

China and the International Legal System: Challenges of Participation*

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ABSTRACT During the past decade, the Chinese government has pursued greater engagement with a range of international legal regimes. China's expanded participation in international regimes for trade and human rights, for example, can provide deeper understanding of the factors influencing China's international behaviour. Building upon scholarly perspectives about institutional compliance with treaty texts and the influence of local conditions on China's policies and practice, this article examines China's participation in international legal regimes for trade and human rights in light of dynamics of normative engagement and the paradigm of selective adaptation. Normative tensions help explain China's policies and practices on compliance with the WTO trade regime, while the imperative of normative engagement helps explain much about China's international human rights diplomacy.

When *The China Quarterly* published its last review of the Chinese legal system, China's participation in the international legal order was seen as uncertain and potentially problematic.¹ During the past decade, the Chinese government has pursued greater engagement with a range of international regimes, opening the economy more fully to foreign trade and investment, engaging in human rights diplomacy and intensifying participation in international institutions.² This has allowed China's international relations behaviour to be understood better, in terms of rational choice and self-interest, sovereignty concerns, cultural distinctiveness and victimization, and responses to globalization.³

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1 James V. Feinerman, "Chinese participation in the international legal order: rogue elephant or team player?" in *The China Quarterly*, No. 141 (1995), pp. 186–210.

2 John Wong and Zheng Yongnian (eds.), *The Nanxun Legacy and China's Development in the Post-Deng Era* (Singapore: Singapore University Press and World Scientific Press, 2001). Samuel S. Kim, "Human rights in China's international relations," in Edward Friedman and Barrett L. McCormick (eds.), *What if China Doesn't Democratize? Implications for War and Peace* (Armonk, NY: M.E. Sharpe, 2000), pp. 129–62. Anne Kent, "China's international socialization: the role of international organizations," in *Global Governance*, Vol. 8 (2002), pp. 343–64; Mark Lanteigne, *China and International Institutions: Alternate Paths to Global Power* (New York: Routledge, 2005).

3 Alastair Iain Johnston and Robert S. Ross (eds.), *New Directions in the Study of China's Foreign Policy* (Stanford: Stanford University Press, 2006); Avery Goldstein, *Rising to the Challenge: China's Grand Strategy and International Security* (Stanford: Stanford University Press, 2005). Allen Carlson, *Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era* (Stanford:

China's expanded participation in international regimes also has the potential to support deeper understanding of the factors influencing its international law behaviour. Scholarly perspectives have tended generally to emphasize China's engagement with the international legal system in terms of compliance with treaty texts,⁴ or to focus on local factors influencing China's behaviour.⁵ These institutional and contextual perspectives come together through the paradigm of selective adaptation, which looks at the ways that interpretation of international rule regimes is mediated by local norms.⁶ Focusing on the period since *The China Quarterly's* previous review, this article will examine China's participation in international legal regimes for trade and human rights in light of the dynamics of normative engagement and the paradigm of selective adaptation.

Perspectives on China's Engagement with International Legal Regimes: The Role of Selective Adaptation

In contrast to expectations about convergence that suggest development towards a globally unified system of institutional practices and values,⁷ selective adaptation explains variations in local reception of non-local standards by reference to the extent of normative consensus.⁸ It suggests that local implementation of non-local rule regimes depends on the extent to which their underlying norms are received by local interpretive communities.⁹ In the course

footnote continued

Stanford University Press, 2005). Rana Mitter, "An uneasy engagement: Chinese ideas of global order and justice in historical perspective," in Rosemary Foot, John Gaddis, and Andrew Hurrell (eds.), *Order and Justice in International Relations* (Oxford: Oxford University Press (2003), pp. 205–35; Anne-Marie Brady, *Making the Foreign Serve China: Managing Foreigners in the People's Republic* (Lanham MD: Rowman & Littlefield, 2003). Phillip C. Saunders, "China's global activism: strategy, drivers, and tools," Institute for National Strategic Studies Occasional Paper No. 4 (Washington: National Defense University Press, 2006); Yong Deng and Thomas G. Moore, "China views globalization: toward a new great power politics?" *Washington Quarterly*, Vol. 27, No. 3 (2004), pp. 117–36; Dwight Perkins (ed.), "A wary welcome: China and globalization," *Harvard China Review*, Vol. 5, No. 1 (2003).

- 4 On trade, see e.g. Deborah Cass, Brett G. Williams and George Barker (eds.), *China and the World Trading System: Entering the New Millennium* (Cambridge: Cambridge University Press, 2003); Donald C. Clarke, "China and the World Trade Organization," Freshfields (ed.), *Doing Business in China* (looseleaf) pp. I-11.1–I-1.30; on human rights see e.g. Ann Kent, *China, the United Nations, and Human Rights: The Limits of Compliance* (Philadelphia: University of Pennsylvania Press, 1999).
- 5 On trade see e.g. Kong Qingjiang, *China and the World Trade Organization: A Legal Perspective* (Singapore: World Scientific Publishing, 2002); on human rights see e.g. Karin Buhmann, *Implementing Human Rights Through Administrative Reforms: The Potential in China and Vietnam* (Copenhagen: Djof Publishing, 2001).
- 6 Pitman B. Potter, "Legal reform in China – institutions, culture, and selective adaptation," *Law & Social Inquiry*, Vol. 2, No. 4 (2004), pp. 465–95.
- 7 Ugo Mattei. *Comparative Law and Economics* (Ann Arbor: University of Michigan Press, 1997); David Trubek et al., "Global restructuring and the law: the internationalization of legal fields and the creation of transnational arenas," *Case Western Reserve Law Review*, Vol. 44, No. 2 (1994), pp. 407–98.
- 8 For discussion of the intersection of norms with identity and community, see Roberto Unger, *Knowledge and Politics* (New York: Free Press, 1975). Also see Amitai Etzioni, "Social norms: internalization, persuasion, and history," *Law & Society Review*, Vol. 34, No. 1 (2000), pp. 157–78.
- 9 For discussion of interpretive communities, see Stanley Fish, *Is There a Text in This Class: The Authority of Interpretive Communities* (Cambridge MA: Harvard University Press, 1980).

of this process, interpretive communities selectively adapt non-local standards for local application in light of their own normative perspectives.

The process involves dynamics of perception, complementarity and legitimacy. Perception of the content and operation of international law standards determines the ways that communities will interpret and apply them.¹⁰ This may involve relatively simple elements of translation of international trade and human rights standards, or reveal more complex factors of cognition, ranging from diversity of understanding to cognitive dissonance and denial. Complementarity describes how apparently contradictory phenomena are combined in ways that preserve the essential characteristics of each component, and yet may allow them to operate together in a mutually reinforcing and effective manner.¹¹ Complementarity between international and local practices and values informs the dynamics of local accommodation and resistance to international standards. Legitimacy concerns the extent to which members of local communities accept the purposes and consequences of selective adaptation.¹² This may involve factors ranging from personal preferences born of individual circumstances and interests, to broader social perspectives of idealism, nationalism and identity that inform responses to procedural or substantive dimensions of international law standards.

