

**THE CARNEGIE ENDOWMENT FOR  
INTERNATIONAL PEACE**

**THE CARNEGIE DEBATES 2006-2007**

**REFRAMING CHINA POLICY  
“U.S. ENGAGEMENT AND HUMAN RIGHTS IN CHINA”**

**WELCOME:**

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**MODERATOR:**

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**DEBATERS:**

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MARK MEDISH: Ladies and gentlemen, good morning. I'd like to call our session to order. My name is Mark Medish. I'm Vice President of the Carnegie Endowment for International Peace. And on behalf of our president Jessica Mathews, who couldn't be with us this morning, I'd like to welcome all of you. Thank you so much for sharing your morning with us.

This is the fourth debate in Carnegie's series "Reframing China Policy." What a great room we have to meet in. I'd like to thank Senator Chuck Hagel for sponsoring and hosting us here today. The purpose of our debate series is to try to bring together the best and brightest minds on China to get the facts straight, and to think through the arguments together, with a view to sharpening understanding of U.S. policy options. The goal here is to have a spirited deliberation.

We're very grateful to our corporate sponsor, GE, for its support for this series. Previous topics of the debate series were, the sustainability of the Communist Party rule in China; the sustainability of China's high rates of economic growth in the long term; and implications of China's military modernization for U.S. policy. Today, we turn to the issue of human rights in China. The specific proposition to be discussed is whether U.S. engagement with China has produced a significant improvement in the human rights situation there.

As we know, it may be an inevitable feature of U.S. foreign policy in dealing with any major power that we have multiple strategic objectives – security, commercial trade, economic, human rights, democracy promotion – based on U.S. national security interests and U.S. national values. We also know that the U.S. policy can't be one dimensional. The question is, where do we strike the balance among these interests and values? What kind of engagement do we pursue at any given time and over time?

Equally fundamental and related questions are, with respect to human rights, what leverage do we actually have? What is our toolbox? Running the spectrum of norm-setting; sanctions or the threat of sanctions; high-level dialogue; grass root exchanges; promotion of the rule of law in civil society. And what has been our track record in using those tools in the case of China? In short, how can we effectively promote our values without jeopardizing our other interests?

To help us navigate these questions, we've invited two of the country's leading experts on human rights in China – Professor Sharon Hom, formerly of NYU Law School, and now the head of an NGO called Human Rights in China; and Professor Jacques deLisle of the University of Pennsylvania Law School. You'll see their full bios in the pamphlets on your chairs.

Without further ado, I'm going to turn this session over to our moderator, Dr. Minxin Pei, who is the director of Carnegie's China Program and author of *China's Trapped Transition*. He'll provide further introductory remarks and lay out the ground rules. Minxin?

MINXIN PEI: Thank you very much, Mark. Before I lay out the ground rules, I would like to announce the next two debates. The one in mid- to late-April will focus on the issue of whether China seeks to displace the U.S. as the dominant power in East Asia. Then following that, May 14<sup>th</sup>, we will have a debate on China's role as a global trader – whether China's trade practices warrant a tougher response from the West.

If you want to stay in touch with us on the debate series and learn more about our debates, please leave your business cards on your way out, or write down your contact information on the sign up sheet.

The format of today's debate is this: Each speaker will start with a seven-minute opening statement. Then, the three of us will engage in a discussion of about four or five issues. That will last for 13 minutes. Then, we will open up the floor for questions. For the sake of efficiency, we ask that you write down your questions on the index cards we've left on your chairs and pass them along. That will go on for about 40 minutes. We will end around 11:35.

The first speaker who will start this debate is Jacques deLisle, a good friend of mine and a former classmate. Jacques?

JACQUES DELISLE: Thank you, Minxin, and thank all of you for coming. We are engaged in a debate here today, and I hope that Sharon and I will disagree more on substance than we did on wardrobe choice.

Time is brief, so I will try to get through my points in relatively short order. As is often true of academics, I didn't have time to write a short paper, so I wrote a long one. I'll try to give it in brief form. Much of what we've been asked to address here, I think, has fairly obvious answers. There is very little doubt that human rights conditions in China remain inadequate, and in some respects utterly abysmal. Nonetheless, they are a lot better than they used to be. They have improved greatly from at least long-term baselines of the late Mao years or the Tiananmen years. Across the board, there's been improvement, but it's been uneven.

Economic and social rights have made significant progress. Political freedoms – at least in the sense of “freedoms from,” and some limited “freedoms to” – have increased considerably, although they remain quite limited. There has been significant progress toward, although not all the way to, the rule of law. There are now media and academic outlets for critics of the regime -- to an extent that was unthinkable a generation ago – for critics from the pro-liberalization right, as well as critics from China's new left. There are gadflies and mavericks who now dot the Chinese political and legal landscape, who were unimaginable a generation ago. Not as dramatic, not as promising, perhaps, as

the mass movements for political change that we saw in the 1980s, but in some ways, by their very multi-faceted and varied and diffuse character, more effective.

That said, of course, the story is not a simple one. Progress has not been even. It's been quite lacking in some vital areas, particularly political speech, political participation, religion and criminal justice. And progress has not been linear. We are all familiar with the major setbacks of 1989 and the quashing of Tiananmen Movement, but there were other minor reversals before that: the anti-spiritual pollution campaign and the anti-bourgeois liberalization campaign, for example. And, of course, the 1990s and our current decade have brought setbacks as well: Falun Gong, crackdowns on house churches, strike hard campaigns against crime, and various other such undertakings. Even in the most recent years, Hu Jintao's years in power, there have been some disturbing signs of retrogression.

Intellectuals in China generally report a chilled atmosphere for their ideas. There has been significant restriction, indeed rising restriction, of the media – particularly new media. There remain serious limits to the development of the legal system, including recently some dark warnings from Luo Gan and others about the infiltration of foreign ideas and other efforts to possibly harm China through the legal system and through the open media, through the use of China's own legal system. The SARS crisis, for all that it added in the way of greater transparency, also did bring forth more repressive responses as well, for example, harsh punishments for those who spread false information, and so on.

Still, the long-term positive trend line is quite clear, and at least correlates with the U.S. policy of engagement. U.S. policies of engagement, of course, began roughly around the time of normalization, which coincided with the beginning of reforms in China at the end of the 1970s. A second wave began in the early 1990s. The post-Tiananmen re-starting of reform in China coincided with a deepening of U.S. engagement during the Clinton and George W. Bush years – a deepened engagement brought about by a burgeoning economic relationship and by a new placing of human rights on the agenda of U.S. policy in a way that was previously obscured by Cold War concerns and by an inattention to human rights conditions in China that was more sustainable before Tiananmen than afterwards.

As to engagement, two macro dimensions frame it and are worth keeping in mind. Since the early 1990s, China has engaged the international rights order and has done so largely on the international order's own terms. China now discusses human rights in terms of a universal list of human rights. It has joined the International Covenant on Economic, Social and Cultural Rights and has signed and promises to ratify the International Covenant on Civil and Political Rights. China has joined other major human rights-related treaties as well.

This shift, to be sure, has been tactical. Part of what brought it into place was the reaction to what happened at Tiananmen and afterwards in exposing human rights conditions in China. Nonetheless, the shift matters because China has now signed on to

the principles and engaged in this process and now makes its U.N. reports, issues its own white papers, and so on. It does so in terms that no longer argue about whether human rights are universal or what the list of human rights should look like. China accepts that discourse and it is something costly and unpleasant for China and exerts at least some moderate pressure for internal change to have to talk in terms of those international norms. To put it in lawyers' words -- and there are lots of lawyers and much lawyerliness in the business of human rights -- we're no longer arguing about the law, at least not in detail; we're arguing about the facts and how the law applies to facts.

The other aspect of engagement, of course, is economic engagement. Here, the link to human rights is indirect, but profound. Opening to the outside world has been a driver for China's breathtaking economic growth rates, and that has, of course, led to direct human rights gains for many hundreds of millions of Chinese in terms of their economic and social well-being. If various venerable theories of social science are at all right, this rising wealth creates long-term pressure for greater civil and political liberties.

