

Contested Representations: Exploring China's State Report

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As states become parties to international human rights treaties, they undertake the obligation to provide periodic state reports to UN human rights treaty bodies. Officially, state reports are paramount vehicles of factual information of a given state's human rights situation. Unofficially their status may be contested and their data reduced to state propaganda. This article examines this transformation through the submission of China's first state report to the Committee on Economic, Social and Cultural Rights. The article shows how human rights documents of diverse genres join together in a continual ceremony of dialogue. It connects minute details of treaty body proceedings to more general developments in the international human rights field, and argues that beneath the veneer of diplomatic conduct accompanying human rights dialogue lays an intense struggle for representation and legitimacy. It further discusses how this struggle reflects the recent rise of Kantian theories of international law. These theories seek to re-evaluate the foundational concept of international law, namely 'sovereign equality', and, thus continue the mission civilisatrice that has characterized elements of international collaboration for centuries.

- ❖ Key words human rights, state report, dialogue, knowledge, representation, mission civilisatrice

Submitting a State Report: China's Entry

It was lunchtime in the 34th session of the United Nation's Committee on Economic, Social and Cultural Rights convened in Geneva in April 2005. The day was an exciting one as China was submitting its first state report to the Committee and the 'buzz' generated by the event was palpable both in the cafeteria as well as the remainder of the vast conference building. It was the second day of China's presentation, and after lunch the session would be

opened for questions by treaty body members. Consequently, the event was the main topic of lunch discussion for the treaty body members who had convened in the Conference building cafeteria. Treaty body members made various comments on the attitude of the Chinese delegation toward the proceedings, noting with delight how pleasant the delegation head had been – that he had opened his presentation with a joke about ‘communist explanations’ was recounted on three occasions.

However, appreciation for his ‘playfulness’ did not translate into a lack of criticism. One treaty body member observed: ‘the leader’s voice changes when he shifts from English to Chinese’. The subtext of the comment indicated that the leader was perhaps not as pleasant in his native tongue as his demeanour in English suggested. Treaty body members were critical of the Chinese delegation as a whole, asking ‘why had China brought such a large delegation? It was, after all, a developing country’. These comments suggested that this was inappropriate carelessness from the Chinese government and that the bulk of the money required for flying all the delegate members from Beijing to Geneva would have been more wisely spent on addressing the various internal societal problems plaguing the country. Simultaneously, the comment implied disapproval toward the flamboyance with which China had made its entry: instead of the appropriate humility and earnestness of a newcomer, the inappropriately sizable delegation was suggestive of malignant communist arrogance.

The Chinese delegation was indeed large, occupying four tables at the centre of the spacious conference room. That the proceedings incited excitement in the Chinese participants was demonstrated by the numerous photographs delegate members took during sessions; for many civil servants outside the Foreign Affairs ministry this was likely their first experience at an international conference. The delegation consisted of both senior and junior officials, leading a treaty body member to comment that ‘there are two kinds of Chinese [in the delegation]: those who are under 40 are Western and modern, those over 40 or 50 are traditional and hierarchical’. The comment indicated approval toward the younger generation and welcomed this change. In sum, the Chinese delegation made an impressive presence, conveying a convincing image that this was indeed a superpower – after all, one of the five permanent members of the Security Council and a tremendous economic force - and not some random developing state. After lunch the question period commenced in an intense atmosphere. Although the exchange opened with the customary diplomatic politeness on how nice it was that China was participating in the proceedings – China’s ratification of the CESCRC and the concomitant submission of its state report had been keenly anticipated events - the tenor soon altered and questions became direct and intrusive. ‘Are there forceful abortions and how do Chinese officials treat them? What do Chinese authorities intend to do about widespread domestic violence and the poor position of women in the Chinese society? How do authorities handle homelessness? What about illiteracy and access to education? The teaching of

religions? The freedom of the press?’ In a few short moments all the ‘ills’ perceived of the Chinese society were plastered around the conference room, and the questions unpacked the seamless tale of societal progress offered by China’s state report. The overall tone of questions was sharp, almost confrontational - far beyond the standard level of diplomatic parlance embedded in mutual compliments – and it introduced a greatly adversarial air into the proceedings.

