to say there hasn't been a lot of criticism of China's actions both before, during and after each cycle, but the most prominent criticism often comes from NGO's and civil society.<sup>124</sup> Their lack of forceful mechanisms makes the criticism easy to fend off for a country like China.

If we are to look at the main recommendations emerging from the previous UPR cycles, at a first glance little seems to have been achieved. China still has not ratified the ICCPR, still

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<sup>123</sup> Eva Pils, "Human rights and the political system", *Handbook on Human Rights in China*, ed. Biddulph & Rosenzweig. Cheltenham, Edward Elgar Publishing Limited, 2019

<sup>124</sup> Universal Periodic Review, China – Third cycle, *Summary of Stakeholder Information*, 2018

uses death penalty, journalists, lawyers and activists are still having their basic rights violated, and certain ethnic and religious minorities are still experiencing discrimination and a lack of basic rights related to their religion. According to some human rights organisations such as Amnesty, the situation for groups such as the Uyghurs have actually worsened in the past ten years.<sup>125</sup> As such, it would be easy to paint a picture of there being no positive developments in China's handling of human rights. This would be a gross oversight however, as there have been clear advancements of human rights made at the same time, especially in relation to the right to development and the overall economic situation of the Chinese people. This development has not happened in the last decade, but is still evident as more and more Chinese, especially of the majority Han population, are able to leave behind the world of extreme poverty. However, there is little to indicate that the formidable economic development that has happened in China has been driven from a wish to introduce, or further comply with human rights. In the time since Xi Jinping was elected in 2013, many have argued that there has been a deterioration of human rights and rule of law within Chinese borders.<sup>126</sup> It certainly marks the start of a new discourse on human rights from China, launching their own understanding of rights and duties in a socialist Chinese society. Has the UPR been successful in changing China's conduct in relation to human rights? On the surface, the answer would be no. At the same time, as countless scholars have previously argued, the first step in changing a State's conduct is to get them to participate in the conversation. As such, with careful optimism one can at least say: the UPR has pushed China to examine their human rights records more thoroughly, while also defending certain aspects of their society.

## **6.2 CEDAW & CERD**

China's involvement with CEDAW and CERD has been erratic at times, with late submissions of periodic reports and even a cease in communication for a period of time. Still, it is two of the monitoring systems China has participated the most in, giving us more information to rely on. The apparatus around both committees has grown a great deal since China first submitted a periodic report, and in later years civil society has been more present in the proceedings, offering their understanding of the rights situation in the country. This is not particular to China, but a general recognition of Civil Society Organisations within the UN system. While the communications over the years show some progress for certain human rights areas, other issues are still hopelessly stuck in the same place they were in the early 1980s. Both

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<sup>125</sup> Amnesty International, *Uyghurs tell of China-Led Intimidation Campaign Abroad*, Accessed 10 August.

<sup>126</sup> Nicholas Bequelin, *China: Xi Can't Do It Alone*, Amnesty International, 18 October 2017

committees have pointed out the lack of clear definitions of racial discrimination and gender discrimination in Chinese legislation.<sup>127</sup> This is an obvious challenge when monitoring the status of human rights in a country such as China, as it will be harder to define what discrimination looks like.

As China continues to refuse ratifying optional protocols for either Convention, it is clear that any communication on human rights in China with international stakeholders will happen under the watchful eye of the State. Individual complaints would pose a major challenge to China, who has already invested enormous amount of energy and money in controlling the information flow within the country, for example by increasing the number of surveillance cameras and controlling media outlets.<sup>128</sup> The strategy of controlling what information goes in and out of the country does not go well with individuals being able to bring complaints towards the State in front of an international audience.

#### 6.2.1 CEDAW

As for CEDAW, China has taken huge strides when it comes to the rights of women. Seen from a Chinese point of view, these are low concessions to appease the international community, and not threatening to an eventual Chinese socialist agenda. The development of legislation on the area has also aligned with their overall economic goals, as women are an integral part of the workforce, indispensable when aiming for an economic development such as the one China has experienced. As such, complying with rights covered in the Convention has been a painless way for China to display compliance with human rights, placating the international community, without having to make uncomfortable changes to their own society. This is not to say that the developments in women's rights in China has not been important, as for example the opportunity to get an education will profoundly change the lives of not only the individual woman, but also for all future generations of women.