Applied to China, selective adaptation analysis permits understanding of local responses to international legal obligations. China's interpretation and implementation of international agreements in trade, such as the General Agreement on Tariffs and Trade (GATT) and agreements associated with the World Trade Organization (WTO), for example, will depend on the extent to which interpretive communities – comprising government officials, socio-economic and professional elites, and other privileged groups exercising authority borne of political and/or professional position, specialized knowledge, and/or socio-economic status – assimilate norms of trade liberalization.¹³

Influenced by their training and education, members of China's interpretive communities bring their perceptions about international law and relations to bear in responding to the requirements of international rule

10 See e.g. David Kennedy, "Receiving the international," *Connecticut Journal of International Law*, Vol. 10, No. 1 (1994), p.1.

11 Niels H. D. Bohr, *Essays, 1958–1962, on Atomic Physics and Human Knowledge* (New York: Interscience Publishers, 1963); Okifira Seliktar, "Identifying a society's belief system," in Margaret Herman (ed.), *Political Psychology* (San Francisco: Jossey-Bass, 1986).

12 Max Weber (ed. Roth and Wittich), *Economy and Society* (Berkeley & Los Angeles: University of California Press, 1978); Fritz W. Scharpf, "Interdependence and democratic legitimation," in Susan J. Pharr and Robert D. Putnam (eds.), *Disaffected Democracies: What's Troubling the Trilateral Countries* (Princeton: Princeton University Press, 2000); Stephen P. Turner and Regis A. Factor, *Max Weber: The Lawyer as Social Thinker* (London: Routledge, 1994).

13 On interpretive communities in China, see H. Lyman Miller and Liu Xiaohong, "The foreign policy outlook of China's 'third generation' elite," and Joseph Fewsmith and Stanley Rosen, "The domestic context of Chinese foreign policy: does 'public opinion' matter?" both in David M. Lampton (ed.), *The Making of Chinese Foreign and Security Policy* (Stanford: Stanford University Press, 2001), pp. 123–50 and 151–87.

regimes.¹⁴ Perceptions contrasting China's colonial past and resulting weakness in foreign relations with its current strengths tend to encourage both a sense of grievance and of opportunities for correction and redress.¹⁵ Perception dynamics are also evident in academic and policy assessments of the international legal system that acknowledge the challenges posed by globalization for sovereignty imperatives of the nation-state generally, and focus on the intrusive nature of international regimes whose underlying norms are seen as a challenge to China.¹⁶ Such perceptions affect the reception of international legal standards by local interpretative communities, and ultimately China's responses of implementation.

Local analyses of China's participation in the international system tend to emphasize the need for compatibility with China's systemic and substantive requirements (complementarity).¹⁷ In addition, the status of international law as a binding standard for Chinese domestic law remains the subject of intense debate, suggesting once again the link between complementarity and acceptance of international standards.¹⁸ Dynamics of legitimacy are also evident. Although China's academic and policy discourses as well as its behaviour in international law are in some respects aimed at building legitimacy with local audiences, the pursuit of legitimacy in the international community explains much about China's engagement with international legal regimes.¹⁹ Thus, understanding China's increased participation in the international legal system invites appreciation of issues of normative engagement, as international standards are selectively adapted by interpretive communities influenced by factors of perception, complementarity and legitimacy.

International regimes for trade and human rights offer useful examples of the ways that international standards are received by local interpretive communities. China's growing economic power seems to affirm support for its accession to the

14 See e.g. Zeng Lingliang, "21 shijie falu fuwu maoyi de fazhan qushi yu Zhongguo faxue rencai peiyang de yong you gaige" ("Development trends in 21st-century trade in legal services and needed reforms in training of China's legal talents"), *Faxue pinglun (Law Review)*, No. 1 (2001), pp. 3–8; Xiao Yongping, "Falu de jiao yu xue zhi geming" ("Revolution in teaching and studying law"), *Faxue pinglun*, No. 3 (2003), pp. 153–60.

15 See e.g. Li Baojun, *Dangdai Zhongguo waijiao gailun (Treatise on Contemporary Chinese Foreign Policy)* (Beijing: People's University Press, 1999); Wang Yinzhou, *Quanqiu zhengzhi he Zhongguo waijiao (Global Politics and China's Foreign Policy)* (Beijing: World Knowledge Press, 2003).

16 Rao Geping and Huang Yao, "Lun quanqiuhua jincheng yu guoji zuzhi de hudong guanxi" ("On mutual impacts of globalization processes and international organizations"), *Faxue pinglun*, No. 2 (2002), pp. 3–13. Liu Shuguang, *Quanqiuhua yu fan quanqiuhua (Globalization and Anti-Globalization)* (Changsha: Hunan People's Press, 2003), esp. pp. 103–66. For response to such resistance, see He Qinghua, "Fa de yizhi yu fa de bentuhua" ("Legal transplanting and localization of law"), *Zhongguo faxue (Chinese Legal Studies)*, No. 3 (2002), pp. 3–15.

17 See e.g. Li Dexi, Qian Zhen and Lin Zhe, *Quanqiu beijing xia de Zhongguo minzhu jianshe (Development of Democracy in China under the Global Background)* (Chongqing: Chongqing Press, 2005), based on a policy conference at the authoritative Central Party School. Also see Gao Gangjun, "Zhongguo de heping fazhan yu guoji fa de jiazhi tixi" ("China's peaceful development and the value system of international law"), in *Faxue pinglun*, No. 3 (2006), pp. 104–10.

18 See e.g. Zhang Shaodong, "Ye lun guoji tiaoyue zai woguo de shiyong" ("Again examining the application of international treaties in China"), *Faxue pinglun*, No. 6 (2001), pp. 73–79.

19 See e.g. Jiang Xiyuan, "An analysis on changing international system and its acceptance of China," *International Review*, Vol. 39 (2005), pp. 19–36.

WTO,²⁰ while its participation in international human rights regimes suggests the potential for expanded engagement.²¹ However, in each of these areas, questions persist concerning China's compliance with international obligations, and the extent of the government's commitment to fundamental norms underlying international trade and human rights regimes. While one element of compliance centres on the capacity of regulatory institutions, normative engagement is also important and may be understood by reference to the dynamics of selective adaptation.

China and the WTO: Accession and Compliance

Begun in 1986, China's application for readmission to the WTO reflected a conflicting array of local policy priorities, including entrenchment of economic reforms and the pursuit of broader international institutional influence. China's accession to the WTO has not been without controversy domestically and internationally, however.²² Questions about GATT/WTO accession within China pressured the government to resist concessions,²³ while internationally many WTO members expressed concerns over Chinese capacity to comply with GATT principles.²⁴ A core question involves normative engagement with the disciplines of the GATT/WTO system.

