

# **Framing China Policy: The Carnegie Debate**

## **Debate #4: “Has U.S. engagement with China produced a significant improvement in human rights?”**

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### *Stepping onto the minefield*

The assessment called for by our debate question presents a minefield of embedded methodological, political, and empirical challenges. Even within the positioning of a qualified “yes” or “no,” an assessment that might feed a constructive policy re-framing has to grapple with a range of complex difficult tasks: defining key terms, categories of analysis, identifying relevant benchmarks and indicators, and data. Although these tasks address how to *measure* progress, they also *promote* greater progress by drawing attention to problems, and encouraging documentation and development of standards and accountability mechanisms. A range of human rights-related initiatives have emerged, and is being developed, by diverse stakeholders, including non-governmental organizations (NGOs),<sup>1</sup> governments,<sup>2</sup> UN bodies and human rights mechanisms,<sup>3</sup> and multi-national corporations.<sup>4</sup>

However, even if the considerable methodological and definitional issues were resolved, the key foundation for any useful assessment is accurate, comprehensive, and reliable information and data. Yet what we have in China is ongoing censorship and information control,<sup>5</sup> maintained by a comprehensive system of criminal, state security and state secrets laws,<sup>6</sup> Internet and media laws, state-of-the-arts technology, and a highly effective police and security apparatus.

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<sup>1</sup> See, e.g., Rights & Democracy, “Initiative on Human Rights Impact Assessment,” Summer 2006 Progress Report, at [http://www.dd-rd.ca/site/what\\_we\\_do/index.php?subsection=documents&lang=en&id=1764](http://www.dd-rd.ca/site/what_we_do/index.php?subsection=documents&lang=en&id=1764).

<sup>2</sup> For discussion of benchmarks used by the EU in their dialogue with China, see Human Rights in China and the International Federation for Human Rights, “Preliminary Assessment of the EU/China Human Rights Dialogue,” Feb. 24, 2004, available at <http://www.ir2008.org/article.php?sid=15>.

<sup>3</sup> See, e.g., Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and human rights: mapping international standards of responsibility and accountability for corporate acts*, Feb. 19, 2007, UN Doc. A/HRC/4/35.

<sup>4</sup> See, e.g., Business for Social Responsibility and Center for Democracy & Technology, “Press Release: Companies, Human Rights Groups, Investors, Academics and Technology Leaders to Address International Free Expression and Privacy Challenges,” January 18, 2007.

<sup>5</sup> He Qinglian, *The Fog of Censorship: Media Control in China*, Human Rights in China, *State Secrets: China’s Legal Labyrinth* (forthcoming Spring, 2007).

<sup>6</sup> See Human Rights in China, *State Secrets: China’s Legal Labyrinth*, forthcoming April 2007.

So within these considerable limits of information and methodological challenges, here is one starting point I want to suggest:

Current U.S. engagement (however defined) with China is not as effective as it *needs* to be or as it *could* be, in terms of not only the U.S. human rights policy basket, but also the trade and security baskets. This is to sidestep the “yes,” “no” debate, so we can focus on what I think really matters: how to get greater traction for advancing human rights for twenty percent of the world’s people through U.S. engagement with China.

While the focus of this policy framing exercise is on the U.S. and China, in order for U.S. *China policy* to be more effective, it will be necessary first, for the U.S. to engage more effectively with the rest of the world—beyond a dangerous unilateralism and go-it-alone-arrogance—and second, to ensure that its handling of human rights at home does not undermine its moral authority and legitimacy abroad. This may be rather Confucian; but one of the most effective ways to influence others is to set the example through one’s own behavior. I will expand later on specific suggestions for the U.S. engagement with China.