The questions were primarily answered by the same Chinese delegation head who had delighted the audience with his opening joke. His responses confirmed that, indeed, he was no mere showman but instead a highly skilled diplomat and politician. His demeanour appeared not in the slightest neither shaken nor offended by the adversarial approach as he declared in an energetic tone through the words of the English translator:¹ ‘We do not allow people to live on the streets; there is no homelessness in China’. He then complemented his responses with exact quotes from a recent *Housing Act* from the state report in front of him.

Challenged Representation and ‘Mission Civilisatrice’

This ethnographic moment functions as a vantage point for examining the numerous roles that state reports acquire as they are processed by UN human rights treaty bodies: whereas they officially act as paramount sources of factual information of a given state’s human rights conduct, unofficially, their status varies as their reliability can be questioned and they may be treated as vehicles of state propaganda. This shift is exemplified with the proceedings surrounding China’s first state report through focus on such elements as the tenor of comments made by treaty body members, echoing Mbembe’s analysis on the workings of power through minute details in postcolonial relations (1992).

With helpful reminders from Michel Foucault (1972) and Jacques Derrida (2002) on the construction of authorship and representation, the article examines how for treaty body members the ‘voice’ of the official report is that of the constitutionally illiberal, ‘bad’ state of China. By contrast, the legitimate voice of the Chinese population is seen as being represented by the ‘good people’ working for NGOs whose shadow reports were treated as reliable sources of factual information. These assessments are connected to the recent rise of Kantian theories of international law which show an explicit rejection of the sovereign equality of states not adhering to distinct notions of democracy and human rights as has been discussed by Simpson (2004).

These issues are placed in a historical perspective by connecting the contemporary tension between China and the international human rights community as embodied by the UN treaty body to centuries of ambiguity between China and the ‘Great Powers’ as has been discussed, among others, by Ruskola (2010). This avenue suggests that the nuances of treaty body

proceedings were well known to both the Chinese delegation and treaty body members in advance. Yet, if the outcome of proceedings is known, why do such states as China choose to submit state reports and participate in treaty body proceedings? The article draws on Strathern's work on the motivations behind University Mission statements in the UK (2006), as well as Annelise Riles' research on the drafting of international documents as itself a part of a larger progressive trajectory which transforms all attempts to uncover hidden norms as misguided (1998; 2001) to examine these issues.

The article posits that, although the dialogue created by treaty body proceedings may resemble an empty ceremony embedded in diplomatic niceties, beneath the surface lurks an intense power struggle over representation and legitimacy. In regards to China this struggle translates to intense controversy over, on the one hand, the validity of the expert knowledge held by treaty body members on China and on the other, the legitimacy of the Chinese government to represent its population in UN contexts among others. These developments gain wider significance from the recent expansion of the mandates of international actors such as treaty bodies as well as international NGOs accompanied with the ongoing transformation of the institution of the state discussed for example by Kapferer (2005) and Trouillot (2001). Jointly, these developments increase the authority of implicit, private expert knowledge at the expense of the public domains of states and governments, compromising possibilities for democracy and political pluralism.

The article is divided into three sections. I first look at UN human rights treaty bodies as central yet relatively unknown human rights domains and explain how both official state reports and 'Shadow Reports' submitted by NGOs are processed. I consider treaty body members as representatives of a trans-national elite, and briefly look at their characteristic professional practices. I then focus on 'state reports' as forms of factual knowledge or state propaganda. This returns to 'China's report', and an expanded discussion of treaty body members' professional practices. I consider how implicit knowledge of the human rights field contributes to the assessments made of state reports. Finally, I look at contemporary and historical perspectives on the relationship of China and the international human rights regime. I will demonstrate how China's position remains ambiguous and characterized by tension over the legitimate international representation of its population. This also reflects on the position of China within international human rights collaboration, and more generally on traits of the international human rights regime, thus offering novel avenues for examining the significance of the infinite documents produced within it.

Introducing Treaty bodies and State Reports

Treaty bodies are a central feature of international human rights monitoring, yet their functions and composition are, perhaps, not as well known as other

elements of the UN human rights framework. To summarize their role, in the absence of an international human rights court, treaty bodies are commonly seen as the most important implementation mechanism of human rights treaties (UN Treaty Bodies 2011; see also Craven 1995; Alston & Crawford 2000; Merry 2006; O'Flaherty 2006).² Yet, the legal status of both treaty bodies as well as the documents produced by them remain ambiguous and the source of ongoing controversy among different 'schools' of international lawyers (Halme-Tuomisaari 2010a:171-172; 187-188).³ In anthropological scholarship their operations have been described as being 'lawlike' (Merry 2006: 72).