Reception of international governance norms

While China's accession to the WTO is often portrayed as a matter of economics and commerce, it also involves fundamental issues of governance. The WTO working party's final report on the accession of China, tabled at the Fourth Session of the WTO Ministerial Conference in Doha in November 2001 and using records from the 14 years since 1987, revealed the extent of the concern over numerous apparent conflicts and inconsistencies between Chinese trade policy and regulatory practice and GATT/WTO standards.²⁵ While the Protocol on the Accession confirmed China's entry to the WTO, the document also

20 See "Workshop on China and the world economy," Atlantic Council, 2006; UN Conference on Trade and Development, *China in a Globalizing World* (New York & Geneva: United Nations, 2005).

21 See Randall Peerenboom, *China Modernizes: Threat to the West and Model for the Rest?* (Oxford: Oxford University Press, 2007), ch. 3.

22 Sylvia Ostry, Alan S. Alexandroff and Raphael Gomez (eds.), *China and the Long March to Global Trade: The Accession of China to the World Trade Organization* (New York and London: Routledge, 2002); Council on Foreign Relations, *Beginning the Journey: China, the United States and the WTO* (New York: Council on Foreign Relations, 2001).

23 See e.g. "China sets deadline for GATT re-entry, slams US 'road blocks'," *Agence France Presse English Wire*, in *China News Digest Online* (10 July 1994); "Foot-stomping helps China in GATT bid," *South China Morning Post*, in *China News Digest Online* (1 August 1994); "China vows not to beg for WTO membership," *China News Digest Online* (23 September 1995).

24 See Draft Protocol on China (1997), prepared by the Working Party on the Accession of China to the WTO. While this document emerged from extensive negotiations between the WTO Working Party and the Chinese, it still contains useful examples of the concerns raised by the US and other OECD countries on issues such as transparency, enforcement, etc.

25 "Report of the working party on accession of China" WT/MIN(01)/31 (10 November 2001).

highlighted many challenges of institutional reform that would be needed to secure long-term sustainable compliance.²⁶

Transparency and rule of law are among the most important of the GATT/WTO governance standards that have challenged norms and practices in China. GATT Article X requires publication of trade regulations, and uniform, impartial and reasonable administration of laws and regulations. These reflect liberal norms about government accountability and limits to state intrusion in private economic affairs.²⁷ In addition, the GATT places significant emphasis on state responsibility for ensuring local compliance. Article XXIV(12) requires each contracting party to take “necessary measures” to ensure observance of the GATT by regional and local governments and authorities.²⁸ These reflect assumptions about the capacity of national governments to ensure local level compliance through central legislation and regulatory edicts.²⁹

Yet there has been conflicting reception of these governance standards in China.³⁰ On one hand, the government has enacted and revised legislation and administrative regulations in many economic sectors, including intellectual property, trade in services, investment and environmental protection, to accommodate WTO disciplines.³¹ Recent efforts to establish systems of public hearings in anticipation of legislation at the central and provincial levels suggest increased efforts to build popular participation in rulemaking.³² In addition, the government seems willing to rely on provisions of GATT Article XXIV to assert greater controls over local authorities, augmenting constitutional interpretations subordinating local autonomy to central authority under the principle of the unitary state.³³

26 *Protocol of Accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization*, WLI/100 2 (10 November 2001).

27 See generally, John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (Cambridge MA: MIT Press, 1989); John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge: Cambridge University Press, 2000), pp. 507–11.

28 See *International Legal Materials*, 1994, Vol. 33, p. 1161. This provision has been amplified by the “Understanding on the interpretation of Article XXIV of the General Agreement on Tariffs and Trade” attached to the Uruguay Round, which requires signatory states to be “fully responsible ... for the observance of all provisions of GATT 1994” and are required to “take such reasonable measures as may be available ... to ensure such observance by regional and local governments and authorities.”

29 See generally, Jeffrey S. Thomas and Michael A. Meyer, *The New Rules of Global Trade: A Guide to the World Trade Organization* (Scarborough ONT: Carswell, 1997), pp. 65–66; John H. Jackson, *The Jurisprudence of GATT & the WTO: Insights on Treaty Law and International Relations* (Cambridge: Cambridge University Press, 2000), ch.18.

30 Congressional-Executive Commission on China, *2005 Annual Report*, Section V(f): Commercial rule of law and the impact of the WTO; Susan Krause, “China’s industrial policies conflict with WTO rules, experts say,” *Washington Post*, 2 June 2005.

31 Zhang Guihong, “WTO dui Zhongguo falu de yingxiang” (“Effects of WTO on Chinese law”), *Zhongguo faxue (Chinese Legal Science)*, No. 4 (2001), pp. 182–85.

32 National Democratic Institute, *Development of Legislative Hearings in China: A Report on NDI's Seminar on Local Legislative Hearings and Local Governance* (2003). Also see the US State Department Bureau of Democracy, Human Rights and Labor’s “Human rights and democracy fund” project list, which includes a number of programmes accepted by China on public participation in rule-making (<https://www.state.gov/g/drl/rls/57669.htm>).

33 Gui Yushi and Chai Yao, “Guanyu woguo difang lifa de jige wenti” (“Several issues in our local legislation”) in *Faxue pinglun*, No. 5 (2004), pp. 103–11 at p. 108; Zhuo Yue, *Difang renda jiandu jizhi yanjiu (Study of the Supervisory System of Local People's Congresses)* (Beijing: People's Press, 2002).

On the other hand, normative assimilation remains uncertain. Problems with transparency continue to recur in areas of public input to lawmaking, access to information on trade policy and regulation, and judicial review.³⁴ The resilience of non-transparent practices by administrative institutions and review agencies is acknowledged by Chinese observers.³⁵ China's governance norms expressed in the State Council's white paper on political democracy³⁶ raise questions as to whether principles about transparency and accountability will impose significant limits on conduct by government agencies. Reverence for principles of state sovereignty also works to limit the application of GATT/WTO dispute resolution mechanisms deemed in conflict with China's institutional arrangements.³⁷

Questions about compliance with substantive standards

China's accession to the WTO also mandates engagement with substantive rules. Questions about China's performance of WTO market access commitments in areas of telecommunications, banking and insurance,³⁸ and the current WTO dispute with the European Union, Canada and the United States over China's imposition of high duties on imported car assembly kits,³⁹ suggest the influence of economic and bureaucratic interests. Yet an examination of intellectual property rights and anti-dumping suggests that additional factors of normative engagement are also involved.

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights incorporates into the WTO system provisions of the 1967 Paris Convention on Industrial Property, the 1971 Berne Convention on Copyrights and a number of other agreements.⁴⁰ Of particular importance is Part III on enforcement of intellectual property rights, which requires that member states ensure that enforcement procedures are available to permit effective action against infringements through civil and administrative procedures and remedies, injunctions, and the imposition of compensatory remedies. In furtherance of its obligations under this Agreement, China has enacted national and local

34 US Trade Representative, *2006 Report to Congress on China's WTO Compliance* (2007), pp. 96–98.

35 Shen Kaiju, "WTO yu woguo xingzheng caijue zhidu gongzhengxing yanjiu" ("Study of fairness in the administrative arbitration systems of the WTO and China"), *Zhongguo faxue*, No. 5 (2002), pp. 68–77 at pp. 73–74 and 76–77; Shi Youqi, "WTO dui Zhongguo xingzheng fazhi jianshe de yingxiang" ("Effects of WTO on development of China's administrative law system"), *Zhongguo faxue*, No. 1 (2001), pp. 11–24 at pp. 18–19.

