

Statements of the Chinese Government before Human Rights Treaty Bodies: Doctrine and Practice of Treaty Implementation

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This article explores the implementation of human rights treaties in China on the basis of statements that were made by the PRC government before human rights treaty bodies. The analysis of government statements differentiates between statements representing an 'internationalist' position and those standing for a 'realist' approach. The study reveals the inconsistencies and incoherencies of the position on international human rights law as presented by the official statements before international treaty bodies. It also explains the gradual change from the internationalist to the realist position by introducing relevant Chinese academic discourses and presenting the political and philosophical underpinnings of official statements and scholarly commentary. Although human rights treaties become part of the national legal system, courts do not apply human rights treaties directly. International human rights obligations are only implemented by way of specific legislative acts.

Introduction

Over the previous three decades, the People's Republic of China (PRC) has become increasingly engaged in the international human rights regime. The PRC has now ratified over 20 human rights treaties. At the end of the 1980s, the PRC became a State Party of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).² A decade later, the PRC joined the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)³ and the Convention on the Rights of the Child (CRC).⁴ A further 10 years elapsed before the International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified.⁵ The International Covenant on Civil and Political Rights (ICCPR) was initially signed by the PRC government in 1998. However, its ratification is still pending.⁶ Apart from assuming legal obligations under international human rights treaties, the PRC participates in the international human rights regime by submitting reports, drafting new instruments and engaging in various rights dialogues (Peerenboom, 2007:

83). Like other countries, China sought to promote and protect its own national interests by taking part in the international human rights system. However, that system assumes a liberal democratic framework that exerts pressure on the authoritarian political system of the PRC to change (Foot, 2000; Kent, 1999). From the perspective of the PRC government, international co-operation serves the purpose of promoting national interests and exercising international influence, rather than initiating political learning processes and institutional change. Therefore, it is argued that the Chinese leadership has not yet internalised the norms of multilateral co-operation, but has adapted itself only tactically (Heilmann, 2004: 260).

Given this background, it is rather unlikely that the domestic implementation of international human rights obligations is driven by an internationalist approach, which ensures an effective translation of international human rights into the PRC legal system. Cassese has investigated the exigencies motivating states in their choice of the incorporation system. He found that states taking an international outlook incline to opt for *adoption*, that is, the automatic incorporation of international law. In contrast, states following a statist or nationalist approach are more likely to adopt legislative ad hoc incorporation, that is, the *transformation* of international law into domestic law by a legislative act (Cassese, 2005: 223). With regard to the following analysis of PRC government statements to treaty bodies, the former approach will be associated with an 'internationalist' position, whereas the latter is termed 'realist'. In practice, Chinese courts do not directly apply provisions of human rights treaties (Zhu, 2000: 316). Individuals are in general barred from invoking the fundamental rights of the Chinese Constitution in court (Shen, 2003). This finding indicates that human rights treaties are not implemented by way of adoption, that is, they are not made part of Chinese law and directly applicable by state authorities.

In April 2005, the United Nations Committee on Economic, Social and Cultural Rights reviewed the initial report of the PRC (including Hong Kong and Macao) on the implementation of the ICESCR (Choukroune, 2005: 30). In its concluding observations, the Committee urged the PRC government to 'ensure that legal and judicial training takes full account of the justiciability of the rights contained in the Covenant and promotes the use of the Covenant as a source of law in domestic courts' (Consideration of Reports, 2005: 42). In contrast, current Chinese practice indicates that obligations under human rights treaties are implemented indirectly by way of transformation, that is, the legislature adopts laws which, at least to a certain extent, replicate the content of human rights treaties. These laws attempt to harmonise domestic law with international standards, as

far as the authoritarian political system can accept such standards. However, new laws or amended legislation would normally not refer to the connection with international law on which it is based.⁷

This article explores the implementation of human rights treaties in China on the basis of statements that were made by the PRC government before human rights treaty bodies. The official statements, in which the government describes the implementation mechanism it purports to apply in practice, will be correlated with the Chinese doctrine on the implementation of international treaties. There are different ways to determine the significance of human rights treaties in the Chinese domestic legal system. Sanzhuan Guo explains in a recent study that human rights treaties are not directly applied by Chinese courts 'because even fundamental rights in China's Constitution have yet to be applied directly by Chinese courts' (Guo, 2009: 166). The article then discusses a number of legislative acts which the author categorises as 'domestic human rights legislation' and attempts to establish how litigation in different areas of law serves the purpose of human rights protection (Guo, 2009: 167–71, 171–8). However, this approach has difficulties in proving the link between the domestic development of individual rights protection and China's human rights obligations at the international level. In order to learn about the implementation of human rights treaties within a certain jurisdiction, one would normally examine the text of the Constitution for a general provision on the status of treaties or a relevant constitutional practice as it is reflected in the jurisprudence of a constitutional court and lower level courts. However, in the case of the PRC, the Constitution is silent on the domestic status of international treaties (Xue and Jin, 2009: 305). On the level of ordinary legislation, there are reference provisions that, under certain conditions, refer to international treaties and demand the direct application of treaty provisions by domestic courts. But there are no such provisions that refer to human rights treaties and there is also no judicial practice regarding its direct application. Given this situation, we may turn to alternative sources such as government statements to treaty bodies and academic discourse in order to explore understandings within China of the domestic effects of human rights treaties.

An introduction to human rights treaty bodies is followed by a brief discussion of the reliability of government statements as an authentic account of the actual practice of implementation. The analysis of government statements differentiates between statements representing an 'internationalist' position and those standing for a 'realist' approach. The study reveals the inconsistencies and incoherencies of the position on international human rights law as presented by the official statements

before international treaty bodies. It also attempts to explain the gradual change from the internationalist to the realist position by introducing relevant Chinese academic discourses and presenting the political and philosophical underpinnings of official statements and scholarly commentary.

United Nations Human Rights Treaty Bodies

United Nations (UN) human rights law has evolved along two different routes, one based on the UN Charter, the other on specific human rights treaties drafted and adopted under the auspices of the UN. Under the Charter-based system the Human Rights Commission, which has been replaced by the Human Rights Council, had played a central role in developing UN Charter-based mechanisms in order to deal with large-scale human rights violations (Buergenthal, 2006). The treaty-based system consists of a large number of treaties that codify much of international human rights law. With the exception of the Genocide Convention and the ICESCR,⁸ these specific human rights treaties provide for institutional mechanisms in the form of so-called treaty bodies to monitor compliance by state parties (Office of the UNHCHR, 2005: 23; Cohen, 1996).

Human rights treaty bodies are bodies that are composed of independent experts. They supervise the implementation of human rights instruments, monitor progress of the human rights situation in the relevant country and provide public scrutiny on realisation efforts. It is their task to assist state parties to evaluate achievements and to identify difficulties with implementation. The bodies are closely tied to the UN by means of procedure, reporting, resources and support (Stoll, 2009). Although the eight treaty bodies that currently exist are not judicial institutions in the sense that they issue legally binding decisions, they apply and interpret the relevant human rights treaties by reviewing and commenting on the reports that the state parties are obliged to submit (Mechlem, 2009). The supervision of the implementation of human rights conventions by treaty bodies has strengthened the international human rights system, although treaty bodies are generally ineffectual in redressing individual human rights violations. The bodies may only exercise indirect pressure on states when they review the periodic reports which states are required to submit. In the review process, states have to explain and defend their respective human rights policies. It is anticipated that the act of forewarning states that their human rights policies will be scrutinised by international bodies at regular intervals will function as an incentive to induce governments to reconsider their human rights policies

independently and to improve the human rights situation within their country (Buergethal, 2006: 791).