Economic engagement also creates the open door through which, in the words of conservative Chinese leaders from the '80s, flies can come in -- a lot of ideas, ideas directly about human rights and other ideas with longer-term implications for human rights flow through the channels of international education, investment, professional and personal ties, and so on.

Now, I would like to address a few aspects of engagement in practice, and what I think has worked and not worked within this broader framework. I would suggest that if you go through the pattern of what has worked relatively well and worked relatively badly, you can see that the greatest progress has come -- or the greatest impacts have come -- where what the U.S. agenda has been, or at least has appeared to be, relatively apolitical. Success has been greater where the models or advice that we've been pushing has been prestigious with Chinese audiences, where the issues on which we have focused are ones on which the U.S. can sustain a relatively moderate degree of pressure on China, and where the U.S.-favored projects and undertakings have found willing and influential partners in China.

This is partly a matter of what human rights issues one focuses on, what subset of rights concerns, and this also is partly a matter of what means or vehicles one uses to pursue them. The more "governmental" an effort is, the more problematic it is, especially for some of the tougher human rights issues. To give a quick inventory: core human rights issues are pressed effectively when they are pressed in relatively narrow ways. Retail prisoner release works reasonably well. Ongoing bilateral discussions about improving human rights conditions at the margin work fairly well also. Programs to increase civil society -- to build civil society -- and strengthen and improve the accountability of institutions of governance work reasonably well. So too do programs to improve China's economic regulation -- the laws that govern market-oriented behavior. Educational, scholarly and professional exchanges are an important and generally effective channel for the diffusion of ideas about human rights. Perhaps more importantly, these channels provide support for like-minded Chinese, both through

providing external endorsement – foreign endorsement – of the ideas they push, through providing a degree of political cover and insulation that comes from having people who look like me show up at some of these conferences and say nothing new, but nonetheless provide a certain degree of endorsement, cover and insulation. Finally, international connections provide international visibility to reformers and dissidents. That these people are thereby on the international radar screen and therefore likely to wind up on the list of individuals about whom the U.S. government and NGOs will be concerned about gives them greater space to operate and innovate.

More hard-line approaches also work, to some degree. Sometimes, this works even in the government-to-government context when the U.S. picks the issues that are really hard for China to push back on. Torture is probably the easiest example of this. Notwithstanding the potential for official pressure on this type of issue, the harder line approaches, the more critical, less engagement-oriented approaches, work better when they are wielded by private hands – NGOs like Sharon’s.

I’ve been speaking about what I think has worked and what hasn’t. Let me close by saying something about why I think a harder line does not work terribly well and would be unlikely to work well. This conclusion is based in a somewhat pessimistic view of American capacity and will and Chinese receptiveness and vulnerability.

First, a harder line from U.S. government policy risks compromising the acoustical separation that has allowed harder lines to be pursued effectively and with more response and engagement from the Chinese side through mechanisms ranging from the two congressionally chartered commissions that focus on China, to private suits in U.S. courts under the U.S.’s Alien Tort Statute, to the work of some human rights NGOs.

Secondly, the U.S.’s capacity and will to press China for greater change is quite suspect and questionable. We never used MFN removal as a sanction in the bad old days before China’s WTO accession, and the idea that anything like that would happen now strikes me as farfetched, given the alignment of political interest groups and assessments of the national interest, as well as the changed legal requirements. The U.S.’s hard power is committed elsewhere, not that we’d use it vis-à-vis China under these circumstances, but it does have its collateral or halo effects that matter for diplomacy more broadly. The U.S.’s soft power has been waning markedly. In the view of much of the world, we are no longer the human rights city on the hill that we had been earlier.

Thirdly, China’s capacity and will to resist have increased. Economic power, some of it deployed to pursue military modernization is part of the story. The ideology that this power and these resources serve has become more rejecting in many ways of deep engagement or deeper engagement with international human rights norms and regimes. Strong sovereignty notions are on display in Chinese diplomacy. The venerable Five Principles of Peaceful Co-existence, the Chinese critique of NATO intervention in Yugoslavia, the recent tussle over Darfur, PRC criticisms of “peaceful evolution” (the perceived desire to change China into a system more to the West’s liking) – all these are ideologies of “pushing back” against a perceived U.S. or Western values agenda.

Coupled with that, increasingly, is Chinese nationalism, which substitutes for a discredited socialism and an increasingly shaky reliance on economic performance legitimacy.

Finally, fear of unrest, of the social instability that economic inequality and insecurity are breeding in China, has led, on balance, to a greater wariness in the regime, and toward the kinds of human rights improvement that would include free media and freer expression, and in some respects, more political participation.

Because of all these factors, the likelihood that a harder line U.S. policy would be effective is low. It would have collateral negative costs for some other means that have been effective. It would take a lot more than we are likely to be willing or able to put into it if we are to press China effectively. We are better off relying on the variety of channels, including engagement by the government and harder lines from other sectors. Such a mixed and multifaceted approach wisely echoes Mao's dictum to "Let a hundred flowers bloom." Thank you.

SHARON HOM: Good morning. Thank you very much. I want to first thank the Carnegie Endowment for inviting us.

Let me start by saying that the answer to the question is really not simple— when we ask the question whether U.S. engagement has produced significant human rights improvement, we're really walking into a mine field of methodological, political, and empirical questions – questions of definitions, questions of benchmarking, questions of what are the timeframes, questions of indicators. What are the metrics? These are all complex questions being addressed by a growing body of work. I find that when we assess whether policy has produced human rights improvements, we tend to talk about those policy assessments separate from rigorous metrics.

The bottom line--- even if we do solve all the questions about the considerable methodological and definitional questions--- for any useful assessment, you need to have accurate, comprehensive, and reliable information. Yet, what we have in China is ongoing censorship and information control, maintained by a comprehensive system of criminal, state security, state secrets laws, Internet and media laws, state-of-the-art technology, and a highly effective police and security apparatus. So, within these considerable constraints of information and methodology, here is one starting point I want to suggest. Current U.S. engagement with China, however defined, 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 in terms of the trade and security baskets. I think Jacques would agree with me there.

This is just to sidestep for the moment the yes-no debate so we can focus on what I think really matters, and that is how to get greater traction for advancing human rights for 20 percent of the world's population through U.S. engagement.

While the focus of this policy re-framing exercise is on the U.S. and China, in order for the U.S. policy to be more effective, it will be necessary first for the U.S. to engage more effectively with the rest of the world, and really go beyond a dangerous kind of unilateralism and go-it-alone arrogance that it has been accused of. And second, the U.S. must handle its human rights at home in a way that doesn't undermine its moral authority and legitimacy abroad. This may be rather Confucian of me, but the most effective way to influence others is to set the example through one's own behavior. I'll talk more later about specific suggestions for U.S. engagement with China.

The status of the human rights situation in China – Jacques has already listed inventoried some of the issues. I want to quickly go through these and raise some others.. First, the context of the “China challenge” -- China's exponential growth and the lucrative potential of its huge market have largely shaped how international business and foreign governments have preferred convenient half-truths, that is, the China economic miracle story – or the assumption that economic growth will inevitably lead to progress. That's what Jim Mann has called the soothing scenario. And they prefer these convenient half-truths – to grappling with the messy reality of the Chinese human rights challenges. That is, progress is not even, it's not one China – but multiple and different Chinas at any given time – so, it's really quite messy.

Domestically, the post-Tiananmen, “bargain,” of silence that is “don't ask, get rich”– never legitimate to begin with – is really breaking down under the pressure of endemic corruption, growing social inequality and unrest, serious environmental, public health and social welfare challenges as documented by the U.S. government – in numerous U.S. government hearings and reports, including the State Department report about to be released tomorrow. Many of you in this room, in other agencies and departments, and NGOs, have also been engaged in important monitoring and reporting work. The overall consensus from these efforts is that the human rights situation in China remains serious and is deteriorating.. I want to highlight a few of these areas.