36 State Council Information Office, *White Paper: Building of Political Democracy in China* (2005) (<http://www.china.org.cn/english/features/book/145877.htm>).

37 See generally, Zhang Naigen, "Lun WTO zhengduan jie jue jizhi de jige zhuyao guoji fa wenti" ("On several important international law issues in the WTO dispute resolution system"), in *Faxue pinglun*, No. 5 (2001), pp. 51–58.

38 Andrew C. Mertha and Ka Zeng, "Political institutions, resistance and China's harmonization with international law," *The China Quarterly*, No. 182 (2005), pp. 319–37.

39 "China 'regrets' auto parts decision," *China Daily*, 30 October 2006.

40 See Christopher Arup, *The New World Trade Organization Agreements: Globalizing Law Through Services and Intellectual Property* (Cambridge: Cambridge University Press, 2000). The text of the TRIPs Agreement appears in World Trade Organization (ed.), *The Legal Texts: The Results of the Uruguay Round* (Cambridge: Cambridge University Press, 1999), pp. 321–53. Also see *International Legal Materials*, Vol. 33 (1994), p. 1197.

legislation and regulations and strengthened central and local institutions for intellectual property rights enforcement.⁴¹

However, enforcement continues to be problematic.⁴² Despite periodic public campaigns to improve it, an observed “epidemic” of pervasive intellectual property violations continues.⁴³ Industry estimates suggest piracy rates in China at between 85 and 93 per cent across all sectors, while internet piracy and end-user piracy of business software, books and journals continue: China’s share of infringing goods seized at the American border is ten times that of any other US trading partner.⁴⁴ Problems range from lax enforcement of existing laws to use of pirated goods in government offices and corruption in the court system. Legal and policy analyses supporting integration of international intellectual property standards with local conditions reveal ongoing resistance to full assimilation of international regime norms.⁴⁵ While notable examples of enforcement have emerged, such as the decision of the Shanghai No. Two Intermediate People’s Court upholding Starbucks’ trademark rights, these appear to be the exception rather than the rule.⁴⁶ Despite repeated assurances of conformity from China,⁴⁷ the lengthy pattern of non-enforcement raises troubling questions about its commitment and capacity to comply with WTO disciplines.

As a second example, China has long been a regular target for anti-dumping and anti-subsidies actions by its trading partners.⁴⁸ Its admission to the WTO has had little apparent impact on this process, largely due to the difficulties in applying GATT disciplines to China’s transitional economy.⁴⁹ Up to the end of

- 41 Volker Pasternak, “Introduction: China’s intellectual property regime,” in Freshfields, *Doing Business in China*, pp. III-10.1.1–III-10.1.28.
- 42 Comments of deputy Secretary of State Robert B. Zoellick at Hearing of the House International Relations Committee (10 May 2006); Joseph A. Massey, “The emperor is far away: China’s enforcement of intellectual property rights protection, 1986–2005,” National Committee on US–China Relations (2005); Andrew Yeh, “China’s piracy problems remain severe,” *Financial Times*, 14 September 2005; Peter S. Goodman, “China a weak ally on piracy: country proves to be problematic partner in cutting theft,” *Washington Post*, 4 June 2005; Jeffrey A. Bader, “China’s implementation of its WTO commitments: mixed results after two years,” Atlantic Council (October 2003).
- 43 “Oral remarks of Robert A. Kapp, President United States–China Business Council to the Trade Policy Staff Committee hearing on China’s progress in implementing its WTO accession commitments,” 23 September 2004.
- 44 “China’s enforcement of intellectual property rights and the dangers of the movement of counterfeit and pirated goods into the United States” (prepared statement of Assistant US Trade Representative Timothy P. Stratford before the US–China Economic and Security Review Commission), 7 June 2006.
- 45 See e.g. Feng Jiehan, “Zhongguo zhishi chanquan baohu: Renzhong de daoyuan” (“Intellectual property protection in China: the burden is heavy and the road is long”), in *Faxue pinglun*, No. 1 (2006), pp. 80–85.
- 46 Geoffrey A. Fowler, “China: Starbucks wins China case over trademark,” *The Wall Street Journal*, 3 January 2006.
- 47 Shi Jiangtao, “China: plea for understanding in war against piracy,” *South China Morning Post*, 12 April 2006.
- 48 See e.g. Yang Guohua, “Respond to anti-dumping complaints vigorously,” *Beijing guoji maoyi (Beijing International Trade)*, 20 January 1998, in FBIS-CHI-98-077 (18 March 1998); Lei Wang, “China’s difficulties and concerns as a respondent in antidumping proceedings,” *World Competition Law and Economic Review*, Vol. 19, No. 3 (1996), pp. 55–58.
- 49 Julia Ya Qin, “WTO regulation of subsidies to state-owned enterprises (SOEs) – a critical appraisal of the China accession protocol,” *Journal of International Economic Law*, Vol. 7, No. 4 (2004), pp. 863–919.

2005, China was the subject of 338 anti-dumping measures filed by WTO member economies.⁵⁰ Its response seems aimed mainly at strengthening its legal and regulatory framework to support defences against anti-dumping actions filed abroad. Under the Regulations on Responding to Anti-Dumping Suits (2001), the Ministry of Foreign Trade and Economic Co-operation (later made a division under the Ministry of Commerce) is authorized to co-ordinate legal defences against foreign anti-dumping suits, thereby ensuring that individual cases are subordinated to national trade policy.⁵¹ In addition, China incorporated GATT/WTO provisions on subsidies and dumping into its own Foreign Trade Law (1994, revised 2004) and associated regulations,⁵² to support retaliation against other economies in response to anti-dumping and anti-subsidy actions.

Local interpretations often portray the WTO anti-dumping regime as an effort to privilege state interests and promote protectionism.⁵³ Moreover, the close intersection between government and business in China's foreign trade sector heightens the potential for politicized interpretations of GATT restrictions on the permitted range of anti-dumping and countervailing duties available to China's trading partners.⁵⁴ Ongoing political pressure on trading partners to affirm China's status as a market economy seems aimed at altering the criteria for assessing anti-dumping and countervailing duties on Chinese exports.⁵⁵ The recent textile dispute with the EU exemplifies the difficulties in reconciling China's trade practices with its WTO commitments.⁵⁶ While China's official explanations tend to emphasize its natural low-cost production conditions,⁵⁷ its pricing practices, supported by state-controlled labour

50 WTO Statistics (www.wto.org/english/tratop_e/adp_e/adp_e.htm#statistics). Also see "China remains top anti-dumping target," *Xinhuanet*, 1 November 2004; "Anti-dumping," *The Economist*, 13 May 2006, p. 102.