Value of Government Statements as a Source of Research

Using government statements as a source of research in the area of human rights will inevitably face criticism and, therefore, requires an explanation. The first concern is a general one that questions the possibility of monitoring a state's compliance with human rights treaties solely on information that is provided by the public authorities of that state. First, it may be assumed that states are unlikely to report human rights violations that they have committed. Second, former practice has revealed that states tend to report only on formal legal arrangements and do not refer to the implementation of those arrangements or to the enjoyment of specific human rights in practice (Kretzmer, 2009). To attempt to compensate for these deficiencies, treaty bodies have either been expressly authorised by more recently adopted conventions to obtain information on implementation in a specific state from specialised agencies or other concerned bodies or have adjusted their working methods which allow treaty bodies to consider alternative sources of information such as NGOs or national human rights institutions (Kretzmer, 2009).

As far as the review process is concerned, the consideration of state reports is expected to take place in the form of constructive dialogue. In practice, representatives of the relevant states are often more committed to presenting their governments in a positive light and defending them against allegations of human rights violations. Accordingly, the members of treaty bodies are familiar with presenting questions that specifically address such matters in which there are doubts regarding the compliance of the reporting state with its treaty obligations (Kretzmer, 2009).

The second concern refers to the specific characteristics of the Chinese legal and political systems. In the PRC political guidelines have primacy over the law. The primacy of political guidelines is expressed in the doctrine of the leadership of the Communist party, the instrumentalist nature of law and the concept of 'socialist legality'. The concept of socialist legality comprises the antagonistic elements of political expediency in the application of law and the strict binding force of law. It depends on the current party policy whether the first or second element of socialist legality is given priority in applying the law (Kopp, 1972: 573). The past two decades saw a turn to greater legal stability and an emphasis on the second element in order to ensure the development of a more market-oriented economy.

Hence, official statements of government or party bodies or declarations made by high-ranking officials are often an important indication of how laws are implemented in practice. However, the value of such statements depends on their specific context. With regard to domestic legal issues, if a government body makes a declaration that is in conformity with a party guideline, such a statement may in practice be more important than the wording of a legal provision (Senger, 1994). If a statement is aimed at the foreign press, a foreign government or an international organisation, the statement may primarily serve propaganda purposes, may not give a correct account of a certain legal situation and may be in fact irrelevant for the application of law within China. Although these considerations should sound a note of caution, statements issued by the Chinese government, which are submitted to international human rights treaty bodies, should not be dismissed out of hand. Government statements derive their value as a source of research from the fact that they provide a useful insight into how the PRC government perceives and frames the issue of domestic implementation of human rights treaties (Peerenboom, 2007: 82).

Analysis of PRC Government Statements

Statements Reflecting an Internationalist Approach

In 1990, the Chinese delegation stated to the Committee against Torture:

[O]ffences under the Convention were also regarded as offences under Chinese domestic law. When China acceded to any convention, it became binding as soon as it entered into force. China then fulfilled all its obligations, and it was not necessary to draft special laws to ensure conformity. If an international instrument was inconsistent with domestic law, the latter was brought into line with the former. Where subtle differences remained, international instruments took precedence over domestic law. (Committee against Torture, 1990: 2)

The statement was made in relation to questions regarding the consistency between the CAT and domestic legislation. The Committee against Torture had repeatedly expressed its concern about, *inter alia*, the lack of a definition of torture in Chinese law that fully complies with the definition contained in the CAT (Committee against Torture, 2008). Thus, the statement by the delegation may have served the primary purpose to avoid the allegation of domestic law being inconsistent with the standards of the CAT.

This first statement of the PRC government before a human rights treaty body with regard to the domestic implementation of international human rights treaties has become the subject of a controversial discussion

among Chinese scholars. Some authors conclude that the statement indicates the direct applicability in the domestic sphere of the provisions of the CAT (Gong, 1999: 289; Huang, 2000: 210; Shao, 2002: 436). Xiaocheng Qin interprets the statement as evidence of the international treaty as being part of the domestic legal system but not as providing an answer to the question whether its provisions can be directly invoked before a Chinese court (Qin, 2000: 156). Yaping Mu and Yifan Xian (2003: 54) understand the statement only in terms that the CAT binds the PRC upon the international plane but that it says nothing about its domestic effectiveness or its direct applicability.

In fact, the statement is put into such vague wording that the second sentence, stating that the CAT 'became binding as soon as it entered into force', could be understood as only relating to the Convention's international legal effectiveness. However, taking into account the context, it becomes clear that the second sentence must be read as 'the CAT became binding under domestic law as soon as it entered into force' and, therefore, relates to the domestic effectiveness of the CAT. According to the statement, the domestic legal effectiveness of an international treaty follows automatically and without the need of any domestic legal act from its binding force on the international level. The statement is silent as far as the question of direct applicability of treaty norms is concerned. Although the Chinese government submitted quite a number of statements regarding treaty implementation to different human rights treaty bodies, legal scholars in the PRC focus their discussions mainly on the statement that was made before the Committee against Torture in 1990.⁹

In the years following the first statement, the observations of the PRC government before treaty bodies state unanimously that provisions of international treaties become effective in the domestic legal system without the need to adopt or transform acts of the legislature. In 1991, in another statement regarding the implementation of the CAT, the delegation held that:

Pursuant to its legal system, once China had ratified or acceded to an international treaty and the treaty had entered into force, there was no need for additional domestic legislation to give effect to the treaty.

In other words, the CAT had automatically entered into force in that country (General Assembly, 1991: 12). This statement only refers to the domestic 'effect' or 'entering into force' of the CAT but remains silent on the question of whether courts can apply treaty provisions directly.

Many statements emphasise that no national legislation is necessary in order to make treaty provisions part of the Chinese legal system (Core Document, 2001: 51; Committee on the Elimination of Racial

Discrimination, 2001: 4).¹⁰ As specific preconditions of the legal effectiveness of an international treaty within the domestic legal system, the statements refer to the ratification decision of the Standing Committee of the National People's Congress (NPC)¹¹ (Core Document, 2001: 51, 53; General Assembly, 1991: 12; Committee against Torture, 2000, 1996) and the coming into effect of the treaty upon the international plane (General Assembly, 1991: 12).

The Core Document Forming Part of the Reports of States Parties of 2001¹² also addresses the question of direct applicability by stating that courts and administrative organs should apply human rights treaties within their jurisdictions (Core Document, 2001: 53). With regard to the CAT, the Chinese delegation held that individuals can invoke treaty provisions before the court and that courts would apply treaty provisions in favour of individuals (Committee against Torture, 2000). However, there is no actual practice to support this argument (Zhu, 2000: 316).