Today, there exist nine treaty bodies monitoring state compliance with the most important human rights treaties including the Covenants on Civil and Political Rights; Economic, Social and Cultural Rights; and the Elimination of Discrimination against Women (UN Treaty Bodies 2011).⁴ Treaty body proceedings embody central UN bureaucratic practices: they produce and process voluminous quantities of documents in repeated international sessions. The primary genre of documents handled by treaty bodies are state reports submitted by state parties according to the intervals specified by each treaty, approximately once in five years. Officially, state reports are paramount vehicles of factual information of a given state's human rights situation. Yet, as will be discussed later, unofficially their status may be contested and their data reduced to state propaganda. This shift is commonly assisted by the 'shadow reports' produced by international and national NGOs that have been accredited for consultative status with the Economic and Social Council (Committee on Economic, Social and Cultural Rights 1993:20).⁵ Although shadow reports hold a limited official role, their unofficial status as embodying the voice of the global civil society and providing reliable information is high among treaty body members as will be elaborated later.⁶

Treaty body sessions last between three to six weeks, and they are organized twice or three times a year in Geneva and New York. Session participants embody the characteristic melange of a UN event: treaty body members and their assistants, state party representatives, members of domestic and international NGOs, other observers such as researchers, interpreters and UN personnel attending to practical matters. The total number of session participants varies according to, among others, the size of state delegations: whereas some 'micro-delegations' include only a couple of state representatives, perhaps from the local embassy, other state delegations include up to two dozen members with leading representatives from different government bodies. Also the number of civil society participants varies as a report from a country with a well-established human rights record generates only mild interest. By contrast the report of a controversial state such as China commonly draws a significantly larger audience as was visible in the treaty body session discussed here.

State Reports as part of ‘Dialogue’

The compilation and processing of state reports entails numerous phases. States start preparing reports commonly one to two years prior to the session where they are scheduled for processing. Reports are usually compiled by officials of foreign ministries who work in collaboration with different government agencies and possibly sectors of the civil society. Finalized reports are submitted to the appropriate treaty body ideally six months before the scheduled session, yet in practice the time varies as states frequently fall behind deadlines.⁷ During sessions each report is processed for one or two days. Processing commences with an oral presentation by state representatives who introduce the report as well as outline the initiatives their government has undertaken to meet treaty obligations after the report’s submission. This is followed by questions from treaty body members on topics for which they wish clarification, and, in turn, by answers from state representatives. Only treaty body members and state representatives have the capacity to make verbal interventions during sessions, yet some time is usually made available for NGO hearings at the beginning of sessions (Committee on Economic, Social and Cultural Rights 2011).

After sessions, treaty bodies produce ‘Concluding Observations’ in which they compliment and reproach state parties on their compliance with treaty provisions. As in the verbal statements by treaty body members, also in the concluding observations NGO shadow reports may be utilized to question the reliability of state reports. This, in turn, challenges the authority of states to act as the legitimate representatives of their populations in treaty body proceedings; instead such authority may be invested in NGOs which are seen to embody the global civil society. This was also the case with China’s report as will be illustrated below. State parties are expected to consider the concluding observations by improving noted shortcomings through domestic legislation and other action, and summarize this progress in the next state report. The compilation of this report commences almost instantly as the processing of the previous one completes.

Jointly these steps form a seamless cycle; they are constitutive elements of human rights dialogue. Dialogue has become a central concept of international collaboration, and it is commonly referred to as being one of the most important goals and indicators of international and national human rights progress.⁸ Annelise Riles has described in her analysis on the making of international documents how the significance of dialogue originates from its capacity to link seemingly divorced events into meaningful continuities. She notes how ‘[t]his particular form of progress was itself part of a larger progressive trajectory. For the delegates and NGO representatives seasoned in UN conferences, documents and conferences form a kind of chain’. Consequently any one document with which delegates were engaged in drafting gained relevance from its adherence to the ‘set of similar documents

such as the Asia-Pacific Platform for Action ... into which it will be incorporated during successive stages of negotiations' (Riles 1998: 380).