51 "Regulations on responding to anti-dumping suits," *China Economic News*, 7 January 2002, pp. 11–13.

52 See "PRC Foreign Trade Law (Revised)," *China Law & Practice*, Vol. 18, No. 4 (2004), pp. 34–47. The earlier text of the law appears at "Foreign Trade Law of the PRC, 1994," *China Economic News*, 23 May 1994, p. 8 and 30 May 1994, p. 7. See "Anti-dumping regulations of the PRC," in *China Economic News* supplement No. 3 (2002) (supplanting "Anti-dumping and anti-subsidy regulations of the People's Republic of China, 1997"). Also see J. Shen, "A critical analysis of China's first regulation on foreign dumping and subsidies and its consistency with WTO agreements," *Berkeley Journal of International Law*, Vol. 15 (1997), p. 295; M. Zheng, "Regulations on antidumping, countervailing duties adopted," *East Asian Economic Reports*, 15 February 1997, pp. 9–13.

53 See e.g. Ling Huiming, "WTO fan qingxiao fa de hongguan fenxi" ("Macro analysis of WTO anti-dumping law"), in *Faxue pinglun*, No. 4 (2003), pp. 74–78.

54 See P.M. Norton and K.W. Almstedt, "Defending dumping claims: exporters to China beware," *China Law & Practice*, June 2000, pp. 32–39. Also see G. Han, "China learns how to deal with dumping charges," *Beijing Review*, 3–9 August 1998, pp. 12–14.

55 See e.g. Sun Liwen, "Lu shijie maoyi tizhi zhong wo guo feishichang jingji diwei wenti zhi xiaojie" ("On clearing up issues of China's non-market economy status in the international trade system"), in *Faxue pinglun*, No. 5 (2006), pp. 90–95.

56 "EU and China reach textile deal," *BBC News*, 5 September 2005; "China ups stakes in textile row," *BBC News*, 30 May 2005; "Textile row deepens as China revokes export tariffs," *Bridges Weekly Trade News Digest* (ICTSD), Vol. 9, No. 19 (1 June 2005).

57 "China slams EU anti-dumping charges on shoes," *China Daily*, 24 February 2006; "Chinese exporters fall victim to use of flawed WTO laws," *Business Weekly*, 18 June 2003.

conditions,⁵⁸ are seen internationally as working artificially to reduce export prices leading to market disruption elsewhere.

Selective adaptation in China's trade law regime

While the extent of China's compliance with WTO disciplines may well reflect factors of local interest and political will, conflicts of underlying norms also appear to play a role. Norms of liberal capitalism underlying the GATT/WTO system seem to operate in tension with imperatives of state-driven development in China.⁵⁹ Depictions of China's institutional conditions as a limit on imposition of WTO disciplines suggest resistance to GATT premises of universal minimum standards.⁶⁰ Selective adaptation elements of perception are also evident in policy and legal discourses that interpret GATT/WTO standards on governance, anti-dumping and intellectual property as purposefully unfair to China and/or as the result of US and international power politics.⁶¹ Factors of complementarity arise in discussions about the compatibility of GATT/WTO disciplines with China's institutional arrangements and normative principles.⁶² Elements of legitimacy are evident in discourses making acceptance of international rules conditional on preserving the authority of Party and government rule.⁶³ Thus, while assessment of China's compliance with GATT/WTO standards cannot be divorced from factors of economic and bureaucratic self-interest, selective adaptation also helps to explain the normative origins of compliance dilemmas.

China and Human Rights: Responses to International Standards

China's expanded engagement with international human rights discourses suggests the importance of normative engagement and selective adaptation. On one hand, the government has supported human rights research and scholarship

58 "Section 301 Petition of the American Federation of Labor and the Congress of Industrial Organizations," (8 June 2006) (http://www.afl-cio.org/issues/jobseconomy/globaleconomy/upload/china_petition.pdf).

59 See e.g. Wen Guanzhong, Zheng Zhihai, Wang Xinkui and Zuo Xuejin (eds.), *WTO yu Zhongguo: Zou jingji quanqiuhua fazhan zhi lu (WTO and China: Walking the Road of Economic Globalization Development)* (Beijing: Chinese People's University Press, 2001), pp. 16–21; Jin Xin, *Zhongguo wenti baogao: Xinshiji Zhongguo mianlin de yanjun taozhan (Report on China's Problems: Serious Challenges Faced by China in the New Century)* (Hong Kong: Liwen Press, 2001), pp. 237–42.

60 Jiang Wei and Wang Jingqi, "WTO xieyi yu Zhongguo minshi sifa zhidu de wanshan" ("The WTO agreement and perfection of China's civil judicial system"), *Zhongguo faxue*, No. 1 (2001), pp. 25–36.

61 On WTO for example, see Xie Kang, *Zhongguo yu WTO: Guize, taozhan yu yingzhan (China and the WTO: Rules, Challenges and Strategy)* (Guangzhou: Guangdong People's Press, 2001).

62 See Han Liyu, "WTO guize se shiyong yu Zhongguo guonei lifa," ("Application of WTO rules and Chinese domestic legislation"), in *Guoji jingji fa (International Economic Law)* No. 4 (2001), pp. 218–35.

63 See e.g. Wang Jiafu, "WTO yu Zhongguo shehui zhuyi shichang falu zhidu jianshe wenti" ("Issues of WTO and the establishment of China's socialist market legal system"), in *Zhongguo faxue*, No. 1 (2001), pp. 3–10 at p. 7.

at the highest levels.⁶⁴ International documents on human rights have been translated into Chinese and published with government support,⁶⁵ and the government has approved bilateral scholarly exchange programmes aimed at information sharing on human rights doctrine and practice.⁶⁶ China has signed both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), ratifying the ICESCR in 2001 and beginning the policy review process leading possibly to ratification of the ICCPR.⁶⁷

Despite this, however, China continues to face criticism over its human rights practices in substantive areas such as labour, discrimination, health, gender and religious freedom.⁶⁸ There were hopeful expectations that participation in international regimes would improve protection for human rights, but institutional enforcement and reporting continues to lag.⁶⁹ Apart from familiar issues of torture and abuse of prisoners, extensive use of the death penalty, abuse of criminal process for political purposes, suppression of religious freedoms and denial of labour rights,⁷⁰ concerns have also been raised in the area of abuse of psychiatry for political purposes and the use of surveillance technology to

64 Wang Jiafu, Liu Hainian and Li Lin. (eds.), *Renquan yu 21 shijie (Human rights and the 21st century)* (Beijing: China Law Publishers, 2000); Xia Yong, *Renquan gainian qiyuan (Origins of Human Rights Concepts)* (Beijing: University of Politics and Law Press, 1997); Xia Yong (ed.), *Zuoxiang quanli de shidai: Zhongguo gongmin quanli fazhan yanjiu (Proceeding Towards an Era of Rights: A Study of the Development of Citizens' Rights in China)* (Beijing: University of Politics and Law Press, 1995).