### ***Status of the human rights situation in China***

China’s exponential growth and the lucrative potential of its huge market have largely shaped how international business and foreign governments prefer convenient half-truths (the China economic miracle story) or questionable assumptions (economic growth will inevitably lead to progress) to grappling with the messy realities of the human rights challenges. Domestically, the post-Tiananmen “bargain” of silence—don’t ask, get rich—never legitimate to begin with, is breaking down under the pressures of endemic corruption, growing social inequalities and unrest, and serious environmental, public health, and social welfare challenges.<sup>7</sup>

In the growing blogosphere in China, critical views are emerging. For example, in mid-December, 2006, the Rising Forum, moderated by Nantian Beilong (“a northern wolf in the south”), a blogger on China’s popular NetEase Web portal, conducted a survey of reader’s opinions regarding the benefits of China’s accession to the World Trade Organization (WTO).<sup>8</sup> His survey’s respondents exhibit a mixture of skepticism and expectation, with many pointing out the sacrifices made by average workers without living wage increases, while elites see tangible benefits.

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<sup>7</sup> The growth of social unrest became clear in July 2005, when the Ministry of Public Security revealed that the number of ‘mass incidents’ had risen by 30 per cent in 2004 to 74,000, and that a total of 3.8 million people had participated in these demonstrations. On 19 January 2006, the Ministry announced that there were 87,000 cases of disturbances of public order recorded in 2005. PRC Ministry of Public Security Press Conference, “Press Release: 公安部召开新闻发布会通报 2005 年全国社会治安形势暨火灾形势 (Ministry of Public Security Report on the Trend of Social Order and Disaster in 2005),” January 20, 2006, [http://news.mps.gov.cn/right\\_news.asp?id=1457](http://news.mps.gov.cn/right_news.asp?id=1457).

<sup>8</sup> “China’s WTO Accession: A Mountain is Still a Mountain, An Internet Survey,” China Rights Forum 1.2007, 75–79 (Edited survey of reader’s opinions on the benefits of China’s WTO accession conducted by a blogger on the NetEase Web portal. The original Chinese survey can be accessed at <http://bbs8.news.163.com/jueqi/789620,50.html>).

As documented by numerous U.S. government hearings and reports including State Department Country human rights reports on China,<sup>9</sup> UN reports,<sup>10</sup> and NGOs, including Human Rights in China's (HRIC) ongoing monitoring and reporting, the overall human rights situation in China remains serious, and continues to deteriorate. Let me highlight a few areas:

- Detentions: Continued detentions and heavy sentences handed down for journalists, lawyers, Internet activists and other human rights defenders, and non-state sanctioned religious groups, reflect the Chinese government's hardening attitude in the lead up to both the 17th Party Congress in fall 2007 and the 2008 Olympic Games. Even suspended sentences should not be viewed as "light" as they still function as a silencing sword hung over the head of the person.
- Announced administrative detention reforms: Although the Chinese government has discussed possible reforms to the Reeducation Through Labor system (RTL) numerous times over the past several years, the practice of RTL, and its abuses, remain largely the same. Reforms have most recently been discussed in the media ahead of the 2007 session of the National People's Congress Standing Committee, where a new draft law, to abolish the system, was reviewed.<sup>11</sup> These reforms reportedly aim to make the system more lenient. However any announced reforms will have to be monitored to ensure actual implementation, which is made difficult by a lack of transparency and information control.
- Avenues for citizens to present grievances to the authorities are ineffective at best: Numerous petitioners that travel to Beijing to petition the government for reasons ranging from official corruption, to land seizures, to withholding of payments, are detained and often sentenced to periods of RTL. Recently, petitioners in Shanghai protested official reporting claiming that the petitioning system is working well.<sup>12</sup>
- Rule of law? Within a framework that maintains the supremacy of the Communist Party of China (CPC), the legal system being built continues to be plagued by corruption, lack of independence from Party control, and remains essentially a rule *by* law. The lack of transparency and accountability contribute

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<sup>9</sup> Reports include: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices—2006*, March 6, 2007; U.S. Commission on International Religious Freedom (USCIRF), Annual Report, Country Report: China, "China Daily, March 1, 2007. May 2006; U.S.-China Economic and Security Review Commission, 2006 Annual Report, November 16, 2006; Congressional-Executive Commission on China (CECC), Annual Report, September 20, 2006. Recent hearings include: CECC, "Human Rights and Rule of Law in China," September 20, 2006; USCIRF, "The Many Faces of China's Repression: Human Rights, Religious Freedom, and U.S. Diplomacy in China," January 31, 2007.