In addition to documents, dialogue has come to refer to a wide array of activities, and consequently its exact meaning remains obscure. This article approaches dialogue as entailing important ceremonial elements. Dialogue is a useful term for describing details of treaty body proceedings due to their ambiguous, 'lawlike' status which challenges assessing their direct impact, for example through domestic legislative changes. It has also become the predominant language around which western states explain their human rights work with China. As an example, the website for the Delegation of the European Union states how 'Constructive dialogue remains the Union's preferred channel for working to improve the human rights situation in China' (European Union 2011). 'Constructive dialogue' was further mentioned as a 'welcomed element' in the Concluding Observations on China's discussed state report (Committee on Economic, Social and Cultural Rights 2005: 1).

The language of international human rights dialogue is English, which dominates also treaty body proceedings. Despite simultaneous translation into six official UN languages, English is the general language of discussion, and most frequently utilized by treaty body members as they pose questions. Information provided by state parties to complement state reports in other languages may be overlooked as resources will not permit the translation of all material in English and many treaty body members are not fluent in all official UN languages. Merry has discussed how in the CEDAW Committee proceedings, draft documents as well as suggested alternative wordings are presented in English. Thus, a person who has not mastered the language 'would have a great deal of difficulty assessing the implications and innuendos of different phrases and sentences' (2006: 44). This choice of language is neither always voluntary nor neutral: for example NGO caucuses are typically held in English only because NGOs cannot afford translators. Thus, shortage of resources reproduces the privileged position of the powerful English-speaking actors, emphasizing their elitist nature (Merry 2006: 44). Domination of English diminishes the possibilities of individuals lacking full command of the language to make compelling representations on behalf of themselves or others in such international fora as treaty body proceedings.

Treaty Body Members as a Trans-national Elite

Treaty body members have a central role in the dialogue sustained by treaty bodies, particularly in assessing the reliability of state reports. Their position is characterized by a noticeable duality regarding the institution of the state: On the one hand they are expressly representatives of their governments⁹ - for example, in treaty body proceedings the names of members are systematically accompanied by information of nationality. On the other, they are expected not to represent state interests but rather act as 'independent experts' on

human rights issues, as is stated by the homepage for the Committee on Economic, Social and Cultural Rights (2006).¹⁰ This is cherished by treaty body members themselves, reflected in how one member described her work: ‘As an expert, I did not represent my government or check my views from any domain. The views I put forth were my own and based on my academic and other experience’.

Emphasis of independent expertise reflects a more general professionalization of the human rights field, as a shift in treaty body member profiles illustrates. Whereas in the past decades treaty body members were commonly senior government officials, today treaty bodies include increasingly individuals seen as human rights experts: academics, primarily law professors, as well as acting judges.¹¹ This change echoes the development noted by Kapferer where the power of nation states is increasingly compromised by oligarchies with which he refers to ‘a particular organization of power usually founded in dynastic processes tied to family and kinship’ (2005: 287). In the field of human rights, instead of family or kinship, oligarchies are formed by transnational elites whose members, like treaty body members, are geographically heterogeneous in origins, yet who share an ideologically homogenous social space which has its own norms, values and cultural practices. The social space is English-speaking, largely secular, universalistic, law-governed culture organized around the formal equality of nations as well as their economic and political inequality (Merry 2006: 37). This social space is further characterized by elitist social capital including implicit knowledge of the human rights field as well as distinct professional practices for processing information as will be shown below.

State Reports - Factual Knowledge or State Propaganda?

This article opened with a distinct characterization of state reports: whereas they are officially paramount sources of factual information of a given state’s human rights conduct, China’s report was placed in an alternative light – its reliability was questioned and it was treated as a vehicle of state propaganda. These elements were embodied in numerous details of the question period: questions asked by treaty body members – of forced abortions, homelessness or the teaching of religions – addressed primarily issues that had already been covered by China in the state report and, thus, there was on the surface no need for posing them again. The futility of these questions was further emphasized by the responses of the Chinese delegation head who often read material directly from the Report as if treaty body members had never seen the document despite having acquired it months prior.