65 CASS Law Institute (ed.), *Guoji renquan wenjian yu Guoji renquan jigou (International Human Rights Documents and International Human Rights Institutions)* (Beijing: Chinese Academy of Social Sciences Press, 1993).

66 Errol P. Mendes and A-M Traeholt (eds.), *Human Rights: Chinese and Canadian Perspectives* (Ottawa: Human Rights Research and Education Centre, 1997); P.R. Baehr et al. (eds.), *Human Rights: Chinese and Dutch Perspectives* (The Hague: Kluwer, 1996).

67 State Council Information Office, "China's progress in Human Rights in 2004" (13 April 2005), section VII (<http://www.china.org.cn/e-white/20050418/VII.htm>); Shi Jiangtao, "Beijing reviews key human rights treaty," *South China Morning Post* (6 September 2005).

68 US Congressional Executive Committee on China, *Annual Report 2006* (<http://www.cecc.gov/pages/annualRpt/annualRpt06/index.php>), Section V; Human Rights Watch, "China: events of 2006," in *World Report 2007* (<http://hrw.org/englishwr2k7/docs/2007/01/11/china14867.htm>); US Department of State, Bureau of Democracy, Human Rights and Labor, "Country reports on human rights practices: China (includes Tibet, Hong Kong and Macao) 2004" (28 February 2005). Also see Amnesty International 2005, "China: human rights – a long way to go before the Olympics" (5 August 2005); Amnesty International UK, "EU–China summit: EU must continue pressing for real progress on human rights in China" (2 September 2005).

69 Susan C. Morris, *Trade and Human Rights: The Ethical Dimension in U.S.–China Relations* (Aldershot: Ashgate, 2002). Leila Choukroune, "Justiciability of economic, social, and cultural rights" *Columbia Journal of Asian Law*, Vol. 19, No. 1 (2005), pp. 30–49.

70 UN Commission on Human Rights, "Civil and political rights, including the question of torture and detention: report of the special rapporteur on torture and other cruel, inhumane, or degrading treatment or punishment – mission to China" (10 March 2006). "High Commissioner for Human Rights highlights progress and challenges at end of visit to China" (Press Release, 2 September 2005). "Reviewing a quarter century of political crime," in *Human Rights Forum*, No. 2 (2003), pp. 54–57. Human Rights Watch, "China: a year after new regulations, religious rights still restricted" (1 March 2006); Congressional-Executive Commission on China, *2006 Annual Report*, section V(d) "Freedom of religion." "The WTO and Chinese labor rights," in *Human Rights Forum*, No. 3 (2005), pp. 39–41.

suppress freedom of communication and expression.⁷¹ China's responses to these challenges have focused on normative engagement.

Participation and normative resistance

As China's participation in the international human rights system has expanded, official interpretations of international human rights discourses suggest an effort to resist and/or transform international standards and norms. As a signatory of and advocate for the 1993 Bangkok Declaration on Human Rights,⁷² China has embraced the implications of what the Bangkok Declaration refers to as a "dynamic and evolving process of international norm-setting" as an opportunity to articulate and justify new standards for human rights that comport with its own policy priorities. Despite criticisms of the so-called "Asian values" discourse,⁷³ such alternative views on human rights have come to challenge liberal rights models.⁷⁴ The privileging of collective over individual rights remains a key element in China's rights discourse.⁷⁵ China also supports principles of the Bangkok Declaration on intrinsic hierarchies of rights, subordination of political and civil rights to socio-economic development, and the contingency of rights on local conditions, which depart from the principles established in the 1993 Vienna human rights declaration.⁷⁶

In a series of white papers, the PRC government has articulated policy positions on human rights supporting the primacy of economic growth by stressing subsistence as the basic right upon which all others depend. The 1991 white paper asserted that economic development must take precedence over political rights.⁷⁷ The 1995 white paper conditioned civil and political rights upon achievement of development goals.⁷⁸ The 1997 white paper reiterated the theme that subsistence and development were paramount human rights.⁷⁹ The PRC human rights white paper of 2000 once again linked human rights to

71 Robin Munro, "Judicial psychiatry in China and its political abuses," *Columbia Journal of Asian Law*, Vol. 14 No. 1 (2000), pp. 1–128. Greg Walton, "China's golden shield: corporations and the development of surveillance technology in the People's Republic of China" (Montreal: International Centre for Human Rights and Democratic Development, 2001).

72 "Final declaration of the regional meeting for Asia of the World Conference on Human Rights" (Bangkok Declaration) (2 April 1993), *Human Rights Law Journal*, Vol. 14 (1993), p. 370.

73 David Kelly and Anthony Reid (eds.), *Asian Freedoms: The Idea of Freedom in East and Southeast Asia* (Cambridge: Cambridge University Press, 1998).

74 Peter Van Ness (ed.), *Debating Human Rights: Critical Essays from the United States and Asia* (London: Routledge, 1999).

75 For critical comment that underscores the prevalence of the collective approach, see Xu Xianming and Qu Xiangfei, "Renquan zhuti jie shuo" ("Speaking on the boundaries of the subject of human rights"), *Zhongguo faxue*, No. 2 (2001), pp. 53–62; He Zhipeng, "Ren de huigui: geren guojifa shang diwei zhi shenshi" ("The return of man: reflections on the status of the individual in international law"), *Faxue pinglun*, No. 3 (2006), pp. 56–63.

76 Compare Bangkok Declaration with "United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action," UN Doc. A/CONF.157/24 (1993), *International Legal Materials*, Vol. 32 (1993), p. 1661.

77 "Text of human rights white paper," *FBIS Daily Report: China* (supplement), 21 November 1991.

78 State Council Information Office, "China's progress in human rights in 2004."

79 "Quarterly chronicle and documentation (April/June 1997)," *The China Quarterly*, No. 151 (1997), p. 698.

subsistence and development, even as the obligation to recognize and enforce civil and political rights was marginalized: “the Chinese government has always put the rights of the people to subsistence and development first.”⁸⁰ The 2004 white paper formally integrated themes of subsistence with international discourses on the right to development,⁸¹ confining civil and political human rights to the theme “political development with Chinese characteristics.”⁸² In these and other areas, the Chinese government seems to be orienting its participation in the international legal regime for human rights so as to challenge established norms that are contrary to PRC practice, thus diminishing the possibility that these might develop into some sort of *jus cogens* with greater binding authority.⁸³

China appears comfortable to defend its human rights policies and practices by reference to its own interpretations of international legal standards. On particular subjects where it has faced criticism, the government has expanded its participation in bilateral and multilateral co-operation projects aimed at increasing the appearance of international law compliance. Thus, the 2004 human rights white paper noted the development of China’s socialist legal system and emphasized constitutional arrangements for enforcement of human rights, asserting that China’s provision of public health services, education, housing and its recognition of the right of religious belief were compliant with international law requirements.⁸⁴ In the area of minority nationalities where China has faced considerable criticism,⁸⁵ the government has publicized its efforts to incorporate international law standards into its minority policies, while also supporting institutional engagement with international agencies.⁸⁶ In the area of environmental protection and sustainable development where conditions in China have been roundly criticised,⁸⁷ government support for the China Council on International Co-operation in Environment and Development suggests an effort to highlight engagement with international law and policy norms.⁸⁸ In the area of

80 State Council Information Office, “White paper: 50 years of progress in China’s human rights” (June 2000), section II (<http://www.china.org.cn/e-white/3/index.htm>).