These statements correlate with the traditional view among Chinese commentators regarding the implementation mechanism of international treaties. According to this view, treaties become part of domestic law and are directly applicable by courts and the administration when they bind the PRC upon the international plane (Chen and Yang, 2002: 29; Li, 1997: 340; Mu and Xian, 2003: 56; Shao, 2000: 27; Wang, 1990: 329). The arguments in favour of this kind of automatic standing incorporation of international rules are mainly based on the existence of statutory provisions of reference which demand the application of a treaty provision in case national legislation conflicts with an international treaty (Chen et al, 2000: 94; Li, 1994: 196; Pan, 1988: 104; Rao, 1999: 29; Zheng, 1998: 220). An example of a national provision which refers to international treaties that is often cited is art 142(2) of the General Principles of Civil Law, which stipulates:

If any international treaty concluded or acceded to by the PRC contains provisions differing from those in the civil laws of the PRC, the provisions of the international treaty shall apply, unless the provisions are ones on which the PRC has announced reservations. International practice may be applied to matters for which neither the law of the PRC nor any international treaty concluded or acceded to by the PRC has any provisions.¹³

This traditional view on treaty implementation was developed in relation to treaties not governing human rights matters. Scholars only rarely argue in favour of an automatic incorporation with respect to human rights treaties. Zhigang Wang (1999: 3) and Yan Wang and Keju Wang (2002: 36–7) hold that human rights treaties become part of the national legal system from the moment they are binding on the PRC, but individuals cannot invoke the provisions of the treaties in court. Because there is no national legislation referring explicitly to human rights

treaties, the basis for an automatic incorporation can be inferred from the participation of the Standing Committee of the National People's Congress in the treaty-making procedure. In accordance with arts 67(14) and 81 of the Chinese Constitution, the President shall not ratify a treaty unless the Standing Committee of the National People's Congress, after reviewing the treaty at its session, renders a decision to that effect. Commentators view the decision of the Standing Committee as an act that is comparable to the enactment of legislation. They advocate that, whenever the Standing Committee participates in the treaty-making procedure, no further act is necessary in order to give an international treaty legal effect in domestic law (Mu and Xian, 2003: 26; Shao, 2002: 436).

Statements Reflecting a Realist Approach

In contrast to the abovementioned statements, which appear to express an internationalist approach to treaty implementation, other parts of the statements affirm that specific measures are necessary in order to give international treaties effect in domestic law. Further, the Chinese government argued in the Core Document Forming Part of the Reports of States Parties of June 2001 that the national legal system is already in conformity with its international human rights obligations:

All the rights set forth in human rights instruments are protected by the Chinese Constitution and separate regulations. For instance, the Chinese Constitution specifies that all citizens are equal before the law (art 33); citizens' personal freedom is not subject to violation (art 37); their homes are inviolable (art 39); the State protects their right to own lawfully earned income, savings, houses and other lawful property (art 13); citizens' personal dignity is inviolable (art 38); citizens have freedom of speech, of the press, of assembly, of association, of procession and of demonstration (art 35) ... Other individual statutes and regulations ... contain specific provisions protecting the rights of Chinese citizens'. (Core Document, 2001: 49)

This statement implies that no changes to national legislation or to domestic practice are necessary in order to comply with human rights treaty obligations.

Statements made before the Committee against Torture and the Committee on the Elimination of Racial Discrimination argue that, in case of a conflict between a national legal provision and a treaty provision, the treaty norm will prevail (Committee against Torture, 2000; Core Document, 2001: 51, 53; Committee against Torture, 1996; Racial Discrimination Committee, 2001: 4). This is described as a general principle which is reflected in Chinese legislation in the form of reference provisions (Core Document, 2001: 52). Such reference provisions stipulate that, in the event of conflict between a certain kind of national provision and a treaty provision, the provision of the international treaty shall be

applied. According to another statement before the Committee on the Elimination of Racial Discrimination, such reference norms have the effect of granting treaty provisions priority over conflicting national legislation (Committee against Torture, 1996: 6).

When the Chinese government was asked by the Committee on the Rights of the Child to provide information on the implementation of the Convention by courts (for example, which articles of the Convention are considered self-executing and which articles of the Convention have been invoked before the courts and cited in court decisions), the government responded by stating that:

The main contents as well as the basic principles of the Convention are in conformity with relevant Chinese laws and policies, and this is particularly true with provisions relating to the trial procedures involving minors. According to the Chinese laws, when China's domestic laws are in conformity with international conventions which are ratified by China or of which China is a State party, the domestic laws will be applied and the relevant stipulations of the international conventions are implemented through application of the domestic laws. Only in cases which are not covered by the domestic laws, stipulations of the international conventions will be cited in the court decisions. Since the stipulations of the Convention concerning the trial procedures of minors are in conformity with relevant Chinese laws, the Chinese courts always directly apply the Chinese laws in hearing cases involving minors and there is no need to invoke specific stipulations of the Convention. (Committee on the Rights of the Child, 1996: 2)

If this statement is a correct description of treaty implementation, it reveals that the domestic effect of international human rights treaties is not relevant in practice because courts and administrative bodies are in effect applying national legal provisions only. In its concluding observations of 1999, the Committee on the Elimination of Discrimination against Women comes to a similar conclusion. It states that:

Although the Convention is an integral part of Chinese law, the Committee is concerned that the Women's Law does not contain a definition of discrimination against women. It is also concerned that the Women's Law does not provide for effective remedies in cases of violation of the law. It is unclear whether the Convention can be, or ever has been, invoked in a court of law and what the outcome of such cases might have been. (Concluding Observations, 1999: 283)

The reply to the Committee on the Rights of the Child and the Concluding Observations of the Committee on the Elimination of Discrimination against Women would appear to include an accurate description of the Chinese practice of treaty implementation. This is because they conform to the widely acknowledged fact that domestic courts should not directly apply human rights treaties.

The government statements in this part correlate with various approaches which operate on the basis of the adoption mechanism but

restrict its application in different ways with the aim to exclude the direct applicability of treaty rules. In the second half of the 1990s, the traditional view of a general adoption was largely abandoned when Chinese scholars started to explore the question of treaty implementation more closely in preparation for the accession to the World Trade Organization (WTO). The notions of 'direct applicability'¹⁴ or 'self-executing treaty provisions'¹⁵ were introduced for the first time and broadly discussed. Further, a distinction was made between the 'domestic effectiveness' of a treaty in the sense that treaty provisions form part of the municipal legal order and the question whether treaty norms are suitable for direct application by courts (Chen et al, 2000: 89; Wang and Wang, 2002: 36). On this conceptual basis, Chinese scholars developed diversified approaches for describing the mechanism of treaty implementation which, in their view, is or should be followed in Chinese practice.

The traditional approach of a general adoption combined with the indistinct direct applicability of all treaty norms, which was initially used to describe the implementation practice, is regarded by a majority of scholars as being too extensive and not allowing enough flexibility. This is the reason why authors seek to limit the traditional approach on three different levels. One group of commentators limits the domestic effects of treaties on the level of application by arguing that making treaties part of the domestic legal system does not mean that treaties can be directly applied by courts (Chen et al, 2000: 92; Li, 1997: 347–8; Mu and Xian, 2003: 56–7). This restricts the traditional view of adoption on the level of application. Direct application of treaty norms either requires that national legislation refers to a treaty provision and explicitly demands its domestic application or the application of a treaty presupposes a vague appropriateness test. The recently developed view of 'selective adoption' advocates that only those treaty norms become part of the domestic legal system which are explicitly referred to in a statutory reference provision (Che, 2005: 97; Han, 2000: 199; He, 2001: 50; Zhao, 2000: 50). According to this view, the restriction already takes place on the effectiveness level when the national legal order incorporates exclusively those treaty provisions which national legislation explicitly refers to. An alternative view that is proposed by a group of authors regards the mode of automatic adoption only as a 'legislative tendency' without normative effect (Cao, 1998: 24). This view introduces the restriction simply by regarding that the implementation of international treaties should not be subject to effective legal regulation.