Further, the conduct of both treaty body members and the Chinese delegation suggested that this was the expected nature of the exchange. The readiness with which the Chinese delegation head responded suggested great awareness of the questions the delegation would face. Lunch discussions

among treaty body members suggested intimate familiarity with the forthcoming answers of the Chinese delegation. This assessment was also visible in the sharp, almost confrontational tone of questions posed by treaty body members which departed from the standard tenor of diplomatic parlance embedded in mutual politeness and introduced a strong confrontational air into the proceedings. By contrast, in her ethnography on treaty bodies Merry noted that although some questions were pointed, their tone was unfailingly courteous, and criticism, even if raised in private, was rarely explicit in the public hearings (2006: 85).

These elements depict treaty body proceedings instead of instances of multi-cited learning in which parties join together in a reciprocal exchange of factual information, as a site of ceremonial monologues containing information known to all participants in advance. During the proceedings, this ceremonial nature was highlighted by the practice of individual treaty body members to leave the conference room before their questions were answered. This suggests that questions were posed also for other reasons than the wish to acquire more factual information from state delegates; rather, the questions contributed to the elaborate ceremony of dialogue.

As the afternoon wore on, ceremonial characteristics intensified. After the momentary vigour following the opening of the question period on China's report had waned, a general sense of inertia overwhelmed the atmosphere. The audience fell deeper into their seats and some people focused their attention on their laptops; many rested their eyes due to the exhaustion of the long day. People began to sneak into the panoramic cafeteria in the lobby of the spacious UN building. In front of the breath-taking view of lush green parks, mountains with the occasional glimpse of the Mont Blanc and the city of Geneva bathing in a gorgeous sunset, greetings were given to long-lost acquaintances. Treaty body members, delegates and observers started to form little groups of lively chat around the tables spread apart; soon drinks would be ordered, and the mood would be set for dinner.

Professional Practices and Implicit Knowledge

How can the preceding characterizations of China's report and its processing be understood? What kind of sources contributes to them? This section argues that an answer cannot be found within the document but rather from its drafting history as well as the attributes invested in the state of China by treaty body members and the international human rights community more generally. This analysis follows Riles' (1998: 378) scholarship of different UN contexts and her arguments that attempts to discover, and criticize, hidden norms within international human rights documents fail in circumstances where norms are, instead, explicit and located at the surface. She has demonstrated how - whereas participants devote vigorous attention to the making of international human rights instruments - once documents are

completed, participants show, 'from an academic point of view ... [a] lack of interest in their meaning' (Riles 1998: 387-388). Instead, documents become artefacts to be gathered, stored and circulated (1998: 382).

These observations are relevant for examining the processing of state reports as is exemplified by the following description by a treaty body member: 'I go through text very quickly - I just glance through it and am able to form a general impression on it. In fact, I can read any book in a day.' This practice – examining data rapidly through general impressions – forms a paramount professional practice for treaty body members. It is further necessitated by two defining elements of their work: abundance of material and scarcity of time. Abundance of material is concretized by the number of pages handled annually by the Committee on Economic, Social and Cultural Rights. Each year, the Committee convenes to two three-week sessions, processing in each session from four to six state reports.¹² With the length of state reports ranging from approximately 50 pages to well over two hundred pages, this can amount annually to over two thousand pages of text (Committee on Economic, Social and Cultural Rights 2008).¹³

In addition, treaty body members receive 'shadow-reports', committee memos, background papers as well as abundant documents generated by other UN human rights domains, and they jointly produce 'Concluding Observations' and 'General Comments'. These documents are accompanied by ample documents related to treaty body members' other responsibilities as many treaty body members are also professors at universities or they act as directors of human rights institutes. These positions are in turn accompanied, for example, by funding applications, travel bills, annual reports, consultative statements, recommendations, student papers, and articles for peer review. Treaty body members commonly produce documents of their own such as articles and monographs. Combined tremendous quantities of documents ensue, as was illustrated by a treaty body member in a seminar discussion. On propositions to introduce new documents for the inspection of treaty bodies she commented: 'This all sounds very exciting, but one cannot but wonder how this concurs with the existing workload of treaty body members who already receive daily on our desks a stack of papers this high [holds hands 40 centimetres apart]'.¹⁴

Processing documents forms further merely one part of treaty body member responsibilities: in addition, members participate in the actual treaty body sessions as well as different meetings accompanying the official program, they attend seminars, hold lectures, provide expert statements, conduct research as well as travel extensively. All this annuls possibilities for personal scrutiny such as examining document sources to assess reliability, or studying ethnographic scholarship to contextualize the reports. Instead documents are examined through general impressions and what Sarat and Felstiner (1995: 101-102) call 'private knowledge' of the international human rights field - intimate knowledge of the subtle details of the human rights field and expert processes.