<sup>10</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, *Mission to China*, March 10, 2006, UN Doc. E/CN.4/2006/6/Add.6.

<sup>11</sup> "New Law to Abolish Laojiao System," China Daily, March 1, 2007.

<sup>12</sup> See Human Rights in China, "Shanghai Petitioners Detained Following Protests," April 12, 2007; Wall Street Journal Op-Ed, "Petitioning China," April 19, 2007.

to ongoing abuse of law and other official procedures as a tool to maintain political control. The use of state security and state secrets law to restrict procedural due process protections exacerbate a politicized and secret decision-making process, especially in sensitive cases.

- Lawyers under attack: Tightening regulations, procedural obstacles, and increasing harassment and threats against lawyers, all demonstrate an increasingly severe crackdown on the legal profession, especially on lawyers who take on cases viewed as sensitive or political by the authorities.<sup>13</sup> In addition to problems of corruption and the lack of independent courts, this crackdown on the bar further undermines a rule of law. The cases of the blind barefoot lawyer Cheng Guangchen, Gao Zhisheng, Zheng Enchong, Guo Feixiong, and others illustrate the plight of rights defense lawyers. The 2006 Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases further restrict representation of group cases,<sup>14</sup> undermining the ability of rights defense lawyers to take on these important cases raising mass human rights issues of corruption, forced relocations, environmental degradation, health, and other pressing issues.
- Growing social and economic inequalities: Despite rhetorical calls for a harmonious society, government economic reform policies continue to have a serious impact on undermining human rights—including access to education, health, work, housing—with a particular impact on vulnerable groups (migrants, rural poor, ethnic groups, children).
- The past is not another country: June 4 1989: Almost 18 years later, despite continuing demands by Chinese citizens,<sup>15</sup> there has been no full public accounting or compensation for the victims of the crackdown on June 4, 1989, and hundreds convicted of June 4th-related activities remain in prison, some for a “counter-revolutionary” crime that no longer exists. In order for China to make genuine progress towards a rule of law, these past abuses, must be addressed.
- Spread of democratic elections? In 1988, the Chinese government introduced direct village elections. Today, village elections occur in some 700,000 villages across China, reaching 75 percent of the nation’s 1.3 billion people.<sup>16</sup> Although Wen Jiabao stated in 2005 that the elections would be extended to higher levels, government leaders have since said the statement was misinterpreted and that

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<sup>13</sup> Human Rights in China, *Trends Bulletin: Setback for the Rule of Law: Lawyers Under Attack in China*, August 28, 2006, Updated February 28, 2007; Human Rights Watch, *A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protesters*, December 12, 2006.

<sup>14</sup> Human Rights Watch, *A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protesters*, December 12, 2006.

<sup>15</sup> Human Rights in China, “Press Release: Tiananmen Mothers Call for End to Censorship over June 4th Crackdown,” February 27, 2007.

<sup>16</sup> Carter Center, “Former U.S. President and Nobel Laureate Jimmy Carter Travels to China to Promote Carter Center’s work on Village Elections,” September 2, 2003, at <http://www.cartercenter.org/news/documents/doc1445.html>.

there are no plans to extend elections beyond the village level.<sup>17</sup> While there are some democratizing effects of these local experiments, more comprehensive and far-reaching democratic reforms at the national level will be necessary.

There are also progressive drivers for change inside China today. Despite the public rhetoric and toeing of the Party line, the leadership is not monolithic. There *are* reform minded allies in the government, think tanks, and throughout civil society. However, in the lead-up the 17th Party Congress and the Olympics, it will be difficult for these voices in a jockeying for power where tough guys will come out on top.