However, while women have been afforded more legal protection and rights in the past 30 years, minority women, and especially ethnic or religious minority women still lack basic human rights now offered to those of the majority Han population.<sup>129</sup> These often live in rural areas, where old, traditionalistic views of women are still prevalent. It is to be expected that women feel the force of that discrimination tenfold as it is added to the disadvantage of being

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<sup>127</sup> Ibid 118

<sup>128</sup> Cate Cadell, *China's coronavirus campaign offers glimpse into surveillance system*, Reuters, 26 May 2020

<sup>129</sup> InterNations, *Discrimination and Racism in China*, [Accessed 10 August].

a woman. As rural China lags behind the cities in development, the difference between minority women and the rest of the population may be growing.

Several issues have been brought up by the Committee in every session responding to a periodic report, such as the protection – or lack thereof – of prostitutes, and issues with gender-based violence.<sup>130</sup> In their latest submission in 2014, the Committee once again asked that the next periodic report would provide information on anti-trafficking legislation and its compliance with international standards.<sup>131</sup> The same goes for information regarding effective legal remedies for women. Legislation has developed for example when it comes to women holding land rights in China, but as pointed out by several civil society organisations, the lack of effective legal remedies, especially for women in rural areas is still a considerable obstacle to the realisation of women's rights. Even though China has shown a willingness to comply with large parts of the Convention, there are still important areas where women's rights are not well enough protected.

### 6.2.2 CERD

Similar to CEDAW, China has taken some big steps towards the realisation of CERD since the ratification of the Convention in 1981. Most notably, as stated by the Committee on several occasions, is the development of legislation protecting minorities, in addition to the implementation of programmes and policies aimed at the advancement of minorities. In general, living standards have improved also for the minority population, as displayed by for example the decrease in mortality rate. However, also similar to the situation with CEDAW, there are at times large discrepancies between the letter of the law and its practice in China. Civil Society organisations have on several occasions pointed out what they describe as widespread discrimination of particularly religious minorities, but also other kinds of minorities.<sup>132</sup> A lack of access to lawyers, and little knowledge of their own rights poses a threat to the fulfilment of the rights laid out in CERD.

While China has referenced the Constitutions from 1954, 1975 and 1978 as including explicit provisions regarding equality of nationalities and the equal rights of all citizens,<sup>133</sup> the Committee on several occasions brought up the use of torture or ill-treatment against minorities, as well as a disproportionate use of other penalties against specific groups. In its first periodic

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<sup>130</sup> Ibid, 96

<sup>131</sup> Ibid, 96

<sup>132</sup> Amnesty International, *China 2019*, [Accessed 11 August].

<sup>133</sup> Ibid, 123

report in 1983, China referenced their autonomous regions as an example of protection of, and rights afforded to, minorities in the country.<sup>134</sup> In later sessions, the Committee has several times brought up concern that China, in an attempt to alter the demographic composition of these regions, have encouraged Han people to move into the autonomous regions. This poses several challenges to the continued preservation of any minority culture, as language in education risk being changed, and as religious and cultural practices risk becoming an unwanted element.

The situation for the Tibetans and Uyghurs has been a concern for the international community since 1987. According to international NGOs such as Amnesty, Free Tibet and Human Rights Watch, Uyghurs, Tibetans, Falun Gong and other minorities still experience discrimination.<sup>135</sup> Still, when reading accounts from NGO's working with these groups, little seems to have happened to improve the situation of those minorities. The repeal of legislation on re-education through labour in 2013 could have been a break-through for the treatment of minorities in China. However, the system of similar camps still exists in China for example in the Xinjiang region under a different name, "Vocational Education and Training Centres". While China claim them to be voluntary re-education, this is not what actual detainees describe<sup>136</sup>. Also, while China acknowledges the existence of several groups of indigenous people within their borders, the protection of their rights under CERD is unsure on several accounts. In their General Recommendation No. 23, the Committee clarifies their understanding of the rights of indigenous peoples, calling upon State parties to ensure equality in dignity and rights for all people, to allow conditions for sustainable economic and social development compatible with cultural characteristics, and to ensure equal participation in public life.<sup>137</sup> As evident by the communications between China and the Committee, it has been, and still is a concern that China does not fulfil these obligations of the Convention, for example by allowing the Uyghurs to practice their religion, or allow the Tibetans to practice their language. Although there have been positive developments in legislation and actual rights, reports from civil society shows there is still a long way to go before all minorities enjoy equal rights in China.

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<sup>134</sup> Ibid

<sup>135</sup> UN Treaty Body Database, China, cycle XIV-XVII, *Info from Civil Society Organizations*, 2018.

<sup>136</sup> Amnesty International, *Up to one million detained in China's mass "re-education" drive*, 2018.