Implicit Knowledge on China

In regards to China such knowledge is ample and definite: China is a 'bad' state and a known human rights violator. In addition to UN operations, this assessment is embodied as well by diplomatic conduct as the statements of international activists. China's human rights conduct is the source of regular complaints by the EU and the US (US State Department 2009), and its failure to ratify international human rights instruments generates recurring global discontentment. When it finally signed the CESC in 1997 and ratified it in 2001 these acts were rejoiced, yet quickly became the subject of objections by the Netherlands, Sweden and Norway who all declared the reservations made by China to the treaty as invalid (CESC 2001a; 2001b; 2002).¹⁵ The realization of the Convention has become the source of ongoing criticism from international NGOs including Amnesty International (Amnesty International 2001; see in general, Human Rights Watch 2006). In the summer of 2008 vast protests commonly embedded in human rights language accompanied the journey of the Olympic flame to the Beijing Summer Olympics. Recently, attention has in particular been invested on Internet censorship and the incarcerations and disappearances of dissenters. This attention was reflected in the awarding of the Nobel Peace Prize 2010 to Liu Xiaobo, who was sentenced to prison in 2009, for his 'long and non-violent struggle for fundamental human rights in China' (Nobel Peace Prize 2010).

An additional problem is created by China's communist system. Simpson (2004: 302)¹⁶ has found in his examination of global diplomatic practice as well as scholarly work in international law and international affairs how the most fundamental principle of international law introduced by the UN era, the notion of sovereign equality, has particularly over the past decades faced reassessment due to the rise of Kantian theories of international law.¹⁷ These theories reflect older traditions of explicit inequality, and they are based on a 'normative individualism that saw liberal-democratic states or republican governments as the sole means by which justice and human rights could be secured at the international level'. States differing from these models, such as single-party regimes or authoritarian governments, are not necessarily what Simpson calls 'criminal' and they might well be capable of meeting their basic conventional obligations to the international community. Rather their basic sin is not confirming to a 'contemporary 'standard of civilisation' embodied by the expansion of human rights system' (2004: 281). Consequently they are threatened to be 'exiled from the inner core of international society' (2004: 283).

These arguments are important for understanding the knowledge status assigned to China's report, and they are reflected in numerous comments made by treaty body members during the proceedings. One member commented at the lunch described earlier that she 'did not wish to speak to

the leaders [of the Chinese delegation], but to those who do not speak English'.¹⁸ Another one stated that he was not really waiting for the state report drafted by the Chinese authorities but rather for the shadow-reports filed by various NGOs to see what 'really happens' in China. Foucault's discussion of authorship is relevant in discussing the link between these statements and Kantian theories of international. Foucault asks:

Who is speaking? Who, among the totality of speaking individuals, is accorded the right to use this sort of language (language)? ... (W)ho derives from it his own special quality, his prestige, and from whom, in return, does he receive if not the assurance, at least the presumption that what he says is true? What is the status of the individuals who – alone – have the right, sanctioned by law or traditional, juridically defined or spontaneously accepted, to proffer such a discourse? (1972: 50).

Consider also Derrida's point on authorship in relation to the signing of documents. He noted how 'the signature invents the signer' (2002: 49). Those who sign documents do so 'for themselves but also 'for' others'. The legitimate authority to sign for others stems, on the one hand, from formal delegated authority or the power of attorney of certain individuals to sign, on the other, on the representatives' inner qualities; 'by right, the signer is, thus, the people, the 'good' people (a decisive detail because it guarantees the value of the intention and the signature)' (2002: 49).