There is also an expanding civil society that is diverse and active. However, the dramatic growth in numbers of registered and unregistered civil society organizations (CSOs)—used broadly<sup>18</sup>— are also accompanied by a range of obstacles including:

- Confusing legal terminology in the Chinese regulatory regime where at least four terms are simultaneously used for organizations constituting civil society organizations: Social Organizations (社会团体), Private Non-Profit Organizations (民办非企业单位), Foundations (基金会), and Non-governmental Organizations (非政府组织).<sup>19</sup> The Chinese government uses them distinctly and, at times, assigns certain organizations to more than one classification. It has never issued an official explanation of all the terms, nor a complete set of regulations applied to different classes of organizations.
- A restrictive regulatory scheme that presents obstacles such as onerous registration and sponsorship requirements.<sup>20</sup>
- Financial support is difficult to secure due to fundraising restrictions, including a minimum holding required to attain legal status. As a result, many small NGOs fail to renew their NGO registration.<sup>21</sup> In addition the recently adopted Law on

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<sup>17</sup> Ministry of Foreign Affairs, “Interview given by Chinese Premier Wen Jiabao to Media of Finland, the UK and Germany, Sept. 6, 2006, at <http://www.fmprc.gov.cn/eng/wjb/zjzg/xos/xwlb/t270458.htm>.

<sup>18</sup> As of December 2005, according to official statistics, there were 319,762 registered CSOs throughout China, of those 171,150 were social organizations, 975 were foundations, and 147,637 were private non-profit organizations. Ministry of Civil Affairs statistics, “2005 Non-Profit Organization Summary Statistics,” available at <http://www.chinanpo.gov.cn/web/showBulletin.do?id=22371&dictionid=2201>.

<sup>19</sup> The Chinese government issued several key documents in 1998 that partially describe the NGO regulatory regime, including Regulations of Registrations of Social Organizations; Temporary Regulations of Non-governmental and Non-commercial Enterprises (NGNCE, *minban feiqiye danwei*); and The Temporary Regulations of Non-commercial Enterprises (*shiye danwei*). “Chinese Civil Society Organizations,” Congressional-Executive Commission on China, <http://www.cecc.gov/pages/virtualAcad/rol/ngosumm.php>

<sup>20</sup> Article 9 and 10, Chapter 3 Registration, Regulations for Registration and Management of Social Organisations (1998).

<sup>21</sup> See “中國社團大整合”, Xinhuanet, June 19, 2003, [http://news.xinhuanet.com/book/2003-06/19/content\\_926956.htm](http://news.xinhuanet.com/book/2003-06/19/content_926956.htm).

Anti-Money Laundering,<sup>22</sup> while having a legitimate regulatory aim, also functions as chilling effect on the flow of support from foreign donors and others to support domestic Chinese activists or local NGOs.

- Lack of independence, including the requirement of setting up internal party organizations (应建立党组织).<sup>23</sup>

Ultimately, in the long term, the fundamental changes that will advance human rights in China must and will emerge from inside China. However, there are obstacles impacting the extent to which these domestic forces (and foreign initiatives supporting them) can be drivers for rights protections. There are inevitable limits to what an authoritarian regime that fears a “color revolution” in its own backyard will allow. The current restrictions on foreign foundations, university exchanges, and other capacity-building programs should be sobering.

To support these domestic forces more effectively, there needs to be more nuance to the messiness of the domestic processes underway, and the different roles and impacts that international groups and domestic Chinese groups can play. There is a need for “walking on two legs” or not putting all domestic program eggs in the same basket, especially in light of evidence that the Chinese leaders have no qualms about crushing all of the basket’s eggs.

Technology is both opening greater civil space and providing increasingly sophisticated tools of censorship and social control. Since 1994, when a group of Beijing physicists succeeded in creating China’s first full Internet connection,<sup>24</sup> the Internet in China has grown in size, sophistication, coverage, and access, in spite of the corresponding sophisticated censorship technology and comprehensive legal controls. The jump in the number of users alone demonstrates the exponential growth in infrastructure capacity and accessibility<sup>25</sup>—China, with over 137 million users,<sup>26</sup> may bypass the U.S. within the next two years and lay claim to the world’s largest Internet population.<sup>27</sup>

As the number of Internet users in China continues to grow, human rights defenders, “rights defense” activists and others are now trying to exploit the potential of the Internet

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<sup>22</sup> Law of the People's Republic of China on Anti-Money Laundering, adopted Oct. 31, 2006, 24th Meeting of the Standing Committee of Tenth National People's Congress, in effect, January 1, 2007.

<sup>23</sup> *Chinese NGO's -- Carving a Niche Within Constraints*, a January 2003 report from US embassy in Beijing. Available at <http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm> [accessed March 13, 2007].