Analysis of Approaches and the Political and Philosophical Underpinnings

What are the reasons for the deviation from the traditional internationalist approach and the shift to a restrictive domestic application of treaties? One main reason may have been that until the second half of the 1990s there was practically no provable practice of direct treaty application. Thus, the internationalist position remained merely theoretical. At the time when the internationalist position was developed, treaty obligations were mainly aimed at the state and the possibility of individuals invoking treaty provisions before municipal courts was not regarded as relevant (Clarke, 2003: 100–1).

Therefore, the restriction of the principle of general adoption is rather a realistic adaptation to the implementation practice of other states and follows to a certain extent the requirements of the constitutional structure of the PRC. It would contradict the People's Congress system of the Chinese Constitution if the courts directly applied all treaty provisions which are binding on China and, as a result, the courts would be conferred a stronger position in relation to the People's Congresses.¹⁶ It is more appropriate if the NPC or its Standing Committee¹⁷ controls the direct application of treaty norms by courts through legislative acts like, for instance, the enactment of reference provisions, or if the Supreme People's Court demands the direct application of certain treaties or certain treaty provisions by issuing judicial interpretations.¹⁸

The realist statements also correlate with the scholarly views advocating a transformation of international rules into domestic law or a combination of adoption and transformation in so far as government representatives stated that courts apply treaties indirectly through national legislation and that treaty norms as such may only be applied in the hypothetical scenario of a conflict between an international treaty and a national law.

Some commentators argue that all treaty norms need to be transformed into domestic law through an ad hoc legislative act (Jiang, 2000: 8–17; Kong, 2001: 8; Wang, 1998: 192). This view is also based on an interpretation of statutory reference provisions, which are regarded as dealing with conflicts between national legislation and treaty norms only in terms of application and do not make treaty provisions part of the domestic legal system (Huang, 2001: 52; Tao, 2000: 8). The scholars who interpret implementation practice in the sense of transformation base their view predominantly upon the rejection of the interpretation of reference provisions as embodying a general rule of automatic treaty incorporation. They deny a general adoption of human rights treaties on the grounds that the scope of application of national provisions referring

to international treaties is confined to legal relationships in private or economic law, and does not cover the relations between individuals and the state. Further, there is no reference provision that refers explicitly to human rights treaties (He, 2001: 50; Wang and Wang, 2000: 291). Another argument against the automatic incorporation of human rights treaties is the claim that international treaties cannot confer rights on individuals (Zhu, 1998: 14).

Finally, some Chinese legal theorists perceive the practice of treaty implementation as a combination of both adoption and transformation with a main focus on adoption (Liang, 2000: 262; Liao and Liu, 2004: 50; Mu and Xian, 2003: 56; Qin, 2000: 156; Yu and Zhao, 2005: 119; Zhao, 2000: 51). This view is a creative interpretation of the current practice that attempts to present a solution with 'Chinese characteristics'. It borrows arguments from the description of the relationship between international law and municipal law. The abstract question of the relationship between international law and municipal law is dealt with by a 'dialectical approach' of mutual influence or interdependence of both systems of law (Chiu, 1987: 1145–6; Li, 1997: 338). The monist theory with primacy of international law, which perceives international law and municipal law as forming part of one single legal system, is criticised as denying state sovereignty and as reflecting an imperialist policy to control the world through world law (Duanmu, 1989; Liang, 1993; Liang, 1996; Mu, 1998; Wang, 1995; Zhou, 1983). The dualist theory, which advocates that international law and domestic law are separate legal systems, is regarded as overemphasising the formal antagonistic aspect of international law and municipal law (Cao, 1998; Gao and Yu, 2002; Yang, 1999; Zhou, 1983: 16–17; Zhou, 1999). Chinese commentators emphasise that states should take into account the requirements of international law when enacting national legislation. Similarly, when states participate in enacting international law, they should consider it from the standpoint of domestic law. As a conclusion, many international law textbooks opine that, as long as states thoroughly perform their international obligations, international law and domestic law can always be reconciled (Duanmu, 1989; Wang and Wei, 1981; Yu, 2000: 101; Zhao, 2000; Zhou, 1983).

Here, the description of the relationship between municipal law and international law, in terms of legal spheres, which are separated as well as interconnected, leads to the 'dialectical unity' of two opposing implementation mechanisms: international treaties are incorporated into national law through the modality of adoption as well as through the mechanism of transformation. The combination of adoption and transformation may be interpreted in such a way that directly applicable treaty provisions immediately become part of domestic law whereas

non-directly applicable treaty norms require a transformation into national law. On the other hand, one may assume that the entire treaty is being incorporated into the domestic legal system and, regarding non-directly applicable treaty norms, the state still needs to enact implementing legislation in order to make the relevant treaty norms applicable for national authorities. Chinese commentators have not yet reached a consensus regarding the applicable criteria to determine whether a treaty norm can be directly applied or not.

However, Chinese legal scholars do agree on the point that human rights treaties cannot be directly applied in China. Their arguments follow the official human rights rhetoric of the PRC government as it is expressed in the first Human Rights White Paper of 1991 (Liang, 2000). According to the White Paper:

The Chinese government has always submitted reports on the implementation of the related conventions, and seriously and earnestly performed the obligations it has undertaken. ... China believes that as history develops, the concept and connotation of human rights also develop constantly. The Declaration on the Right to Development provides that human rights refer to both individual rights and collective rights. ... China is in favour of strengthening international cooperation in the realm of human rights on the basis of mutual understanding and seeking a common ground while reserving differences. However, no country in its effort to realise and protect human rights can take a route that is divorced from its history and its economic, political and cultural realities. A human rights system must be ratified and protected by each sovereign state through its domestic legislation. (State Council Information Office, 1991: 8, 14; State Council Information Office, 2005)

The official view regarding the conception of human rights plays an important role in discussion on the domestic implementation of human rights treaties.¹⁹ The official human rights concept is still dominated by Marxist-Leninist ideology. Accordingly, human rights are not understood as inherent and inalienable rights based on human dignity and as preceding the existence of the state. Such an understanding would be incompatible with the world-view of Marxism, the basic-superstructure model, the legislative monopoly of the state, and the instrumental character of law (Brunner, 1978: 37).