<sup>137</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23 – Indigenous Peoples*, 1997

### **6.3 Discussion: Does the human rights monitoring system work as intended?**

In accordance with the theory of the persistent power of human rights (PPHR), international monitoring systems are after all accounts more effective on small, materially vulnerable States than on powerful States such as China.<sup>138</sup> As such, coercion has little effect on China, as according to Kinzelbach their material power is simply too great. This does not however, as previously discussed in chapter 3.2.1.3, mean that the other social actions described in the persistent power of human rights will not work. The question is whether or not the monitoring systems for CERD, CEDAW and the UPR manages to utilise the other actions in a meaningful way to ensure a higher degree of compliance from any given state. Persuasion, capacity building and sanctions / rewards are tools available when convincing a State to change its conduct, but it is not obvious that the sessions with the monitoring committees is the arena where these tools are best utilised. Here it is important to point out the particular position of China, both relating to its size, its economic- and its military power, along with a long authoritarian history. These conditions set China apart from most other countries when dealing with international discourse on human rights.

Persuasion is present in the communications from the Committees of CEDAW and CERD, as they commend a State, in this instance China, for amendments or changes made to comply with human rights, all the while trying to display a link between concessions already made and future changes that would increase compliance with those rights. This however seems to have little effect unless the State itself finds further compliance with a given Convention beneficial. Capacity-building is also present to a minor degree as in the case of China, where the Committee will encourage and focus on measures to be implemented in rural areas, i.e. areas where limited statehood may pose a challenge. The process of going through State reports and discuss the situation of human rights in a State will also likely create ground for potential cooperation programs aimed at capacity building, as the different states will get a better idea of what areas exist where they have aligning interests. Sanctions does not really exist within the scope of the monitoring systems, particularly not when a State has not recognised the Committee's competence on individual complaints. However, the discussions gain attention from media and overall society, giving NGO's and human rights defenders a much-needed stage to present their issues on. This may possibly lead to for example economic sanctions from other, more powerful States if severe violations of human rights are discovered. Of course, this is less likely to happen in the case of powerful states like China.

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<sup>138</sup> Ibid, 35

As to the question of whether the monitoring systems work as intended in furthering the compliance with human rights, the answer probably varies depending on who you ask. The monitoring and reporting in itself do not imply compliance with human rights. However, having the international spotlight directed towards oneself, tactical concessions or other changes may be made in order not to look bad. As far as the intention of the sessions is to create a space for discussion and conversation on the human rights performance of each country, it does have its usefulness and work in giving basic human rights attention and focus in a busy and chaotic international agenda. Then again, if one were to ask NGO's, human rights lawyers or activists if the monitoring systems are working, the answer would most likely be no. It is in the nature of these groups to be impatient for change, and the UN system does not work quickly. Seeing thousands of thousands of people from a minority group suffer for years under the hands of a state like China is frustrating for those who do not have to think about international order but are simply working on improving the conditions for one specific group.

Considering the communications previously examined between China and CEDAW / CERD, there is reason to be carefully optimistic of the effect of the monitoring systems. As far as for legislation and development, it becomes clear that China has taken huge strides since its first reporting cycles. In the case of both Conventions, Chinese legislation has changed since the first periodic reports to provide better protection for several rights mentioned in the Conventions. Laws on discrimination, the rights of women and minorities, the mentioning of human rights in the constitution, several white papers on the subject and amendments to the criminal law gives the impression of a State gradually becoming more compliant with human rights. Considering this, the monitoring systems have undoubtedly had an effect, as in pushing the State to amend several parts of its legislation. While there may be discrepancy between the letter of the law and its de facto application in Chinese society, it is still a step in the right direction, and must be considered a victory for human rights.

This makes the deterioration of human rights in China under Xi Jinping all the more devastating for those organisations pushing for change inside the country. Where there for a long time was a positive development regarding the protection of minorities, women and overall human rights, it seems like the current administration is more intent on changing the discourse on human rights to align with overall Chinese interests. Although the committees of both CEDAW and CERD has commended China for its efforts in changing legislation, important puzzle pieces such as a clear definition of racial discrimination and discrimination against women is still not included in the law. At the same time, technological development has made

it possible for China under Xi Jinping to expand their surveillance, again leading to harder strike downs on minority groups.

All in all, the different sessions discussing State reports on the human rights situation may give the impression of being pre-rehearsed shows with little effect for the individual suffering under human rights violations. As everyone knows who will be saying what before a meeting has even started, the meetings in themselves does little to further compliance with human rights. Nevertheless, the process leading up to the actual review/report may have a bigger impact on human rights in a society. Coercion, persuasion, and especially the weight of an international media spotlight may spur States into action where they otherwise would be contained to let status quo remain. For example, the UPR together with reviews by the Committees of CEDAW and CERD has undoubtedly given much needed attention to the plight of ethnic minorities in China such as the Tibetans and the Uyghurs.