Search for a Legitimate Voice and the Transformation of the State

In the present context the 'voice' of China's state report is that of the constitutionally illiberal, 'bad' state of China. The individuals who have signed the document are leading state officials, certainly not 'good people' and questionably legitimate representatives of the Chinese population in the eyes of the international human rights community. Thus, the voice embodied in China's state report cannot be accepted as the legitimate voice of the Chinese people, and the data contained in it cannot be treated as factual information. Instead it is depicted as state propaganda. By contrast, the legitimate voice of the Chinese population is seen as being represented by the 'good people' working for NGOs whose shadow reports are also seen as the reliable sources of factual information.

This characterization of China's report can be contrasted with the recent practice by Finland, a state that is widely viewed as a 'model-state' in human rights issues and a Nordic democracy that fares well in international assessments on the 'world's best places to live in' (Halme-Tuomisaari 2010b). As the Finnish Foreign Ministry prepares its state reports, it has over past years begun to attempt incorporating 'shadow-reports' into its official reports. In practice this means that consultations are held with chosen NGOs whose

solicited comments on the draft state report are selectively incorporated into the finalized report. Instead of reproaching this practice as compromising the access of treaty body members to factual information of the Finnish human rights situation, due to the country's favourable standing in the international human rights phenomenon as well as its recognized democratic mode of governance, UN treaty bodies have widely acclaimed it.¹⁹ Similar practice coming from China or another 'rogue state' would without question be unacceptable.

These findings reflect Kantian theories of international law as they show 'an explicit rejection of the sovereign equality inherent in liberal pluralism'. Simpson argues that today increasingly:

...the individual's democratic and human rights prevail over the state's claims to territorial integrity or political sovereignty. The state's sovereignty, such as it is, is derived from the consent of the people. In this way, domestic legitimacy rather than effectiveness or recognition determines international status (2004: 302-303).

Bruce Kapferer echoes this assessment as he argues that the state as an institution is 'undergoing significant transformation(s) or transmutation(s) in the current historical moment.... (T)he once broadly accepted Weberian definition of the state as that authority with the legitimate monopoly of violence over defined territory seems to be undergoing challenge in many global regions' (2005: 285-286).

Kapferer continues by noting how the power of nation states is increasingly compromised by oligarchies with which he refers to 'a particular organization of power usually founded in dynastic processes tied to family and kinship' (2005: 287). Oligarchies can be located also in the field of international human rights, but instead of family or kinship they derive their power from their membership in the global elite of transnational actors sharing the social space characterized by the values of modernization, secularization and human rights as was discussed. Michel-Rolph Trouillot has argued how:

Notably in the South, NGOs and trans-state institutions from the World Bank to the IMF now perform – sometimes better – on the score and produce similar if not more potent legibility effects. UNESCO or ILO statistics are more reliable than those of quite a few national governments. NGO's capacity to plan effectively at the local and regional level all over the South and the World Bank's or the IMF's power to envision and promote everywhere a future based on their assessment – however questionable – of the present have now moved a number of state practices away from the national. For better or worse, these are all, analytically, state-like institutions (2001: 132).

The processing of China's state report likewise shows how treaty body members invested the capacity to produce reliable information rather to NGOs instead of the State of China. Thus, there was an undeniable expectation that NGOs were more effective in meeting tasks that by formal guidelines were the responsibility of states. This shows an important departure from the notion of governments as the primary organizing principals of international collaboration; instead the safe-guarders of the 'contemporary standard of civilization' become increasingly such trans-national elites as members of UN expert bodies and international NGOs. This emphasizes the authority of the private, often unstated knowledge of these elite groups at the expense of the state, governments, and ultimately the possibility of either democracy or political pluralism.

As the mandates of international organizations and powerful international NGOs have continually expanded, this elite can, thus, be seen as having formed a type of global 'corporate state'. Kapferer has described how 'the imperialism of the corporate state respects no boundaries, is trans-territorial and denies sovereignty of any territorial kind, operating primarily on a logic of control (of the market) rather than a logic of rule (of power over persons and populations)' (2005: 291). This certainly applies to the international human rights regime that by its definition is universal. However, whereas Kapferer argues these groups to be united by their unmitigated search for economic profit, motivations identifiable with the international human rights differ: although by no means divorced from the global economic system, human rights elites can be seen as gaining their motivation also from the lengthy tradition of mission civilisatrice (see, for example, Koskeniemi 2001) which provides both the justification as well as the obligation to engage in global human rights action.