Serious detentions and crackdowns continue against for journalists, human rights lawyers – weiquan lawyers and other rights defenders, Internet activists – and non-state-sanctioned religious groups. The ongoing crackdowns in the Tibetan Autonomous Region (TAR), and in the Xinjiang Uyghur Autonomous Region (XUAR)– continue to be serious. What we're going to see is an ongoing government hard line, which will continue in the lead up both to the 17<sup>th</sup> Party Congress and the 2008 Olympics.

Though guaranteed in various parts of Chinese law, the avenues to present grievances, both according to China's scholars' own assessments, as well as foreign reports,– particularly petitioning – are not effective and are being increasingly restricted or met with police force. There have been some recent announcements regarding proposed legislative and administrative reforms, including RTL (reform through labor) reforms (again), and further death penalty reforms. -- recently, new regulations that did not get too much attention in the international media-- new regulation on how the Supreme Court will be managing their review of the death penalty cases.

These announced reforms are important at one level, tinkering that is, but the fundamental structures will be left intact. That means there will be some real limits to the impact of these reforms, including the RTL reforms. The draft for the amendments of the RTL law has been approved by the State Council and been tabled for a first reading in October. These need to be monitored not only for formal legislative advancements, but also for questions of what are the implementation mechanisms and monitoring and accountability mechanisms being built in up front? We have to ask these implementation questions up front, not after legislation is passed, or several years down the road.

Rule of law issues. Within a framework that very clearly maintains the supremacy of the Communist Party, the legal system being built is really not a rule of law, it's a rule by law; that is, the use of law to maintain political control through legislation, including through regulations or guiding opinions issued by the mass organs of the party, like the All China Lawyers' Association (ACLA), the All China Federation of Trade Unions. For example, the ACLA "guidance" measures restrict representation of group cases and are intended to keep control of the way that law can be used. Because of time, I'm going to skip over the long list of other human rights problems, which I think most of you in this room are quite familiar with, but want to add this one point about the Tiananmen crackdown of 1989..

Almost 18 years later, despite continuous demands by Chinese citizens, including Ding Zilin, one of the leaders of the Tiananmen Mothers — calling for a full public accounting, compensation, and the release of the hundreds that are known to still be detained for crimes that are often non-existent, like counter-revolutionary, the government has still to respond.

The silence imposed on publicly talking about Tiananmen, the official refusal to review the crackdown decision, echoes the silence around other outstanding historical mass human rights violations – this is the 50<sup>th</sup> anniversary of fanyou – the anti-rightist movement, which we can't talk about either, because once we start talking about that, we must address the Cultural Revolution, then June 4<sup>th</sup> can't be far behind. So, we can't talk about rule of law, criminal justice, and social justice when we can't even talk about past abuses. You can't move forward if you're carrying this historical baggage.

Ultimately, the fundamental changes that will advance human rights must and will emerge from inside China. But there are considerable obstacles facing these domestic forces, because there are clear limits to what an authoritarian regime -- that fears a "color revolution" in its own backyard -- will allow. There are also current restrictions on foreign actors, such as foundations that are quite sobering-- I don't know of one foundation yet who has made it through the new registration process. The limits within which university exchanges and other capacity-building programs operate to maintain access also need to be looked at more critically.

There needs to be more nuance to some of the domestic processes underway, and there's a need for walking on two legs or three legs (if we include the Internet)--that is, domestic guonei work, international, and cyberspace are three inter-related realms. We

need to walk on three legs, because to put all the program eggs in one basket is very dangerous, especially in light of the fact that the Chinese government has shown it has no qualms about crushing all the eggs in the basket.

Bottom-line conclusion: Has U.S. engagement with China contributed to promoting human rights? Well, a qualified no and a qualified yes, would be equally true. Here's 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 E.U. has been trying, the Canadians have been trying, and the U.N. has been trying -- on and on and on. China itself, both reform forces within the government, civil society actors, think tanks, lawyers, scholars – they're all grappling with the question, not of U.S. engagement, but how to promote greater human rights protections. Curiously, as China has become more engaged with the international community – both through the trade regimes and the U.N. regime, and the international human rights regime – as China internationalizes its position, which absolutely has an influence on its domestic strategies, the U.S. has curiously moved away from multilateral strategies.

As a policy reformulation issue, which I think we'll have more time to talk about in the Q and A, – in terms of thinking about toolboxes, leverage, timing- I want to suggest we need to look more at the international frame because of the considerable work being done.

The last thing I want to say about timing is regarding the Olympics. 2007 is the countdown year. The Chinese have chosen another marker – the 500 day countdown – and that will begin March 27<sup>th</sup>, 28<sup>th</sup>. The Olympics present enormous opportunities, but only if you do not provide fodder for Chinese nationalism. This means any Olympics-related strategy or campaign needs to carefully target an area in which the U.S. can have leverage, but not subject or open itself to or be vulnerable to charges of intervention. I think one area where you can have leverage is regarding U.S. companies that are involved in providing services, legal services, IT, security-- the whole security infrastructure is mainly built by foreign companies--and foreign media and public relations firms are involved– you would be interested to hear that Ogilvy has been retained to train the Chinese public security police in how to more softly deal with foreign media. So there are many foreign actors, and this is where the U.S. government can have some leverage. As you know, Morrison Forster represents Beijing Olympics Organizing Committee on all the IPR and other contracts issues – for U.S.-based companies,,leverage can be explored.

Thank you.

DR. PEI: I'm now going to ask both of you to respond to a series of questions. The first question is, in terms of baseline trends, how would you compare today's situation in terms of human rights in China vis-à-vis the late 1990s, or the late Jiang era? Do you think the current situation is a temporary setback, do you think it's worse? Or, do you think it's going to be a lasting feature of the current system? Jacques?

MR. DELISLE: In many ways, the Hu era has been a step back from the Jiang era. It's been a step back, most strikingly, for the people that most of us talk to most. That is, relatively reform-minded intellectuals have certainly felt the chill. It's harder to get certain ideas out there and to try to make them have an effect. People who've been involved in things like the "weiquan" or "rights protection" movement, other human rights lawyers, other lawyers who have pressed for government accountability—those folks have definitely had a very tough time.

The journalists, or aiders of journalists – that group has clearly encountered a great deal of difficulty. The concern with social unrest has led to crackdowns on rural protests and some of the urban protests. In all, in those most visible and most political areas, yes, it's been a time of bad news.

I don't know that it means that the entire picture with respect to human rights is that bad or deteriorating. The sustained economic growth and the increasing concern with redistribution or with sharing the fruits more broadly bode well for human rights. I think the regime's commitment in these areas is seriously meant because it is self-serving for a leadership that wants to remain in power and that has staked its legitimacy on making people better off. And then there are the other areas, such as religion, that are a mixed bag in terms of recent developments.

Is the recent at least partly negative trend likely to be a long-term one? I think the short-term prospects are fairly negative. I don't think there is that much pressure for improvement, for reasons that I mentioned in my opening remarks. I don't think the U.S. is going to be terribly active in bringing a lot of pressure to bear. I think the Chinese regime's concern about dissent and social unrest leads to a relatively harsh and reactive response within China. Populism, to which the Hu-era leadership has turned, is not democratic in any reliable way – and certainly is not individual rights-protecting in any reliable way. It thus does not simply or strongly support at least those aspects of human rights.

Now, the question is, what do things look like beyond the near term? Here, I think there is more hope because there are long-term trends toward greater prosperity, toward greater openness to foreign ideas, and toward a real desire on the part of leadership to be accepted as the leaders of a respectable country. Former Deputy Secretary of State Zoellick used the "stakeholder" analogy. I think there's a Chinese parallel to that concept that resonates strongly in elite circles in China. They don't like being told by foreign governments or, more commonly, NGOs—whether Sharon's or others—that, at some level, they are international outlaws. To be in a position where China is vulnerable to that kind of criticism is costly in terms of long-term regime agendas. But, the impact of some of the positive trends is several years out. It's not short-term.