<sup>24</sup> RLA Cottrell, Charles Granieri, Lan Fan, Rongsheng Xu, and Yukio Karita, “Networking with China,” April 1994.

<sup>25</sup> The first annual survey report of the China Internet Network Information Center (CNNIC) in 1997 recorded 620,000 users, and in its most recent report recorded 137 million users. CNNIC, *Statistical Report of the Development of Chinese Internet [sic]*, October 13, 1997; CNNIC, *19th Statistical Survey Report on Internet Development in China*, January 23, 2007.

<sup>26</sup> CNNIC, *19th Statistical Survey Report on Internet Development in China*, January 2007, p. 5.

<sup>27</sup> “Internet users to log in at world No. 1,” *China Daily*, January 24, 2007, [http://www.chinadaily.com.cn/china/2007-01/24/content\\_790804.htm](http://www.chinadaily.com.cn/china/2007-01/24/content_790804.htm)

to facilitate communication, expression, and access to information.<sup>28</sup> Despite the Chinese leadership's fears of its own people organizing which results in massive efforts at control, the genie is out of the bottle, and will not obediently return to its prison.

***So has U.S. engagement with China contributed to promoting human rights and supporting these domestic forces for change?***

Well, a qualified “no” or “yes” would be equally true and defensible.

The good and bad news: it's not all about the U.S. The U.S. is not the only actor influencing or attempting to influence China's human rights record. The increasing presence of China throughout the world, highlighted in the past year by dramatic investment in Africa, enables China to play different actors against each other as well as build its influence. More significantly, as long as the Chinese leadership refuses to embark on any serious political reforms, there *cannot* be any true progress in advancing human rights. But as Pei Minxin has so eloquently argued: where is the incentive for the economic and political elites to relinquish all of the privilege and benefits that accompany the present set-up?<sup>29</sup>

Rule of law: After more than a decade of U.S. legal reform programs intended to improve Chinese court proceedings, increase professionalism among Chinese lawyers and judges, and enhance access to legal services, serious systemic and structural weaknesses of the Chinese legal system remain. However, a cadre of competent and professional lawyers, judges, and legislators is growing and U.S. initiatives have contributed to this.<sup>30</sup>

Human rights defenders: Beyond hostage releases? The pattern of negotiating releases of political prisoners or dissidents, especially around sensitive times, such as the annual sessions of the former UN Commission on Human Rights, raises concerns about the impact on institutional reforms. Individuals who are exiled are often without support, isolated, and have a difficult time trying to find a meaningful way to contribute to the work back in China. Exile is not progress. Threats and imprisonment of family members left behind is not progress. Without systemic and institutional reforms and change, there cannot be real progress. For example, thanks in part to international pressure, AIDS activist Dr. Gao Yaojie was recently released from house arrest and allowed to visit the U.S. to receive an award.<sup>31</sup> However, the system which enabled local authorities to make such an arbitrary decision like this remains.

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<sup>28</sup> For a number of articles on this subject, see Human Rights in China, China Rights Forum: Technology and Human Rights, issue 3, 2006.

<sup>29</sup> Minxin Pei, *China's Trapped Transition: The Limits of Developmental Autocracy* (2006).

<sup>30</sup> The U.S. government and private foundations provide support for many legal reform efforts in China. For a sample list, see “FY 2005-2006 Human Rights and Democracy Fund Projects,” Bureau of Democracy, Human Rights, and Labor, December 6, 2005, <http://www.state.gov/g/drl/rls/57669.htm>. For a discussion of the impact of these projects, see Hecht, Jonathan, “Can Legal Reform Foster Respect For Human Rights In China?,” April 11, 2002, <http://www.cecc.gov/pages/hearings/041102/hecht.php>

<sup>31</sup> Yardley, Jim, “Detained AIDS Doctor Allowed to Visit U.S. Later, China Says,” *New York Times*, February 21, 2007,

The good news: Despite the ups and downs, the rhetorical saber-rattling, and cultural misunderstandings and gaps, the U.S-China relationship remains very important to Chinese leadership. China wants to be a respected member of the international community. Peaceful evolution is probably what everyone would prefer. China wants a successful and smooth Olympics and is investing vast resources to the preparations and hosting of the Games. To achieve this goal it must balance, on one hand, its perceived necessity for a domestic lock-down to maintain order and, on the other, packaging itself as a modern, open, and gracious host to the world.