In more recent writings, scholars accept the origin of human rights in natural law but simultaneously claim that international human rights lack legal effect (Liu, 2004: 74, 77). Hongjun Zhou tries to mediate between the opposite views of 'Western' human rights of universal quality, on the one hand, and the 'Sino-Marxist' dynamic-concrete human rights conception on the other. This view recognises rights of a universal nature and, at the same time, denies the legal effect of such rights. Universal human rights are attributed to the area of morals or a preceding value order. Although human beings are entitled to human rights alone on the

basis of their human existence, the rights, in order to become legally effective, require recognition by positive law (Zhou, 1999: 389). Peixiang Gong distinguishes between two kinds of subjective rights that individuals are entitled to. On the one hand, there are rights which individuals ought to enjoy (*yingyou quanli*); on the other hand, there are rights which individuals actually enjoy (*xianyou quanli*). Rights that ought to be enjoyed by individuals are grounded on an anthropological basis but are only of moral significance. They are inherent in human beings and are a reflection of such values that form the foundation of the individual's existence as a subject of society. Rights actually enjoyed by individuals are based on an expression of intention by the state and are a positive manifestation of the first category of rights (Gong, 1992: 137–8).

Another view combines this distinction between 'ideal rights' and 'actual rights' with the relationship between human rights treaties and national law: human rights in the international sphere are preceding the law, they are 'moral rights', 'ideal rights' and not legally binding, 'actual existing rights' that unconditionally oblige the addressee of the norm. International human rights treaties can only lay down an order of values for the domestic protection of human rights (Liu, 2004; Xia, 2001: 220; Xia, 2002: 68). It is argued that human rights treaties are not directly legally binding because international human rights are grounded on natural law. The attribution of human rights covenants to the sphere of 'ideal rights' is only valid from the perspective of municipal law. In international legal practice, 'value-guiding rights' (*jiazhi daoxiang de quanli*) are not confined to a theoretical or purely ideal existence but appear in the form of positive rights and become, from the perspective of international law, a standard of legality for domestic law (Liu, 2004: 74).

According to this group of scholars, human rights treaties are deemed not to have legal effect in the domestic legal system. On the other hand, the legal effectiveness upon the international plane remains unaffected. This approach seems to serve the purpose of maintaining the principle of general adoption of treaties and to exclude at the same time the domestic legal effectiveness of human rights treaties. There is a conflict between the effects of international publicity, which can be triggered by the accession to a human rights treaty and the attempt to reduce the effects in national law of human rights treaties in accordance with the Marxist human rights conception. This conflict cannot be overcome by the abovementioned legal constructions.

Conclusion

Chinese scholars have diverse views regarding the significance of the PRC's State Parties Reports and statements of the Chinese delegations

before human rights treaty bodies. They agree only in so far as the government statements have no domestic legal effect because the statements belong to the sphere of diplomatic affairs (Mu and Xian, 2003: 54–5; Qin, 2000: 156; Wang, 1998: 210). Fuyao Liao and Jian Liu (2004: 48–9) view the statements as manifestations of a ‘political guideline regulating diplomatic affairs’. Zhaojie Li (1997: 197) and Geping Rao (2000: 191) regard them as ‘authentic and reliable evidence’ for the mechanism that China applies to give domestic effect to treaty obligations. Only scholar Yanxu Han (2000: 202) alleges the irrelevance of government statements for the practice of domestic implementation of human rights treaties.

In the statements following the internationalist approach, treaty provisions become automatically effective in the domestic legal system upon being binding on the PRC if the NPC Standing Committee has formed a positive decision regarding the ratification of the relevant treaty. In addition to this, some official statements claim the direct applicability of human rights treaty provisions. In the scholarly analysis upholding the realist approach, it is made clear that, in general, courts and administrative bodies exclusively apply national laws. The statements suggest that national legislation has already exactly reproduced the contents of international human rights conventions and therefore makes any direct application of treaty norms superfluous. However, this suggestion is incorrect, particularly regarding the fundamental rights of the Chinese Constitution which were not implemented by acts of the legislature. Fundamental rights are not directly applicable by courts or the administration; they can only be indirectly applied through implementing legislation (Liu, 1997: 13–18; Zhou, 2003: 8–17). Many fundamental rights lack adequate implementing legislation (Shao, 2002: 444). Some of the rights guaranteed by human rights treaties lack any corresponding provision in the national legal system. For example, no Chinese national law provides for the right to strike as stipulated in art 8 of the Covenant on Economic, Social and Cultural Rights.²⁰

If one takes into account both international and realist approaches, the treaty provisions and national legislation with corresponding contents have legal effect in the PRC legal system. However, the provisions of international treaties will only be applied in case of conflict. Moreover, the direct application of treaty norms in case of conflict seems to be hypothetical because the provisions of international treaties are in general not taken into account in the course of adjudication and therefore conflicts will not be noticed by judges. On the one hand, international treaties become part of the domestic legal order, on the other hand, they need to be transformed into national legislation – or already exist as parallel

national legislation – in order to be applied by national courts. Hence, national judges are not allowed to apply the provisions of human rights treaties directly although they have become part of the national legal system.

The statements within the internationalist category are consistent in so far as they refer to the domestic legal effect of international treaties, that is, that treaties become part of the domestic legal system. However, the statements are incorrect as far as they suggest direct applicability of human rights treaties. Human rights treaties are in practice subject only to indirect application through parallel national legislation. The formal legal reason why treaty provisions in the area of human rights are not directly applicable lies in the lack of statutory reference provisions or judicial interpretations issued by the Supreme People's Court, which demand the direct application of the relevant treaty norms. The distribution of powers between the legislature and the courts under the People's Congress system, as well as the discrepancies between the international human rights system (that assumes a liberal democratic framework) and the political system of the PRC, are the substantive reasons for the denial of direct applicability of human rights treaties. The argument based on internationalist lines suggests compliance with treaty obligations when in fact treaties are not or are insufficiently implemented within the domestic legal system. Similar to the combination of monism and dualism or adoption and transformation in scholarly writings, the combination of the internationalist with the realistic approach gives the PRC government more flexibility. When the PRC government has to respond to an allegation that there is no proper implementing legislation in place, it can emphasise the internationalist view by stating that the relevant treaty provision has already automatically become part of the domestic legal system. Within China, the realist approach could be applied to deny direct applicability of a treaty provision in a domestic court by pointing out that no national legal provision referred to the relevant human rights treaty or that domestic law had already transformed the treaty provision into domestic law and that only the relevant domestic provision should apply.

However, when human rights bodies not only investigate the law on the books but also the actual application of law, the internationalist argumentation is no longer able to conceal that many provisions of international human rights treaties are not implemented at a domestic level. The above examination of official statements and academic discourses has also shown that there is a gradual change in governmental and scholarly attitudes, with a general move towards greater realism.