81 Jack Donnelly, “In search of the unicorn: the jurisprudence and politics of the right to development,” *California Western International Law Journal*, Vol. 15 (1985), p. 473.

82 State Council Information Office, “China’s progress in human rights in 2004.”

83 For discussion of the tensions between norms and practice in the development of *jus cogens* in international law, see Dinah Shelton, “Normative hierarchy in international law,” *American Journal of International Law*, Vol. 100, No. 2 (2006), pp. 291–323.

84 State Council Information Office, “China’s progress in human rights in 2004,” section II.

85 Uradyn E. Bulag, *The Mongols at China’s Edge: History and the Politics of National Unity* (Lanham MD: Rowman and Littlefield, 2002); Colin Mackerras, *China’s Ethnic Minorities and Globalisation* (London: Routledge, 2003).

86 State Council Information Office, “National minorities policy and its practice in China” (20 May 2004). “2008 nian renleixue minzuxue shijie dahui xuanchuan ziliao” (“Information materials for the 2008 international conference on anthropology and ethnology”) (May 2004), detailing international co-operation activities since 1992.

87 “Poor showing for China in ‘environmental performance index,’” *China Development Brief*, 9 February 2006 (www.chinadevelopmentbrief.com/node/455).

88 CCICED Secretariat, *China Council for International Cooperation on Environment and Development: Success Story* (2005) (www.harbour.sfu.ca/dlam/index.html and www.secretariat@cciced.org).

women's rights, even as its compliance with the Convention on Elimination of All Forms of Discrimination Against Women is challenged,⁸⁹ China has sought to justify its policies and practices on women's equality as consistent with international law standards.⁹⁰

Patterns of normative resistance are also evident in China's participation in international human rights fora. Diplomatic initiatives are explained locally as an important avenue for influencing the application of international regime norms on human rights and democracy.⁹¹ Thus, increased participation in international institutions (including NGOs) is seen as useful to prevent intrusion of international labour standards inappropriate to China's interests.⁹² While reception of the UN High Commissioner for Human Rights Louise Arbour in November 2004 and the Special Rapporteur on Torture in November–December 2005 seemed to reflect increased willingness to accept international human rights scrutiny,⁹³ China also managed to avoid formal criticism at the UN's Commission on Human Rights, largely through a series of successful "no action" motions.⁹⁴ Similarly the effects of international monitoring of China's human rights record have seemingly been confined to areas of "technical co-operation" such as education and administration where the Chinese government is already embarked on reforms.⁹⁵

Although China has participated increasingly in the UN's Human Rights Commission, this seems aimed as well at resisting international criticism. Thus, formal statements for the record are made to affirm China's resistance to use of country-specific criticisms, dismissing these as an exercise in "double standards and political motives."⁹⁶ In addition, China's participation works to advance its preferred interpretations of international human rights standards, such as the

89 Yin Sheng, "Zhongguo heping fazhan zhong funu renquan de guoji falu baohu" ("International legal protection of the human rights of women during China's peaceful development"), *Faxue pinglun*, No. 2 (2006), pp. 116–21; Amnesty International, *China Report 2005* (<http://web.amnesty.org/report2005/chn-summary-eng>). Also see Centre for Reproductive Rights, "Supplementary information on China" (letter to CEDAW Committee), 3 August 2006; Human Rights China, Asia Monitor Resource Centre, China Labour Bulletin, Hong Kong Christian Industrial Committee, *Report on Implementation of CEDAW in the PRC* (December 1998).

90 State Council Information Office, "White paper: gender equality and women's development in China" (August 2005) (http://news.xinhuanet.com/english/2005-08/24/content_3396107.htm).

91 Huang Deming, "Zhongguo heping fazhan zhong waijiao zhineng tiaozheng de qianyan falu wenti" ("The function of diplomacy in adjusting legal issues confronted in the course of China's peaceful development"), *Faxue pinglun*, No. 2 (2006), pp. 107–15.

92 Zeng Lijie, "Qiyе de shehui zeren yu Zhongguo de heping fazhan" ("Corporate responsibility and China's peaceful development"), *Faxue pinglun*, No. 4 (2006), pp. 64–69.

93 "High Commissioner for Human Rights highlights progress and challenges at end of visit to China" (press release, 2 September 2005); "Civil and political rights, including the question of torture and detention: report of the special rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, Manfred Nowak," Commission on Human Rights (10 March 2006).

94 "Attempt to block rights resolution, Beijing expected to counter Geneva offensive," *South China Morning Post*, 15 April 1997, p. 8. "Disappointed, not discouraged on China," *International Herald Tribune*, 17 April 1997, p. 4.

95 Office of the High Commissioner for Human Rights, "Mission report on China" (1999); Kent, *China, the United Nations, and Human Rights*.

96 "Statement by HE Ambassador Sha Zukang, on behalf of the like minded group, at the 61st session of the Commission on Human Rights" (14 March 2005) (<http://www.china-un.ch/eng/rqrd/thsm/t187353.htm>).

primacy of economic, social and cultural rights over other rights,⁹⁷ and restrictions on the application of international standards on self-determination to local national minority groups.⁹⁸ In discussions on implementation of international human rights instruments, China has challenged the credibility of the UN human rights process, suggesting that its ongoing support would depend on being insulated from criticism.⁹⁹ China's presence on the new UN Human Rights Council (replacing the Human Rights Commission) continues to serve as a vehicle through which to articulate preferred interpretations of international human rights standards – including principles on the right to development, deference to local subjective conditions as context for human rights assessments and state sovereignty in human rights enforcement.¹⁰⁰ In light of this, China's candidacy for the new Human Rights Council faced resistance from NGOs concerned with its human rights record.¹⁰¹

Selective adaptation in China's human rights discourse

Under conditions where international human rights standards do not have a uniform set of normative principles,¹⁰² China's efforts to influence the content of international standards and norms reflect the importance of normative consensus as a basis for local reception of non-local standards. China's engagement with the international legal regime on human rights has combined institutional participation with normative resistance in furtherance of the "process of international norm-setting" referred to in the Bangkok Declaration. The selective adaptation paradigm seems particularly appropriate to further understanding of this behaviour.

Government statements on the human right to subsistence and development suggest normative tensions with international human rights standards that reject hierarchies of rights and question claims to conditionality based on local conditions. This emphasis reflects an insistence on a hierarchy of rights and on timetables for the granting of political and civil rights dependent on local conditions of development. China's reliance on the right to development discourse to justify its policies thus suggests a response to international norms that is grounded in the normative dynamics of selective adaptation.