DR. PEI: Sharon?

MS. HOM: Well, first we don't know the full picture of both the past and present human rights situation because of information control and censorship about the environment, public health, death penalty numbers, executions, what's happening in the TAR, Tibet Autonomous Region, and the XUAR. We don't know information about toxic spills except when it leaks out.

Also, when we talk about rule of law, transparency, and accountability, we have to recognize we don't know a great deal. Information, with respect to investigations, prosecutions, criminal cases – are considered state secrets at different levels: secret, highly secret, top secret. Within this kind of comprehensive information control system, the first thing is the answer to that trends question must be qualified; we don't know the full picture, but we know bits and pieces. I have to clarify that Human Rights in China's approach is not to tell the Chinese government that they are outlaws. I think it's very important for us to also encourage. We think it's very important to say, good, in the last 20 years, you have signed onto and ratified almost every single major human rights treaty -- (except for the ICCPR—signed but not yet ratified). International treaties on torture, women, racial discrimination, children, economic social and cultural rights -- Each one has been ratified, and we say that's great. Because it means that China has agreed to report on their progress in these areas – and work with international monitoring bodies to implement their treaty obligations. That is a good sign of progress.

Then, we try to press for specific reforms, in our parallel NGO reports on each of these areas in HRIC's reports in all of these areas, beginning with 2001. The recommendations and final conclusions from the treaty body monitoring bodies reviewing China's record such as CERD (the UN Committee for the Elimination of Racial Discrimination) – across the board, their assessments have been first to applaud the Chinese for trying to do better reporting and taking steps towards implementation. At the same time, numerous recommendations on legislative reform have also been made—such as amend the trade union law to allow independent unions; adopt a definition of discrimination. Because how can you have laws protecting women and ethnic groups if you don't have a definition of discrimination? But none of these recommendations so far have been implemented. Part of what China wants to also say to the international community is that we are cooperating with international mechanisms. So that's another opportunity to say, great, you want to cooperate? One good first step is to implement these UN recommendations.

That's also an example of what I meant by the U.S. needing to not abandon multilateral human rights strategies. Instead of trying to invent, whole cloth, recommendations that are U.S.-based, one way to get added traction is to build upon the recommendations of international human rights bodies. Instead of pushing just a U.S. government recommendation in a bilateral dialogue,. The U.S can advance these recommendations made by independent, international bodies to which the Chinese have voluntarily signed onto to work with in terms of developing norms and standards

The third aspect that I would point about trends – which is quite alarming – is the rise in, for lack of a better English word, thug violence; that is, the rise in violence by criminal elements, particularly at the local level, that seems to be either with the complicity of the local government, or with the local police just simply looking away.

This rise in violence includes lawyers being beat up; witnesses being beat up; and families being beat up. And we're talking about a pretty high level of violence. I think that does not bode well for the domestic picture of a harmonious society. The clear intention of China's full-court press to make sure that the Olympics coming out party – is going to be smooth; that China will present a “civilized” face to the international community – see the current anti-spitting, learn-to-stand in line, learn English campaigns. This is all part of the public face for the Olympics, but the real human rights concern should be what happens the year after and the year after that and the year after that when international media attention has shifted away

DR. PEI: Does the U.S. really have any leverage at this point in pressuring China? Because we talked about erosion of American soft power, China's increasing capabilities, skills, and so forth. So, Jacques, what do you think?

MR. DELISLE: We still have real leverage. And we use real leverage in small ways, and I think often use it in the areas where it's likely to be most effective. I share Sharon's view that in some cases we're too timid, in terms of what we could undertake. But there are small-scale successes. I think there's a lot to be said for the lists of individual Chinese people we are particularly concerned about. Raising individuals – as Sharon has said, exile is not improvement, but exile is better than sitting in a jail.

There is also the problem of successes that are hard to measure. Sharon's right about the poor information in many respects. The counterfactual is hard to prove. There are people who wind up not being in as much trouble as they otherwise would have been because of the visibility of their activities and the sense that the U.S. and others are going to press for their interests and freedom. So I think, in that small or “retail” way, we make a difference.

I think the ongoing dialogue with the human rights officer in the U.S. Embassy in Beijing is an important process. Visiting officials, at the assistant secretary level or even higher, raising these issues and keeping them on the agenda keeps the pressure up. And it's possible to keep that pressure up and to have leverage over the Chinese regime, for some of the reasons that both Sharon and I have mentioned. That is, because China has now, in principle, signed on to international human rights standards, it's no longer possible to dismiss completely any criticism as being impermissible interference in China's internal affairs or trying to force Western values on China. You can say to China, “You signed the darned convention, we're talking about implementation.” And that is a real shift that gives, again, marginal but real leverage.

I think the other area where we have an impact is not one that government policy so much controls, but one that it can trade on. That is, there are certain aspects of what China is grappling with, not just within regime circles but among reformers as well, where American models and advice have a lot of prestige. We see this particularly in the economic realm. The amount of economic law that has been borrowed – and economic policy, too, for that matter, which has been borrowed – from Anglo-American capitalism

is extraordinary. As an aside, I note that I think there will be major problems implementing some of this because it has been borrowed almost too faithfully.

But if you think that there's a link between Anglo-American style or market-oriented economic reform and either the prosperity that creates demands for human rights, or the attitudes of autonomy that come with private economic activity, there is an important channel of human rights-relevant influence here. And it may be possible to leverage that a bit more. It is possible to draw linkages between economic reforms and human rights in a way that is not terribly threatening, but that makes use of what is essentially a Chinese desire, a regime desire to reap economic gains. We can talk about market-supporting economic reform advice in purely technical terms. This means not flagging too much that it has human rights implications, but counting on that effect playing out.

We could also be more assertive than that, but in doing so we need to be realistic. We need to focus on areas where it is really possible to think about the U.S. government sustaining pressure. And we're better off doing that where there is an economic link. It could be, for example, linking labor rights to trade issues.

But to press hard on more politically charged aspects of human rights where it is possible to assemble a temporary coalition in American politics is ill-advised. It's going to fall apart, prove unsustainable and thus may prove counterproductive. That's the 'yes' answer.

The 'no' answer follows from the reasons I outlined in my opening remarks. Macro international political power re-alignment matters. Our moment of maximum influence has passed. Our relative ability, at least temporarily, to stand up for these principles has waned. China's ability and willingness to push back has waxed. Some of that shift may reverse, but I doubt that much of it will.

Finally, I gave you the 'yes' and then the 'no' answer. Let me give you the 'maybe' answer. As I said a few moments ago, the U.S. does remain – especially if it cooperates with its allies – something like the Berne Group or cooperation generally with the E.U. in general, which I know Sharon's done a lot of work with – the U.S. retains an ability to function as a gatekeeper to respectability and China's full inclusion to the international system. That is a form of leverage that can be used judiciously. We saw it used, strongly, in the wake of Tiananmen. We've seen it used in the WTO context. There too, there is something that China wants, a club it wants to enter, a level of respectability and access it seeks. And we saw some of this even in the not terribly effective, but marginally useful, pressure on Hu Jintao to accept that Darfur is an international concern, rather than something that happens inside the black box of Sudanese sovereignty.

DR. PEI: The leverage issue –

MS. HOM: The leverage issue – I think Jacques and I both agree. It's a yes and no –that the U.S still has leverage. In some ways the moment of opportunity when the

U.S. had maximum leverage – is a moment that has perhaps passed, that cake has been baked. Because many of the “clubs” that China was seeking entry into – the Human Rights Council, the newest club, the WTO, all of the major U.N. bodies, WHO, UNESCO – China has successfully lobbied for and acquired major leadership positions. So, it’s inside as a member of many of the clubs, so that the keeping them out is no longer a real lever.