## **7 Conclusion**

Human rights in China is a vast and complicated topic, coupled with a history that is richer and longer than for most other states. For the past 30 years, China has attempted to reconnect with the international community, including trying to change how the country is perceived in regard to human rights. As mentioned in the introduction, China takes active part in several United Nations-based mechanisms such as the UPR in order to accomplish this. By analysing China's communications with CEDAW, CERD and the UPR, this thesis has aimed at documenting the effect of international monitoring systems on a State's conduct on human rights. As shown through textual analysis of the situation in China in the early 80s compared to today, there has been a clear development in regard to certain human rights, while others have stagnated. Theoretically, human rights are afforded more protection in today's Chinese society than in the 20<sup>th</sup> century, as legislation, programmes and policies have been implemented with the supposed aim of furthering human rights. However, as evident by information from civil society as well as communication with UN monitoring systems, there is at times a big difference between what China says and what they do.

So, does the international monitoring system succeed in changing a State's conduct on human rights issues? Any conclusion based on the case study of only one country has obvious limitations, but it may give an indication as to the larger answer. In the case of China, it seems apparent through the development of human rights in the country that yes, the international monitoring systems have worked, at least to some extent. Working on the assumption that

China belongs to a category of States particularly difficult to influence due to their strength and power, this bodes well for the function of international monitoring systems in relation to smaller and weaker states. Especially in later years, where civil society organisations have been included in the reviewing process, there is reason to believe that the system has had a positive effect on states' conduct, because the pressure from groups, organisations, and media both nationally and internationally will force a State into a conversation on their own conduct. However, it is important not to exaggerate the effectiveness of the monitoring systems, as the lack of sanctions or other means of remedies leaves much up to the State in question, and potential threats of sanctions from other States outside of the system with reporting and reviewing each other. A system as large as the UN system will be inherently slow in creating change, which for many smaller human rights actors may be a frustrating process. However, there is a good chance the changes eventually made will be stronger and longer lasting, as a result of the long processes to get there. Using the Persistent power of human rights, it is likely the system is more effective on materially vulnerable states that are also socially vulnerable in that they care about international perception. The stronger a State is, both in term of economic and military power, the less effective the system will be. This is exemplified by China, who in recent years have put more effort into changing the international discussion around, and perception of, human rights rather than changing their conduct.

On the question of whether international monitoring and subsequent recommendation have affected China's conduct on human rights, this thesis leads to the answer being both yes and no. China does interact more with the international community on the subject of human rights now than it did before. There has also been progress that it is unlikely would have happened without the monitoring systems, if not for anything else, then because the monitoring contributes to shining a spotlight on human rights abuses. Still, the State has maintained their position that "there is no universal idea of human rights"<sup>139</sup>, and in later years have taken steps to clarify their own understanding of the concept, based on Chinese socialist thinking. This may prove to become a bigger obstacle in the future, as we see China caring less about international opinion than before. In addition, a new leader has emerged, who has proven on several occasions that human rights are not a priority. The abolishment of re-education camps serves as an example of a window of optimism from the international community, that has later been proven wrong as similar camps still exist in certain regions in China. Major issues are still left unresolved, such as China not having ratified the ICCPR, are there is little to suggest that this

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<sup>139</sup> Ibid, 7

will change in the near future. Under the disguise of national security and combating religious extremism, the Chinese government has launched a surveillance campaign on their own population, with the social credit system and mass surveillance being rolled out in the whole country. At the same time, there may be less domestic demand for change at the moment, as many Chinese are experiencing a quality of life, e.g. living conditions and increase in income, previously unprecedented in the country.

Based on this study, it may seem like international monitoring systems have little effect on powerful states. At the same time, we should not underestimate the effect these reviews have, both by starting an international conversation on human rights violations, and by giving actors fighting for human rights a voice. In the case of China, the international monitoring system has succeeded in changing the state's conduct on human rights issues to *a certain degree*. But it seems unlikely that this would have happened if China had not seen it as *beneficial* for themselves. Under Xi Jinping priorities have shifted towards a stronger, more influential China, no longer content with the western view of human rights, and wishing to set the agenda on these issues for themselves. China has the power to shift the international conversation, and as such, the monitoring system will likely not be effective in ensuring more compliance with human rights in the years to come.

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