***Getting greater traction from U.S. engagement with China:***

Like the issues facing U.S business in China, the human rights issue is not *whether* to do business with China, but *how* to do so in way that does not contribute to human rights violations and abuses, and at best, provides some leadership in promoting human rights.

- Promoting civil society: A vital part of effective engagement includes transparency, accountability, and input from civil society both domestically in the U.S. and in China—this engagement must not be limited to civil society groups allowed by the Chinese authorities. This will require more fluid and multiple approaches to supporting domestic and international NGOs, as well as exploiting the blurring of “inside” and “outside,” as traditionally defined by territorial borders. The increasing information exchange and flow enabled by technology such as the Internet, cell phones, etc., despite censorship, contributes to the expansion of a virtual public space, which transcends these geographic demarcations. Of course, the limits of a digital divide must be kept in mind.
- More effective linking of bilateral engagement and multilateral strategies: This effort can maximize the synergism of each approach and includes such strategies as the Berne Process. The Chinese leadership and the diplomatic core abroad have gotten much more sophisticated, demonstrating technical, doctrinal, and procedural expertise on human rights in bilateral and multilateral venues. The procedural maneuverings at the Human Rights Council is illustrative of how effectively obstructionist China can be. However, the multilateral human rights mechanisms have issued numerous recommendations and findings regarding the human rights situation in specific areas. Pressing these constructive recommendations reached by international experts would help to respond to claims of interference in domestic affairs or Chinese sovereignty. China has signed onto mechanisms of the international human rights system and should be welcoming efforts to promote their implementation of their international obligations.
- Legal reforms: China claims it is engaged, once again, in legal and administrative reforms, such as reforming RTL and the death penalty. The U.S. needs to

critically monitor these developments, and at the same, time, exploit the openings provided by these reform intentions and initiatives. However, some caution regarding excessive focus on formal legislative initiatives: without structural reforms, allocation of resources for implementation, monitoring and accountability mechanisms, and a cultural shift, legal and administrative reforms will stay where they are—on paper.

- More critical attention paid to implications of when rule of law, governance, and democracy-building are used as proxies for human rights. These are systemic conditions related to, and necessary for promoting and protecting not only human rights, but also trade and economic interests. But the tendency towards backing off from the “H” word for fear of sensitivity of the Chinese leaders sends the wrong message—to the Chinese leaders, to the emerging Chinese civil society, and to the international community committed to human rights concerns. After all, the Chinese government is issuing White Papers on Human Rights of the U.S. as well as establishing human rights think tanks and institutes, and even mounting a human rights exhibition. While these might be viewed with some cynicism, the point is that it would be ironic and undermining of human rights terminology, concepts, and values, if international actors shied away from explicit reference to human rights.
- Adopt and make public clear benchmarks, indicators, and metrics. The EU experience should not discourage the U.S. For example, press for Ratification of the International Covenant on Civil and Political Rights (ICCPR). The Chinese government has for years said that it intends to ratify the Covenant, but only after more domestic legal changes. As demonstrated by Chinese WTO accession, however, all legal change does not need to come before acceding to international instruments. Furthermore, ICCPR jurisprudence makes it clear that complete compliance is not a precondition to ratification, but ratification will promote steps towards compliance. China’s ratification of the ICCPR would be an important step towards protecting the right to free expression.
- Olympics: Exploit the final lead-up to the Olympics, but carefully strategize to avoid providing fodder for Chinese nationalism. For example, a U.S. government initiative explore how to monitor or investigate U.S. corporations involved in mounting the Olympics, including in the area of security, IT, legal services, and media training.
- Chinese nationalism: Chinese nationalism needs to be viewed within a historical frame as well as recognizing its manipulation by the present leadership in Beijing. How is it expressed? There are demonstrations and many layers of protest on the Internet. There is also much that is not visible and this needs to be taken into account. The nationalistic voice, while strong, is not the only voice in China.