However, the real reason why the U.S. still has leverage is -- despite lots of rhetorical saber-rattling, the U.S. relationship with China is extremely important to China, no matter what China says publicly --whatever the rhetoric is. This relationship is just too important for it to not be a peaceful and successful one. Not to mention the over \$350 billion dollars that China is holding in U.S. Treasury Securities. You just don’t want your investment to go down the tubes, so you do really want to preserve that relationship.

China’s historical relationship with the U.S. also pre-dates 1949 and really goes back more than a hundred years in terms of exchanges, particularly academic exchanges.

Secondly, the tools for leverage. There needs to be a balance – I think the balance is really between interventions that protect individuals – minimizing the human damage, the human cost, the human suffering, which is really important when we’re talking about human rights and, at the same time, not forgetting that the ultimate longer term is systemic structural reforms. Otherwise, we’re constantly pulling people out of a river of which they constantly are falling in and drowning. And in that respect, that’s the tricky part with these hostage releases. Is it really better for an individual to be exiled? I’m not sure, because if you look at individuals’ experiences living in exile, it’s really quite sad. They’re isolated. They’re not all successful. They’re not able to make the difference they want to make any more to the homeland to which we really care. I think those are really terrible costs of exile.

Furthermore, for the people who have been exiled, like Rebiya Kadeer most recently – and some Tibetan cases that have been released, their “releases” have been accompanied by threats to family members, and in Rebiya’s case, her family and her children are being harassed, beat up, and arrested. Part of the hostage deal that, yes, you can go abroad, but silence; individuals have actually been threatened, don’t say anything because your family is still here. This presents real problems for these individual releases. It is also clear that individual releases and cases, are something that the Chinese government is becoming less inclined to engage in.

Regarding “U.S. models” – I think that U.S. models are more effective if we present it a little bit more humbly -- along with a menu of not just a U.S. model. Some very thoughtful Chinese legal scholars have said quite publicly, why are we looking to just the U.S. model. There are other models. Let’s look at the European models, so forth. The U.S. presenting itself as part of a menu of policy choices and options would facilitate greater uptake.

Finally in terms of more leverage – it would be helpful to stop thinking about talking about, and strategizing about China as if it were monolithic. The reformer voices are not dead. Some of them are 90, but they are not dead. There are other reformer voices. This is true within the party. This is even true within the lead up to the 17<sup>th</sup> Party Congress, which unfortunately in the jockeying for power, tough guys are going to win. So nobody wants to sound like a softie so some voices will be muted.

So there is going to be a lot of tough posturing, but the 17<sup>th</sup> Congress is not the end of it. I think it's important to engage on human rights with a broad range of Chinese counterparts. The tendency is to engage with the MFA (the Ministry of Foreign Affairs) or in the trade area with the trade ministries.

I think two things need to happen. One is there needs to be more sharing within various U.S. departments engaged with China– this might be quite radical — Labor and the U.S. Trade Rep's Office, State Department-- it would be useful to have a little bit more strategic information sharing. Perhaps it happens, because of the lack of transparency about internal bureaucracies, I don't know. But if it's not happening, it needs to happen more.

One other litmus-test for the leverage question is to ask, does a particular initiative promote and support more space for the reformer voices, whether in government, in the think tanks, or in the NGO sector. And that means creating greater space and pushing the envelope more than I think is currently being pushed.

DR. PEI: One more question. What should American corporations do? We know there are American corporations with enormous economic influence inside China, and where they do have a direct impact on human rights conditions within China. But we also know that American corporations so far have been quite reluctant to speak out on this issue. Should the U.S. government take some measure to force American companies with businesses in China to take a different stance on human rights conditions there?

MR. DELISLE: I think it's politically unlikely, and as a policy matter, probably a bit unwise. Corporate America is fairly effective in resisting calls on it to take any particular stand on human rights in China, particularly anything that sounds like the government is telling corporations, "You must take this position"-- a matter almost of government-demanded speech. We've seen failure of more modest law-making efforts in the past – mostly in the '80s, when there were discussions of passing legislation that would have imposed codes of human-rights-related conduct on U.S. corporations. In that context, the business community's reaction was largely and effectively preemptive, with corporations adopting their own policies concerning human rights or corporate social responsibility.

I also worry that anything addressing corporate behavior that has too many government fingerprints on it, that articulates in law a position U.S. corporations shall take with respect to these issues, is going to destroy what I referred to earlier as a useful acoustical separation. I think it took a long time to drag China, to drag Chinese leaders to

the point of understanding that the U.S. is not a monolith in which private actors and all branches of government are somehow part of some anti-Chinese conspiracy.

If you compare, for instance, the way China has handled the Alien Tort Statute claims that have been brought by Falun Gong members, or by people complaining about prison labor or by some Tiananmen dissidents – those kinds of claims based on human rights abuses committee by Chinese authorities – China doesn't like those cases, but it now understands that the courts are different from the executive branch and that the private plaintiffs and the pro bono lawyers who are working for them are separate from, and sometimes headaches for, the state. They are all part of a universe that the president can't really control.

Compare that to the late 1970s when the Chinese position was very different: the Taiwan Relations Act showed that the President didn't really mean it when he signed the normalization accord, and the Hukuang railway bonds case, in which private plaintiffs sued China for old debts, was something that the President should have been able to stop. It took awhile to get official China to understand this. Obviously China is not going to go back to its former perspective, but we need to be wary about doing things that suggests—or invites opportunistic Chinese claims—that something resembling those connections among U.S. actors do exist.

That is not to say corporations shouldn't do anything. I think they should do more than they have. But the most effective leverage – the way they are going to get less push-back from China and have more effect – is, first of all to do that which is within their own control, to make sure that their own workers enjoy a certain degree of labor rights, to make clear that they will look out for their workers if they run into human rights-implicating trouble with the authorities, to make sure their suppliers are living up to human rights standards such that they are not just outsourcing the human rights problem by having things produced by formally nonaffiliated enterprises. Wal-Mart in particular has a lot of leverage as a buyer for many Chinese suppliers. I know Sharon has worked on that issue.

U.S.-based companies can make the case to the Chinese authorities that says, “Look, you guys want business; you want investment. You have got to understand that bad human rights conditions are bad for business.” That is a perfectly plausible argument. If nothing else, U.S. businesses can engage in a little bit of a two-level game saying, “Look, back home, my shareholders are going to kill me if I cannot answer human rights questions.” CALPERS (the giant public employees pension fund) and its ilk do not like the idea of having a big holding in some company that is dealing with a problematic regime.

In these areas and these ways, U.S. businesses can push around the margins, where the effort doesn't appear to be coordinated and government-steered, and where it at least starts with issues that are going to be accepted by Chinese authorities as legitimately within the realm of business and business-related concerns. That is promising.

Corporations also could engage in a little bit of acoustical “sub-separation” by providing money to support human-rights-favorable activities – scholarships or some such arrangement for Chinese human rights lawyers who want to go outside the country for a while, or scholars and such. That kind of thing I can imagine being a nice way of leveraging corporations’ assets and their increasingly recognized human rights obligations, and also sending a pro-human rights message that will be difficult for China to answer with the familiar critique about foreign government interference.

MS. HOM: I think that U.S. corporations and corporations in general have a great role to play in promoting human rights. At the very least, they can avoid being complicit in human rights violations. First, to be effective, the analysis of the corporate role needs to be strategically and sector-specific, and not just vaguely --corporations across the board.

Secondly, both voluntary and regulatory approaches have to go hand in hand. A good example of that is the IT example. After the Congressional hearings last February on IT companies doing business in China – after the “Hill four” sweated through intense questioning in the hearing, there was suddenly mobilized interest and discussion in the industry about voluntary initiatives and concerns about regulation. HRIC has been part of a multi-stakeholder process that just went public in January, after seven to eight months of a private process, which involved –Microsoft, Google, and Yahoo. The process is addressing two goals: developing guidelines and principles for promoting freedom of expression by U.S. companies abroad, IT companies doing business in repressive regimes; and secondly, the NGO stakeholders, including HRIC, are focused on, development of implementation mechanisms, benchmarks, accountability

The third thing that can be said about how the U.S. government can promote the role of corporations is looking to international developments. Earlier in February Professor John Ruggie, the UN special representative on human rights and transnational corporations and other business entities., released his report on human rights and corporations specifically addressing the methodological problems of how to measure human rights impacts. The framework lays out two key points, both the ways in which human rights assessment for corporations parallels existing, very well developed approaches in the environment area – environmental and social impacts assessments – and secondly, how it has to be different and unique to human rights, which is that it has to be within a very rigorous doctrinal technical, human rights frameworks of standards, indicators, and a body of jurisprudence.