Notes

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- 1 The PRC ratified the convention on 4 November 1980 and declared a reservation regarding art 29(1).
 - 2 The PRC ratified the convention on 29 December 1981 and declared a reservation regarding art 22.
 - 3 The PRC ratified the convention on 4 October 1988 and declared that the Chinese government does not recognise the competence of the Committee against Torture as provided for in art 20 of the Convention and does not consider itself bound by art 30(1).
 - 4 The PRC ratified the convention on 2 March 1992 and declared that the PRC shall fulfil its obligations provided by art 6 of the Convention under the prerequisite that the Convention accords with the provisions of art 25 concerning family planning of the Constitution of the PRC and in conformity with the provisions of art 2 of the Law of Minor Children of the PRC.
 - 5 The PRC declared that the application of art 8.1(a) of the Covenant to the PRC shall be consistent with the relevant provisions of the Constitution of the PRC, the Trade Union Law of the PRC and the Labour Law of the PRC.
 - 6 It is said in an official statement of the State Council of 2005 that '[t]he Chinese government also signed the International Covenant on Civil and Political Rights in October 1998. At present, the Chinese government departments concerned are pressing on with their research and preparations, and when conditions are ripe, the State Council will submit a request to the Standing Committee of the NPC for examination and approval'.
 - 7 As long as the Chinese government associates international human rights law with Western hegemonism and power politics, a harmonisation of domestic law with international standards that conceals the connection with the international realm may better take into consideration political sensitivities than the direct application of human rights treaties by courts: Wan, 2007: 742. The Law on the Protection of Women's Rights and Interests is an example of a domestic law that implements the CEDAW but omits any reference to that treaty.
 - 8 The ICESCR did not establish a treaty body, but art 18 of the ICESCR entrusts the UN Economic and Social Council (ECOSOC) with functions concerning implementation as prescribed in arts 16 to 25 of the ICESCR. The ECOSOC later created a similar body for that Covenant by resolution. See ECOSOC Res 17 (28 May 1985).
 - 9 This may be due to carelessness in dealing with foreign language sources or may be an expression of doubt that those government statements before treaty bodies have any value in exploring the mechanism of treaty implementation in China.
 - 10 Regarding other statements of the Chinese Foreign Ministry, see Chen, 2000.
 - 11 In accordance with art 67(14) of the Chinese Constitution, the NPC Standing Committee decides on the ratification and abrogation of treaties and important agreements concluded with foreign states.
 - 12 Core documents are submitted to the Secretary-General by the State Party. They contain information that is relevant to all treaties including information on the political system and the legal framework within which human rights are protected within the

- relevant state. Core documents serve the purpose of reducing repetitions of information in the State Parties reports to the various treaty bodies: Office of the UNHCHR, 2005: 48.
- 13 Article 142 of the PRC General Principles of Civil Law was modelled on art 129(1) of the Basic Principles of Civil Legislation of the Soviet Union of 12 December 1961.
 - 14 Chinese: *zhijie shiyongxing*; this term is used by Rao, 2000. The notion of *kecaozuoxing* is used as well which may be translated as ‘operability’ of a treaty norm under a domestic legal system; this term is used by Yu and Zhao, 2005: 118. Another frequently used term is *kezhiqingxing* which means ‘executability’, see Wu and Li, 2004: 25.
 - 15 Chinese: *zizhixing tiaoyue* or *zidong zhixing tiaoyue*.
 - 16 For a discussion of the constitutional implications of direct effect, see Cottier and Schefer, 1998.
 - 17 The Chinese Constitution describes both the National People’s Congress and its Standing Committee as legislative organs: art 58. The National People’s Congress enacts basic laws (art 62(3)), whereas the enactment of ‘other laws’ falls into the domain of the Standing Committee: art 67(2).
 - 18 The Supreme People’s Court issues ‘judicial interpretations’ which have the effect of law. Abstract judicial interpretations do not arise out of specific application of law and often explain the national law subject to interpretation in a very detailed manner. See Liu, 1997; Ahl, 2007.
 - 19 For a discussion of human rights in China, see Peerenboom, 2005; Svensson, 1996.
 - 20 The reservation declared by the PRC covers only art 8(1a) of the ICESCR regarding the establishment of Trade Unions. See Ahl, 2001.

References

- Ahl, Björn (2007) ‘Die Justizauslegung durch das Oberste Volksgericht der VR China’ (Judicial Interpretation of the Supreme People’s Court of the PRC) in 8 *Zeitschrift für Chinesisches Recht (Journal of Chinese Law)* 251.
- Ahl, Björn (2001) ‘Die Rolle der Gewerkschaften in der VR China nach der Reform des Gewerkschaftsgesetzes’ (The Role of Trade Unions in the PRC after the Reform of the Trade Union Law) 8 *Zeitschrift für Chinesisches Recht* 172.
- Brunner, Georg (1978) ‘Die östliche Menschenrechtskonzeption im Lichte der UN-Menschenrechtskonvention’ (The Eastern Concept of Human Rights from the Perspective of the Human Rights Covenants) in Gottfried Ziegerm (ed), *Die Ausübung von Staatlicher Gewalt in Ost Und West Nach Inkrafttreten der UN-Konvention über zivile und politische Rechte* (The Exercise of State Powers after Coming into Effect of the International Covenant On Civil And Political Rights). Heidelberg: Karlsruhe.
- Buergenthal, Thomas (2006) ‘The Evolving International Human Rights System’ 100 *American Journal of International Law* 783.
- Cao, Jianming (1998) *Guoji Gongfa Xue (Science of Public International Law)*. Beijing: Beijing University Press.
- Cassese, Antonio (2005) *International Law*. Oxford; New York: Oxford University Press.
- Che, Pizhao (2005) ‘Lun tiaoyue zai woguo de shiyong’ (On the Application of International Treaties in China) 3 *Faxue Zazhi (Journal of Legal Science)* 96.
- Chen, Dan and Yang, Hongbo (2002) ‘Cong guojifa guoneifa jiaodu tan WTO xieding zai Zhongguo de shiyong’ (On the Application of the WTO Agreement in China from the Perspective of International Law and Domestic Law) 21 *Huaihua Shizhuan Xuebao* (Huaihua Normal College Journal) 28.
- Chen, Hanfeng et al (2000) ‘Guoji tiaoyue yu guoneifa de guanxi he zai Zhongguo de shijian’ (On the Relationship between International Treaties and Domestic Law and the Practice in China), in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi (The Relationship Between International Treaties And Domestic Law)*. Beijing: World Knowledge Press.