97 "Statement by H. Ambassador Zhang Yishan, head of Chinese delegation, at ECOSOC substantive session of 2005 on human rights" (22 July 2005) (<http://www.china-un.org/eng/xw/t204673.htm>).

98 "Statement by Counsellor La Yifan of the Chinese delegation, at third committee of 60th UNGA session on elimination of racism and right to self-determination (Item 69, 70)" (7 November 2005) (<http://www.china-un.org/eng/xw/t220137.htm>).

99 "Statement by Mr La Yifan, alternative representative of the delegation of the People's Republic of China on Agenda Item 105(a): Implementation of human rights instruments at the third committee during the 59th session of the general assembly" (25 October 2004) (<http://www.china-un.org/eng/xw/t167002.htm>).

100 Yang Jiechi, "Work in cooperation for a new chapter in the cause of international human rights" (21 June 2006) (<http://www.china-un.org/eng/rqrd/thsm/t258933.htm>).

101 PRC Foreign Ministry, "Aide memoire," 13 April 2006; China Rights Defenders, "Vote for the human rights council: is China qualified" (press release, 8 May 2006).

102 See generally, Henry J. Steiner and Philip Alston, *International Human Rights Law in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2000).

Factors of perception, complementarity and legitimacy are also evident. Perceptions that human rights criticism of China is driven by American or international power politics, for example, suggest important conditions for China's engagement.¹⁰³ In addition, official discourses suggest perceptions of human rights as constrained by China's constitutional system, limited to those expressly granted by the party-state and qualified by duties to uphold Party rule and protect the interests of the state and society.¹⁰⁴ Complementarity is evident in assertions that compliance with international human rights standards requires support for China's sovereignty imperatives, acceptance of the limits of local conditions and preservation of China's governance priorities.¹⁰⁵ In the case of China's compliance with the ICCPR for example, complementarity issues are to be resolved through legislative initiatives aimed to ensure that local priorities are preserved.¹⁰⁶ The importance of legitimacy is shown as China strives to present its legal and political system as fully honouring international human rights standards. Thus, international human rights norms of state responsibility are cited to support the primacy of Chinese government control in human rights enforcement.¹⁰⁷ Legitimacy dynamics are also evident in China's rebuttals of annual reports from the United States criticizing China's human rights record and its counter-reports on American human rights abuses, which seem aimed to establish a legitimate moral equivalent between China and the United States on human rights issues.¹⁰⁸

Summary

China's participation in international legal regimes has increased substantially in the past ten years. Domestic policy priorities combined with the influences of

- 103 See e.g. Liu Jie, *Renquan yu guojia zhuquan (Human Rights and National Sovereignty)* (Shanghai: Shanghai People's Press, 2004), ch. 8.
- 104 Constitution of the People's Republic of China, Articles 1, 51. Also see Zhang Jiliang, *Zhonggong renquan lilun yu Zhongguo requan lifa (Party Policy on Human Rights and China's Human Rights Legislation)* (Beijing: Chinese Academy of Social Sciences Press, 2004).
- 105 See Li Wanqiang, "Lun quanqiuhua qushi xia guojifa de xin fazhan" ("New developments in international law under the trend of globalization"), *Faxue pinglun*, No. 6 (2006), pp. 55–62. Tang Tianri, "Zhongguo he xifang zai renquan wenti shang de yuanze fenqi" ("Divergence of principles between China and the West on human rights questions"), in China Human Rights Development Foundation (ed.), *Xifang renquan guan yu renquan waijiao (Western Human Rights Concepts and Human Rights Diplomacy)* (Beijing: New World Press, 2003), pp. 60–65. Wang Guangxian, "Diyue guo zai shishi guoji renquan tiaoyue fangmian de jingyan yu wenti" ("Experience and problems of signatory states implementing human rights treaties"), *Faxue pinglun*, No. 2 (2002), pp. 116–25.
- 106 See Liu Jian and Hao Jianyun, "Lun woguo laodong jiaopei zhidu yu guoji renquan gongyue de chongtu ji qi tiaozheng" ("On conflicts between our labour education and training system and international human rights treaties and their adjustment"), *Faxue pinglun*, No. 5 (2001), pp. 29–32.
- 107 See Zhou Chonghai and Xie Haibao, "Lun guoji fa shang de renquan baohu" ("On human rights enforcement in international law"), in *Zhongguo faxue*, No. 1 (2001), pp. 164–68; Sun Shichen, "Lun guoji renquan fa xia guojia de yiwu" ("On state responsibility under international human rights law"), in *Faxue pinglun*, No. 2 (2001), pp. 91–96.
- 108 "Human rights accusations refuted," *China Daily*, 29 March 1995, p. 4; State Council Information Office, "The human rights record of the United States in 2002" (Beijing: 2003); State Council Information Office, "The human rights record of the United States in 2001" (Beijing: 2002); Edward Cody, "China says US has double standard on rights," *Washington Post*, 3 March 2005.

globalization have seen increased internationalization of China's markets through WTO accession as well as increased participation in international organizations and discourses for human rights. Yet there are uncertainties about the extent to which China's increased engagement with the international legal regime has resulted in local assimilation of the normative underpinnings for international law standards in trade and human rights. To some extent, China's participation in the international legal regime reflects its "big power" aspirations¹⁰⁹ and suggests that participation remains contingent on unilateral assertions of state interest and the use of political power to achieve these interests.¹¹⁰ However, selective adaptation analysis also helps to explain China's behaviour in terms of reception of international norms for trade and human rights. China's participation in the GATT/WTO can be understood in light of tensions between trade standards grounded in norms of liberalism and China's local governance norms. Similarly, China's participation in international human rights regimes can be understood in terms of normative engagement that ranges from resistance to pro-active norm-setting.

China's importance to the world mandates continued efforts to understand its participation in international legal regimes. The challenge remains to interpret China's formal references to international legal texts in light of questions about acceptance of underlying norms. Just as the *xieyi* (写意) style of the great Chinese monk-painter Badashanren (八大山人) focused on the essence of a subject to express understanding of the details of surface appearance,¹¹¹ so too can observers of China's engagement with the international legal system attend to essential issues of normative consensus as a way to shed light on surface appearances of textual interpretation. China's participation in international legal discourses and institutions warrants such an approach, and invites the international community to consider its implications. As interpreted in light of selective adaptation, the details of China's interpretation and implementation of international standards in trade and human rights raise important questions about China's engagement with fundamental norms of international legal regimes.

109 Zhang Dengji, *Jianjiang Zhongguo: bu queding shijie zhong de daguo dingwei yu daguo waijiao* (*Writing China: Identity Formation and Big Power Diplomacy*) (Taipei: Yangzhi Wenhua Publishers, 2003).

110 China Mieville *Between Equal Rights: A Marxist's Theory of International Law* (Leiden: Brill, 2005), pp. 289–93.

111 Josef Hejzlar, *Chinese Watercolours* (London: Galley Press, 1987), pp. 19–21; Liu Mo, *Badashanren* (Shijiazhuang: Hebei Education Press, 2003), pp. 38–45.