That is a very important document and I think that part of bringing the U.S. more actively back into the multilateral human rights arena – would be to draw a page from that report on how to engage corporations. This would be extremely useful because it’s getting traction for international developments that are getting a lot of attention right now.

MR. DELISLE: The IT and ISP companies, the Google-Yahoo-Microsoft issue is a particularly important one to focus on. If you think of a spectrum of areas where we

have had legislative responses and where we haven't, you'll see that these lie in the middle. The Foreign Corrupt Practices Act – that is easy. Corporations sometimes chafe at the restrictions, but it's politically easy to say we ban that kind of activity. Banning providing services or equipment to the military or police in repressive regimes, including China's, that is a fairly easy one as well. At the other end of the spectrum, saying to a corporation that it should have the following set of human rights policies and position papers-- that is over at the other, politically difficult, end of the continuum.

The IT or ISP issue is in the middle. It strikes me as a quite plausible case for legislation, to the extent that the companies don't self-regulate in the shadow of the prospect of such legislation, precisely because banning U.S. companies' cooperation with China's Internet police strikes me as being fairly similar to selling technology for surveillance, if not instruments of torture, to police in repressive regimes. Such cooperation is a way of aiding a particular kind of repression rather than simply doing business in a country that has a bad human rights record and thereby being only in a much looser way complicit.

MS. HOM: Can I also add to that-- a number of corporations – Gap, Ford, Wal-Mart – in process – have taken on lots of initiatives to think about how they can articulate policies for guiding corporate practice on human rights, labor rights, or sustainability either through a direct approach, using the H word, human rights, or through proxies for human rights. For example, see reports by Ford, Gap, and other companies. Sustainability, labor rights, are all human-rights related -- labor rights are an aspect of human rights, and we are seeing another wave of CSR and beyond CSR developments.

When you think about Wal-Mart, China's sixth-largest trading partner –if it were a country it would be the 20<sup>th</sup> largest in the world, with its huge group of suppliers, and over 6,691 stores worldwide – it could have enormous impact on China. With 73 stores and super centers in 36 cities and over 36,000 associates (employees) in China by the end of 2006, WalMart recently agreed to acquire another 101 stores in China (under a phase-in process with the stores operating under the name Trust-Mart). Although it's complex, this kind of corporate clout has an enormous impact on labor conditions, supply chain issues, environment, and human rights.

DR. PEI: Okay, now we go to the questions – we have just terrific questions. Thank you so much. And while we're on the theme of U.S. corporations, this question: Does Ms. Hom have a strategy to shame U.S. companies who are failing in China to be more attentive to human rights?

MS. HOM: First, our strategy is not only to shame, simply shaming wasn't particularly effective in the 20<sup>th</sup> century, and we don't think that it's going to be – as a single strategy --going to be particularly effective in the 21<sup>st</sup> century with governments or with corporations. So what really needs to happen is walking on two, three legs. If you go our website at [ir2008.org](http://ir2008.org), you can see our developing corporate strategy that targets, companies in a sector-specific way. For example when Google was disclosed to have been censoring their search engine results –rather than saying, shame on you, Google, we

immediately said, hey, Google, it's not too late for corporate leadership; here is something you can still do.

What we're trying to do is develop a more nuanced NGO strategy, which includes both working with the corporations, the ones who will come to the table with us – and that is increasingly more of them – and secondly to help develop solutions, to be solution-providers. You know, anyone can knock down a barn; it's really hard to build one. The challenges of trying to build greater systematic protections for human rights, as well as protecting individuals is enormously complex, and we think that as NGOs, we should be part of developing constructive solutions.

So some of those solutions include better information disclosure, better corporate reports. Some companies surprisingly tell us they really don't know what to do about the Olympics. And they actually ask what do you think we should be doing in the lead-up to the Olympics. We want to really engage in that process, to be constructive, to be in dialogue, and then work together – because if a solution comes from only one source, it's not going to be effective; if there is to be effective corporate implementation it has to be part of the solution that different stakeholders develop and monitor together.

DR. PEI: Just another one – it sounds like both speakers believe human rights can best be advanced by avoiding direct confrontational punitive American measures targeting China. What other measures – are there other measures that work better?

MR. DELISLE: Direct, I don't think there is a problem with. The U.S. State Department human rights reports are quite direct. People can quibble about the accuracy or tone of those reports or the two congressionally chartered commissions -- the U.S. Congressional-Executive Commission on China, which focuses extensively on human rights and law issues, and the U.S.-China Economic Security Review Commission which has some of these issues in its portfolio. But I think all are quite direct in their criticisms of Chinese human rights practices.

Such government-related undertakings are part of the package, and so too are all of the American-based or American-tied NGOs, which run a gamut from moderately critical to really quite harshly critical – they are fairly directly confrontational.

As to confrontation as a more core government policy or government sanctions, I don't think it's very realistic. The U.S. has yet to show any real stomach for doing that. We saw what happened in the wake of Tiananmen, which is the one time we came close to denying MFN. That moment passed. It is harder to do something like that now, because of all the shifts in the global environment that we have been talking about. I think if we were even to work up enough will to impose real sanctions briefly, we wouldn't stick with it, just as a matter of politics. And I think that it is actually a very dangerous game to try to work up such short-lived will because it will in the end send the message to Beijing that they can wait us out, and worse yet, it will in the short term send the erroneous messages to some of the more potentially bold reformers in China that things are going to get better and the U.S. is going to back them. Because I don't think

that will be sustained in the long run, it risks encouraging reckless behavior by brave Chinese.

That said, there is a lot that we can do. We can be direct and critical without imposing sanctions. We can work to bring collaborative pressure to bear multilaterally, which I think is likely to be more effective. I think we can also work to encourage those forces in China that are most likely to be moving in the right direction. Those kinds of things require access to China. They require some symbolic gestures. They require the human ties, the professional ties. They require the businesses on the ground, the scholarly exchanges, the providing of advice on how to reform China's laws that will help village elections and civil society organizations, and rule of law, and legal aid, and all of these kinds of things. Such efforts are all nipping around the edges; it's frustratingly slow work. It is hard to justify in that there are people who suffer in the short run while awaiting change, but it is ultimately the best long-term hope because the necessary changes will have to come ultimately from inside and because I frankly don't think we politically have the will or the ability to make a tougher line with some real sanctions behind it stick.

DR. PEI: And the results of this?

MS. HOM: Well, I think the question is not whether to confront or not, but when to be firm so that we can be effective – we being governments, business, and civil society – so that really the question is when to be really firm and send a firm message. There are numerous opportunities to do that – for example, whether to lift the arms embargo that was imposed after Tiananmen in 1989. It sent a really clear message. One doesn't have to be hostile and confrontational although the Chinese government may claim that the action is “unfriendly” or against the Chinese people. Send a very clear message. The arms embargo was imposed following Tiananmen, and if Tiananmen is not dealt with, it should not be lifted. This debate continues in Europe.

Second, in the engagement with China, one area which is very important to be firm about is the inclusion of independent civil society, both in the domestic Chinese processes and in the international processes. I mean not only the civil society groups that are state-sanctioned and that are approved by the government.

The EU government with the exception of one EU-China human rights seminar meeting, really stood quite firm despite some objections and concerns by the Chinese government to the participation of Human Rights in China. It was important for the EU to stand firm because to back down would send a very bad message about independent civil society, about the dangerousness of human rights, and about who should be at the table and in the room.