- Chiu, Hungdah (1987) 'Chinese Attitudes toward International Law in the Post-Mao Era' 21 *International Law* 1127.
- Choukroune, Leila (2005) 'Justiciability of Economic, Social, and Cultural Rights: The UN Committee on Economic, Social, and Cultural Rights' Review of China's First Periodic Report on the Implementation of the Covenant on Economic, Social, and Cultural Rights' 19 *Columbia Journal of Asian Law* 30
- Clarke, Donald (2003) 'China's Legal System and the WTO: Prospects for Compliance' 2 *Washington University Global Studies Law Review* 97.
- Cohen, Stanley (1996) 'Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims' 18 *Human Rights Quarterly* 517.
- Cottier, Thomas and Schefer, Krista (1998) 'The Relationship between World Trade Organization Law, National and Regional Law' 1 *Journal of International Economic Law* 83
- Duanmu, Zheng (1989) *Guojifa* (International Law). Beijing: Beijing University Press.
- Foot, Rosemary (2000) *Rights Beyond Borders: The Global Community and the Struggle Over Human Rights In China*. Oxford and New York: Oxford University Press.
- Gao, Zhihua and Yu, Hong (2002) *Guojifa Xue* (Science of International Law). Beijing: Commerce Press.
- Gong, Peixiang (1992) 'Hefaxing wenti: quanli gainian de fa zhexue sikao' (The Problem of Legality: Legal-Philosophical Thoughts on the Concept of Rights) 3 *Shehui Kexue Zhanxian* (Social Science Frontier) 131.
- Gong, Renren (1999) 'Guanyu guoji renquan tiaoyue zai zhongguo de shiyong wenti' (On the Question of Application of International Human Rights Treaties in China) in Xia, Yong (ed), *Gongfa* (Public Law). Beijing: Law Press.
- Guo, Sanzhan (2009) 'Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects' 8 *Chinese Journal of International Law* 161.
- Han, Yanxu (2000) 'Lun tiaoyue zai Zhongguo guonei de shiyong' (The Domestic Application of International Treaties in China) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.
- He, Xiaoyong (2001) 'Lun shimao zuzhi xieding zai woguo fayuan de shiyong wenti' (Problems regarding the Application by Chinese Courts of the WTO Agreement) 3 *Guoji Maoyi Wenti* (International Trade Issues) 49.
- Heilmann, Sebastian (2004) *Das Politische System Der Volksrepublik China (The Political System Of The People's Republic Of China)*. Heidelberg: Kunkeilopka Medienentwicklung.
- Huang, Jianqiu (2000) 'Lun WTO xieding zai guonei fayuan de shiyong' (On the Application of the WTO Agreement by National Courts) 9 *Shehui Kexue* (Social Science Journal) 49.
- Huang, Lie (2000) 'Guoji tiaoyue yu guoneifa de guanxi: lilun yu shijian de guancha' (The Relationship between International Treaties and Domestic Law: A Survey of Theory and Practice) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.
- Jiang, Guoqing (2000) 'Guojifa yu guoji tiaoyue de jige wenti' (Some Problems concerning International Law and International Treaties) 3 *Waijiao Xueyuan Xuebao* (China Foreign Affairs University) 8.
- Kent, Ann (1999) *China, the United Nations and Human Rights*. Philadelphia: University of Pennsylvania Press.
- Kong, Xiangjun (2001) 'Jianli yu WTO yaoqiu xiang shiyong de sifa shencha zhidu' (Establishing a System of Judicial Review that conforms with the Standards of the WTO) 6 *Zhongguo Faxue* (China Legal Science) 3.
- Kopp, Ferdinand (1972) 'Das Verfassungsverständnis in den sozialistischen Staaten' (The Understanding of Constitutions in Socialis States) in Hans Hablitzel and Michael

- Wollenschlager (eds), *Recht und Staat* (Law and State). Berlin: Festschrift für Gunther Kuchenhoff.
- Kretzmer, David (2009) 'Human Rights, State Reports' in Rudiger Wolfrum (ed), *Max Planck Encyclopaedia of Public International Law*. Oxford: Oxford University Press.
- Li, Zhaojie (1994) 'The Effect of Treaties in the Municipal Law of the People's Republic of China: Practice and Problems' 4 *Asian Yearbook of International Law* 185.
- Li, Zhaojie (1997) 'The Role of Domestic Courts in the Adjudication of International Human Rights: A Survey of the Practice and Problems in China' in Benedetto Conforti, et al (eds), *Enforcing International Human Rights in Domestic Courts*. Hague and Boston: Kluwer Law International.
- Liang, Shuying (1996) *Guoji Gongfa* (Public International Law). Beijing: The Open University of China Press.
- Liang, Shuying (2000) *Guoji Gongfa* (Public International Law). Beijing: China University of Political Science and Law Press.
- Liang, Xi (1993) *Guojifa* (International Law). Wuhan: Wuhan University Press.
- Liao, Fuyao and Liu, Jian (2004) 'Lun guoji tiaoyue zai Zhongguo de shiyong' (On the Application of International Treaties in China) 1 *Tianshui Xingzheng Xueyuan Xuebao* (*Tianshui Administration College Journal*) 48.
- Liu, Chao (ed) (2004) *Guojifa Zhuanlun* (International Law Monograph). Beijing: the Intellectual Property Press.
- Liu, Liantai (1997) 'Woguo xianfa guifan zai shenpan zhong zhijie shiyong de shizheng fenxi yu pingshu' (Analysis of Concrete Examples and Comment on the Direct Applicability by Courts of Norms of the Chinese Constitution) 6 *Faxue Yanjiu* (*Journal of Legal Science*) 13.
- Liu, Nanping (1997) *Judicial Interpretation in China: Opinions of the Supreme People's Court*.
- Mechlem, Kerstin (2009) 'Treaty Bodies and the Interpretation of Human Rights' 42 *Vanderbilt Journal of Transnational Law* 905.
- Mu, Yaping (1998) *Dangdai Guojifa Lun* (Theory of Current International Law). Beijing: Law Press.
- Mu, Yaping and Xian, Yifan (2003) 'WTO xieyi zai woguo guonei shiyong de wenti' (On the Question of Domestic Application of the WTO Agreement in China) 25 *Jinan Xuebao* (*Jinan Journal Philosophy and Humanity edition*) 54.
- Office of the United Nations High Commissioner for Human Rights (2005) *The United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies*, Human Rights Fact Sheet No 30, <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>.
- Pan, Baocun (1988) *Zhongguo Guojifa Lilun Tanta* (Exploration of a Chinese Theory Of International Law). Beijing: Law Press.
- Peerenboom, Randall (2007) *China Modernizes: Threat To The West Or Model For The Rest*. Oxford: Oxford University Press.
- Peerenboom, Randall (2005) 'Assessing Human Rights in China' 38 *Cornell International Law Journal* 71.
- Qin, Xiaocheng (2000) 'Tiaoyue de guonei shiyong: Zhongguo guonei lifa zhong de zhuangkuang fenxi yu sixiang' (Domestic Application of International Treaties: An Analysis of Chinese Domestic Legislation) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.
- Rao, Geping (ed) (1999) *Guojifa* (International Law). Beijing: Law Press.
- Rao, Geping (Year?) 'Guanyu tiaoyue zai zhongguo guoneifa shang de shiyong wenti' (On the Question of Domestic Application of International Treaties in China) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.