I want to say one thing about access. Access is extremely important to be able to gather data and local contacts. At the same time, I think access is a double-edged sword, – for governments, foundations, and academics and researchers – access is important at the same time that access can also be a kind of hostage holder. In order to in order to

promote and maintain access, preserve future access, there are implicit and express officially prescribed limits that you must be very careful to work within or face fears of being kicked out.

A very prominent long-time China legal scholar and lawyer said to me last month – making a joke after I enlisted him in, once again, another human rights project -- Sharon, you're going to get me kicked out of China. I said, no, no, no, *bu, bu, bu*. I'm going to help work on a China that we all want to go back to.

Another aspect of access is to not think about it in a limited 20<sup>th</sup> century way. Although some members of my staff are not able to return to China for now, and I was recently back in 2005, have not been back since, there is another way in which we and HRIC have another kind of access.

Access in the 21<sup>st</sup> century, has a technology face– with over 135 Internet users and about, 400 million cell phones in China, and new kind of technologies. Through our electronic weekly newsletter and our E-activism project, HRIC is reaching each week between half-a-million to three-quarters of a million subscribers; we are averaging monthly between 140,000 to, over 200,000 unique IP users coming to our website through proxies.

So there is a whole different way to think about access in a more nuanced technology dimension –I don't mean advocating Second-Life, which I think is just incredibly bizarre – to be living a second life when a lot of people in China, like 700 million people don't even have a first life. Real time and place are important, but cyberspace creates some important blurring of inside, outside, and creates strategic opportunities.

One final point about access that is extremely important is the contacts possible *outside* of China–in the last year-and-a-half, for my organization, for example, we have seen an increase in the number and quality of contacts with scholars, NGOs, and government officials. And so even when we are not able to meet with them in-country, we still have perhaps fuller discussions with these counterparts outside of China, and they also take back a lot of materials.

MR. DELISLE: Let me just underscore the access issue. Two things: It is important to understand two spectra here. One is the differential risk. It takes a lot, if you are truly non-Chinese in the authorities' view, to get yourself in very much trouble. Getting banned has happened to a relatively few foreign scholars and journalists. It has happened to some – far more than it should, but it's not that widespread. And more severe sanctions for full-fledged foreigners are very rare.

For people who are sitting on a Chinese passport, it's a very different world. And there is a distressing ability to track the spectrum of how much trouble you're likely to be in that tracks a spectrum of how secure your status as a non-Chinese person is. If you had no more contact with China than I did growing up you're pretty much fine. If you're

a completely naturalized U.S. citizen, you are in relatively good shape. If you've got a green card, that is a little less good, and if you have just got a Chinese passport, the risk that you're going to run into more trouble is serious. So the people who are at the most secure end of those spectra often are too wary of their risk of loss of access, and should push the envelope further because the consequences are not that severe.

The second thing is quality versus quantity of access. Sharon is talking about the expansion of quantity of access. It is absolutely important. Quality – high-quality access -- is vital as well, and I would just reinforce what Sharon said. The importance of keeping channels open so that people can get outside China and have those conversations elsewhere – and not just have the conversations but spend a lot of time in the outside world.

To take a legal example, the lawyers I know who spend significant time outside of China being trained and practicing and going back -- the way they think of themselves, and their roles, and the role of law in their society, versus the ways of thought of those who haven't gotten out is significant. They differ not so much in terms of how much they value certain values, but in the sophistication with which they understand them and the importance they see of trying to press them and how they press them. There is a different perspective that is very hard to replicate without sustained, immersing contact in foreign environments.

MS. HOM: I want to underscore and support Jacques' comment that many foreign and U.S. actors are not pushing the envelope enough. There tends to be an incredible sensitivity that I often find, alarming--, foreign actors saying, oh, don't mention human-rights, but China has no problem with invoking human-rights. They are even issuing very strong white papers on the U.S. human rights record. Why should foreign actors be reluctant to use the H word?

I would add a caveat to Jacques' point about foreigners: I think for ethnic Chinese, whether green-card or U.S.-passport holder – my own personal experience underscored that we are perhaps disproportionately targeted. After I published my Asian Wall Street Journal op-ed piece in 2005 about my unfortunate incident with the state secret police, I received E-mail from the country about incidents of ethnic Chinese being harassed, beat up, or threatened to not talk about what happened. So it's important to recognize that ethnic Chinese, do face some considerable risks. But having said that, much more can be done to push the envelope by the foreign actors in China, because are they really going to throw out X, X, so and so, or a program. And even if they do, it will be not for the long term.

Jim Feinerman is sitting in the audience so he can throw a rock at me if he wants to me to not tell this story.. In CLEEC program (the Committee for Legal Education and Exchange with China) under Jim's watch, there was an infamous year in which our Chinese counterparts nominated a whole group that we viewed were unqualified. Part of the CLEEC work included an annual program where we brought about 22 to 25 Chinese scholars to come to the U.S. to study law. That year, Jim's chairmanship, we said no to

every single one of the nominees. The Chinese were very upset, said we hurt their feelings, this was not a friendly act, that this was the end of the program. For both side, it was not a very good experience.

However, the U.S. side held firm, and insisted on qualified individuals, with English language proficiency and real research proposals that could be carried out. We were also holding the line because it appeared that the Chinese had imposed an age limit, not allowing anyone under 35 if I recall, and there were some wonderful smart scholars that were not being nominated.

So no one came in that year, and that seemed bad, and then the program recovered, and subsequently, we brought other classes in. The program got back on track with serious qualified scholars with English language research capacity. So, one has to have a longer view about pushing the envelope. There may be some pushback, but you have got to take the longer view to send a real firm and effective message.

DR. PEI: Next question. One could argue that a major obstacle to our effective U.S. policy to promote human rights in China has been the bitter politicization and division within the U.S. over human rights in China policy. What can we do to rebuild a consensus on human rights and China policy in the U.S. and more broadly with the West?

MR. DELISLE: There is a funny alignment on the human rights issue and the broader political spectrum. It's the sort of thing that should actually be healable. That is, it's not that human rights is a left issue or a right issue. The right and left tend to emphasize different aspects. Obviously, religious freedom has gotten somewhat more play on the right. Labor rights have gotten a bit more play on the left. Political prisoners – some on both. The other side of the divide has been in favor of engagement at all—or at least considerable—costs. Sweep the human rights issues under the carpet. There are proponents of both views in both parties. So it may be one of those rare moments where bipartisanship could occur, albeit with intra-party splits.

As a tactical matter, the easy things to do are to pick the most fundamental rights, which no one much would object to emphasizing. China has signed the torture convention. Torture still goes on – who is going to endorse that? It is important to focus on those issues that will bring some consensus, and those areas of accidental consensus, and maybe even some horse-trading among human rights agendas. I think there is a way of doing that. If the goal is to really rebuild consensus in some sense, to take the longer-term view, to swallow hard and make moderate arguments about how human rights is good for business and trying to make that sell politically, then I think that can work.

I think it's been a relatively good development in American partisan politics in the last couple of election cycles that we haven't had to endure the ritual in which the party-out-of-power bashes the party-in-power's China policy, particularly on human rights grounds. That was something we had in several cycles prior to the last couple. It was Clinton going after Bush I, and before that Reagan going after Carter, and so on and so on down through the unfriendly takeovers, as it were. Today, China policy does not have that kind of salience, and so I think there is more of a possibility to build a

consensus. I think getting NGOs and businesses and others around the table as well is a good idea. If you have more voices, there might be more of an ability to heal the divide and reduce pursuit of partisan advantage.

MR. PEI: Sharon.

MS. HOM: Well, one way is just to first spin it as a good thing, that the division and the debates within the U.S. government about China and human rights is a good example of democracy in action, where there can be differences, where policy debates can really be all-out, knock-out, drag-out publicly aired ones.