- Senger, Harro von (1994). *Einführung in das Chinesische Recht* (Introduction to Chinese Law). CH Beck Verlag.
- Shao, Jin (2000) *Guojifa* (International Law). Beijing: Beijing University Press.
- Shao, Shaping (2002) 'The Theory and Practice of the Implementation of International Law in China' in Shao, Shaping and Yu, Minfa (eds), *Guojifa Wenti Zhuanlun* (Monograph On Problems Of International Law). Wuhan: Wuhan University Press.
- Shen, Kui (2003) 'Is it the Beginning of the Era of the Rule of Law of the Constitution? Reinterpreting China's First Constitutional Case' 12 *Pacific Rim Law And Policy Journal* 99.
- Stoll, Peter-Tobias (2009) 'Human Rights, Treaty Bodies' in Rudiger Wolfrum (ed), *Max Planck Encyclopaedia of Public International Law*.
- Svensson, Marina (1996) *The Chinese Conception of Human Rights: The Debate on Human Rights in China, 1898-1949* [\[publication details?\]](#)
- Tao, Zhenghua (2000) 'Guanyu tiaoyue xiaoli de jige wenti' (Some Problems regarding the Effect of Treaties) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.
- Wan, Ming (2007) 'Human Rights Lawmaking in China' 29 *Human Rights Quarterly* 742.
- Wan, Exiang (1998) *Guoji Tiaoyue Fa* (Law of International Treaties). Wuhan: Wuhan University Press.
- Wan, Exiang and Wang, Guangxian (2000) 'Guoji renquan tiaoyue zai woguo guonei fayuan de shiyong' (The Application of International Human Rights Treaties in Chinese Courts) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi* (The Relationship Between International Treaties And Domestic Law). Beijing: World Knowledge Press.
- Wang, Keju (1999) 'Guoji renquan guifan zai Zhongguo de shishi jizhi' (Implementation Mechanisms for International Human Rights Norms in China) in Liu, Hainian and Li, Lin (eds), *Renquan Yu Sifa* (Human Rights And the Judiciary). Beijing: China Legal Press.
- Wang, Tiewa (1990) 'International Law in China: Historical and Contemporary Perspectives' 221 *Recueil Des Cours* 195.
- Wang, Tiewa (1995) *Guojifa* (International Law). Beijing: Law Press.
- Wang, Tiewa (1998) *Guojifa Yinlun* (Introduction to International Law). Beijing: Beijing University Press.
- Wang, Tiewa and Wei, Min (1981) *Guojifa* (International Law). Beijing: Law Press.
- Wang, Xianshu (2000) *Guojifa* (International Law). Beijing: Beijing University Press.
- Wang, Zhigang and Wang, Yan (2002) 'Jingji, shehui he wenhua quanli guoji gonyue de falv xiaoguo ji zai woguo de shishi' (The Legal Effect of the International Covenant on Economic, Social and Cultural Rights and its Implementation in China) 3 *Jinyang Xuekan* (Jinyang Journal) 36.
- Wu, Dongxian and Li Wenxue (2004) 'Guoji tiaoyue yu guoneifa de jinghe shiyong' (The Concurrent Application of International Treaties and Domestic Law) 64 *Hangzhou Shangxueyuan Xuebao* 23.
- Xia, Qingxia (2002) 'Guoji renquanfa shiye xia de guojifa yu guonei fa guanxi' (The Relationship between International Law and Municipal Law from the Perspective of the Law of International Human Rights) 3 *Nanjing Jingji Xueyuan Xuebao* (Nanjing Economics College Journal) 67.
- Xia, Yong (2001) *Renquan Gainian de Qiyuan* (Genesis of the Human Rights Concept). Beijing: China University of Political Science and Law Press.
- Xue, Hanqin and Jin, Qian (2009) 'International Treaties in the Chinese Domestic Legal System' 8 *Chinese Journal of International Law* 299.
- Yang, Zewei (1999) *Guojifa Jiaocheng* (Textbook of International Law). Beijing: China University of Political Science and Law.

- Yu, Xianyu (2000) 'Lun guojifa yu guoneifa de xietiao' (On Harmonisation of International Law and Municipal Law) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue yu Guoneifa de Guanxi (The Relationship Between International Treaties And Domestic Law)*. Beijing: World Knowledge Press.
- Yu, Xiuling and Zhao, Jing (2005) 'Shilun guoji tiaoyue zai guonei shiyong de hunheshi' (On the Mixed Mode of Domestic Application of International Treaties) 4 *Luohe Zhiye Jishu Xueyuan Xuebao* (Luohe Professional College Journal) 117.
- Zhao, Jianwen (2000) *Guojifa Xinlun (New Introduction to International Law)*. Beijing: Law Press.
- Zheng, Chengsi (1998) 'The TRIPS Agreement and Intellectual Property Protection in China' 9 *Duke Journal of Comparative & International Law* 219.
- Zhou, Gengsheng (1983) *Guojifa (International Law)*. Beijing: Commerce Press.
- Zhou, Hongjun (1999) *Guojifa (International Law)*. Beijing: Commerce Press.
- Zhou, Wei (2003) 'Zur Grundrechtsbindung chinesischer Gerichte' (On the Direct Application of Fundamental Rights by Courts) 10 *Zeitschrift Für Chinesisches Recht (Journal of Chinese Law)* 8.
- Zhu, Qiwu (1998) *Zhongguo Guojifa Lilun yu Shijian (Theory and Practice of Chinese International Law)*. Beijing: Law Press.
- Zhu, Xiaoqing (2000) 'Renquan liang gongyue shishi jizhi yu tiaoyue de guoneifa shiyong wenti yanjiu' (Exploration of the Implementation Mechanisms regarding both International Human Rights Covenants and the Problems of Domestic Application of International Treaties) in Zhu, Xiaoqing and Huang, Lie (eds), *Guoji Tiaoyue Yu Guoneifa De Guanxi (The Relationship Between International Treaties And Domestic Law)*. Beijing: World Knowledge Press.

Laws (China)

- Constitution of the People's Republic of China (2004)
- General Principles of Civil Law (1986)
- Labour Law of the People's Republic of China (1994)
- Law on the Protection of Women's Rights and Interests (2005)
- Trade Union Law of the People's Republic of China (2001)

Official Documents

- State Council Information Office of the PRC (1991) 'Human Rights in China', Chapter X. 34 Beijing Review, 4-10 November, 8, <<http://www.china.org.cn/e-white/7/7-L.htm>>.
- State Council Information Office of the PRC (2005) 'China's Progress in Human Rights 2004', <http://english.gov.cn/official/2005-07/28/content_18115.htm>.
- State Council (2005) 'Building of Political Democracy in China', White Paper issued by the Information Office of the State Council of the People's Republic of China, Chapter VII: Respecting and Safeguarding Human Rights; <<http://www.china.org.cn/english/features/book/145926.htm>>.

International Legal Instruments

- Committee on the Elimination of Racial Discrimination, 2001, Fifty-ninth Session, Summary Record of the 1469th Meeting, 1 August, UN doc. CERD/C/SR.1469
- Committee on the Rights of the Child, 1996, Written Replies by the Government of China Concerning the List of Issues, 17 May, UN doc CRC/C.12/WP.5
- Committee against Torture, 2008, Consideration of reports Submitted by State Parties, 12 December, UN doc CAT/C/CHN/CO/4

- Committee against Torture, 1990, Fourth Session, Summary Record of the 51st Meeting, 27 April, UN doc CAT/C/SR.51
- Committee against Torture, 1996, Sixteenth session, Summary Record of the Public Part of the 252nd Meeting, 8 May, UN doc CAT/C/SR.252/Add.1
- Committee against Torture, 2000, Twenty-fourth Session, Summary Record of the 419th Meeting, 12 May, UN doc CAT/C/SR.419
- Concluding Observations (1999) of the Committee on the Elimination of Discrimination against Women, 3 February, UN doc A/54/38
- Consideration of Reports Submitted by State Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: People's Republic of China (Including Hong Kong and Macao), 13 May 2005, UN ESCOR, 34th Sess, UN Doc E/C.12/1/Add.107 (2005)
- Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, 1249 UNTS 13
- Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3
- Core Document (2001) Forming Part of the Reports of States Parties, 6 November, UN doc HRI/CORE/1/Add.21/Rev.2
- ECOSOC Res. 17/1985, Review of the Composition, Organization and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 28 May 1985, UN doc E/1985/85
- General Assembly, 1991, 46th Session, Third Committee, Summary Record of the 41st Meeting, 14 November, UN doc A/C.3/46/SR.41
- Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc E/1990/5/Add.59 (2005)
- International Covenant on Civil and Political Rights of 19 December 1966, 999 UNTS 171
- International Covenant on Economic, Social and Cultural Rights of 16 December 1966, 993 UNTS 3
- International Convention on the Elimination of All Forms of Racial Discrimination of 7 March, 1966, 660 UNTS 195
- International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, 1465 UNTS 85