Second, promoting more crossover briefings and conversations so that agencies and departments are not limited to their own realm of expertise. Third, to echo what Jacques said about focusing on areas of concern where you're going to have more consensus, I think the real challenge is going to be implementation -- there will be areas of consensus around issues and principles. No one is going to be for torture. No one is going to be against freedom of expression.

The real difficulty in building consensus are the pragmatics -- how to advance those principles and those values, how to advance human rights. The issue raised about whether PNTR should be taken away from China is an example of strategy. It's about a "how" question, that will be divisive. It's going to be harder to get consensus about the "how" question than the "why" question and the "so-what" question.

DR. PEI: The last question about leverage again. You all say that the U.S. is having less leverage today than before, but that is because the U.S. tries to change the behavior of a regime. What about a new approach that targets individual violators of human rights in China? For example, the U.S. and its allies can keep a dossier on local officials who are directly responsible for human rights violations, and then deny them visas to the West as punishment. How will that work?

MR. DELISLE: We have done some things that are sort of like that, and they have been relatively effective. To take the example from earlier in my remarks, there have been a series of these Alien Tort Statute suits and Torture Victim Protection Act suits in which the main defendants are individual Chinese leaders, in one case as high as Jiang Zemin, but also people substantially down the chain--mayors or public security officials--who have had some connection with the human rights-violating activities in question. Such a suit clearly stings a bit. It gets a lot of publicity. Although these cases rarely lead to an enforced award or even a judgment, sometimes you get a court statement that condemns the behavior and attributes it to official China. And that is what these cases really are about. It would be nice to get some money, but the real point is to air the behavior things in a high-profile way.

This sort of measure has been effective. It clearly does embarrass. It has its impact without disrupting the bilateral relationship. And to the extent that you have got local officials who definitely want access to the U.S., we're hitting them where it hurts.

It's something akin to, and could even include, seizing foreign bank accounts. It could include other denials of benefits to individuals.

In some ways, the type of action you ask about is symmetrical with what has been the relatively successful retail strategy of focusing on individuals who have been targeted by the Chinese regime. It's a nice mirror image to that. I think it's absolutely worth doing, and it has another advantage of, in at least some cases, if you don't go too high up the chain of Chinese officials, of perhaps resonating with things that the top levels of the Chinese regime agree with. That is, China's leaders know they have a problem, and will say they have a problem, with abusive behavior by local officials. They are not going to be too keen on the U.S. going out and prosecuting these people in U.S. courts. But we're not talking about that; we're saying, "You don't get a visa." Well, so what? That is less a thumb in the eye to the PRC per se, but it can be painful to the individual official.

So that is all to the good. Is it going to profoundly change things? I doubt it, but every little bit helps, and I don't see much of a down side to it.

MS. HOM: I think that, first, saying U.S. current policy is not as effective as it *needs* to be and as it *could* be-- is not the same thing as saying that it has *less impact*. What I'm saying is that we need to focus on how to get more leverage.

On the question of targeting individuals: Human rights violations and abuses and challenges are not only the result of individual actions. So targeting individuals while important from the perspective of accountability of individual decision makers, it will not necessarily address the structural systemic part of what needs to be done, the constructive part of creating the conditions for advancing human rights, the conditions and a culture that will respect human rights, and build a rule of law.

"Prosecution"-type avenues alone will not do that. therein addition to individual legal accountability, there needs to be constructive, capacity building – and they need to mutually inform each other. Yet, the capacity building and technical assistance initiatives tends to be divorced from human rights monitoring and reporting. This is also true for the U.N.; not just the U.S. government.

DR. PEI: Okay, we can stay all –

MS. HOM: Don't we have a closing sentence?

DR. PEI: I want to end on a sort of dry note; that is, other than the Olympics, do you see any opportunities for the U.S. to make a bigger difference than it makes today in the next five years? You mentioned the Olympics.

MR. DELISLE: The Olympics of course are the event everyone focuses on. Other things inevitably will come up. It's hard to predict what they will be. Among the things that are calendared, a presidential changeover is always an opportunity to articulate a new China policy, and clearly we are going to have a change of presidents,

and one that is a more dramatic shift than a sitting vice president becoming a president. So, whether or not there is a switch in parties, it is always a moment of potential policy change. The Chinese always watch U.S. presidential elections very carefully and worry about policy-destabilizing outcomes. The next election may provide opportunities to rethink human rights policy toward China, especially if China policy can be insulated from campaign politics. As I said earlier, entanglement of campaign politics and China policy has not been good for U.S.-China relations, has not occurred in the last two presidential elections and is not looking likely to occur this time on the human rights side though it may be on the economics side.

There is also the old saw about the Chinese term for crisis—“weiji”—being the conjunction of opportunity and danger. This might describe the Taiwanese presidential election in 2008. This is an occasion on which there is going to be a lot in play. And obviously what is going on in Taiwan’s politics strongly resonates with human rights issues in China. One can imagine an election-related crisis in cross-Strait relations implicating human rights issues, among many others.

There is significant talk of pressing China harder in the WTO, and bringing dispute resolution cases, probably IPR cases, but perhaps a number of others as well, ones that entail pressing farther than we have so far. As the WTO’s “mission creep” into more human rights-related issues and the possibilities of linkage between trade and human rights come up more often, I could see that presenting an opportunity for the U.S. or others to exercise leverage effectively because the WTO-centered regime does hit China where it really matters.

Finally, I do not think we have yet fully worked out what to do about the American companies in the new technology areas – the Yahoo-Google kinds of issues. With them, the rub between business and human rights issues is sharper than it has been at any time since American firms first started going into investing in manufacturing plants a generation ago. That is another possible area of pressure, or friction, over human rights. And again, probably the most likely or promising opportunities are ones we just don’t know about yet.

DR. PEI: You have the last word.

MS. HOM: The Olympics -- it’s important not to lose the opportunity of the Olympics. The Chinese government, Chinese civil society, are all focusing more and more on the Olympics. Because it’s so high on the Chinese government’s agenda, to miss that would be such a huge lost opportunity. Even Chinese animal rights activists are beginning to invoke the Olympics -- the Beijing Human and Animal Environmental Education Center – organized a rally with a slogan, to show a face to the world during the Olympics that we are compassionate about animals.

The second opportunity is the new UN Human Rights Council-- despite the fact that the U.S. is not on the Human Rights Council – the U.S. is very active as an observer. China will be coming up for a universal review during its term on the Council. The debates this month in Geneva regarding the universal review process provide an

opportunity for the U.S. government to weigh in on this. When China comes up – of course the process cannot target a particular country, it has to be fair; each country reviewed must be under the same standards and process. But there are some real suggestions about how that review could have some teeth if governments push for it. The Council as an international body, can be the vehicle to both review the record, as well as to make recommendations, and to work to get buy-in from China and other members.

You can see some shifting of China's role in other international bodies like the Security Council where there is some odd transiting from China being just obstructionist to more of a leadership position on North Korea, and some shifting on Sudan. I think that those are geo-political opportunities,

One last word on the proverbial cup half-full half-empty -- whether human rights is better or worse. I think it's really important when we talk about human rights to look at it not only from the perspective of those with a half-full or empty cup, when there are those who literally have no cups or water--. Like the 300 million people in China who have no access to clean drinking water. So when we talk about human rights —and it's pointed out that 300 million people have been lifted out of poverty, there are also 300 million people have no clean drinking water. It has also been estimated that there are 300 million in a growing middle class. However, over 90-something percent of the billionaires in China are party members – high party members or their families.

So when we talk about human rights, we really have to re-center the human – we all like rights, particularly lawyers. So how do we center the human part? I think that we need to center it by looking at progress not only in terms of is the haves – but the those left behind, the 700 million rural inhabitants who have no access to basic healthcare, the 300 million with no access to clean drinking water, migrants without decent jobs, housing, or education for their children.. The real test for progress on human rights– is what happens to the least of us.

DR. PEI: That is true compassion. I hope all of you would join me in thanking Jacques and Sharon for giving us a splendid performance today. Thank you.