Traces of this mission accompany the discussed proceedings on China's report. Here useful are the observations of Mbembe as he emphasizes that in studying postcolonial relations, focus needs to be directed to

...workings of power in its minute details, and to the principles of assemblage which give rise to its efficacy. That is, one must examine the orderings of the world it produces; the types of institutions, knowledges, norms, and practices that issue from it... as well as the light that the use of visual imagery and discourse throws on the nature of domination and subordination (Mbembe 1992: 4).

Illuminating is also the classic analysis of Foucault as he discusses the emergence of bio-power: 'The mystique of the everyday is joined ... with the discipline of the minute...(T)he meticulousness of the regulations, the fussiness of the inspections, the supervision of the smallest fragment of life and of the body ... in the context of.... an economic or technical rationality for this mystical calculus of the infinitesimal and the infinite' (1977: 140).

In this article power relations have been opened up particularly through treaty body comments disapproving of China's large delegation as it was seen to embody carelessness and arrogance as if it was a reckless act of property destruction in a Potlatch ceremony by a participant seen to lack sufficient wealth for it.²⁰ This disapproval introduces an expectation of Chinese submission into the position of a recipient country within international collaboration. Ernesto Laclau has discussed how persistent classifications into sponsors and recipients stigmatize and condemn under-privileged global domains to 'an ambiguous peripheral relation with the existing institutions', and further how this 'can have only paralysing political effects' (1996: 33).

Dialogue as Contestation over Representation

The previous section considered a relatively gloomy picture of China's possibilities to introduce its narrative as prevailing in such arenas of international collaboration as UN human rights treaty body proceedings. Due to its constitutional lack of liberalism resulting in compromised international personality as well as the poor reputation of its human rights conduct, the data presented by the Chinese government has little chance of being accepted as anything but state propaganda. These findings raise a pivotal question: why has China chosen to enter treaty body proceedings?

Before attempting an answer, the difficulties involved in the very posing of this question need to be recognized, namely the assumption that the state of China – and its will – could be approached as forming one unified entity instead of a coalition of numerous elements reflecting diverse motivations and goals. Whereas the assumption of state unity is an essential building block of formal legal analysis, it is ill fitting for attempts to acquire a more nuanced understanding. The erroneousness of approaching the state of China as one unified entity has been demonstrated by vast scholarship, of which merely one example is the work of Mayfair Mei-Hung Yang (1989; 2000) on how state power and traditional gift economy are intertwined in China. In regards to China's participation in the international human rights regime, a tension can be located between conservative and progressive domestic elite groups holding influence in various government offices, with the latter in particular seeking to westernize China.

Thus, the subsequent analysis argues that for present purposes benefits still exist in approaching China as one coherent unit as distinct commonality can be found between the analyzed events. Numerous attempts have been made to understand why states ratify human rights treaties and participate in the international frameworks around them. Hathaway (2002) has proposed that governments ratify treaties because this allows a costless expression of support for the principles they contain. Strathern (2006: 196) discusses the motivations behind a different genre of documents, namely University Mission statements in the UK by noting how such documents 'create no

knowledge', and therefore their content is not even intended to be analysed in the sense of academic texts. Why do these documents exist; 'what is an institution of higher education doing producing what is (in the sense of being analysable) nonsense?' (2006: 184).

Strathern seeks answers from the expected reactions of such documents, noting how they are produced as a response to demands imposed directly by the Higher Education Funding Council of England (HEFCE), and indirectly by 'national practices of accountability or the language of international convention' (2006: 196). She equates Mission Statements to 'bullet proofing' of the army of Naparama of Mozambique, discussed by John and Jean Comaroff (1992) - a practice where warriors rely merely on the marks drawn on their chests to protect them from their adversaries' bullets. Strathern argues that universities draft Mission Statements in similar efforts to shield themselves (2006: 196).

The notion of bullet-proofing is useful for understanding China's actions, and it can be connected to the earlier introduced concept of dialogue. China has in recent years become remarkably active in the field of human rights as is illustrated by its first National Human Rights Action Plan from 2009 (China's Human Rights Report 2009). Similar reports are today produced by and expected from virtually all governments by the international human rights community; Finland introduced its first Human Rights Report in 2004 (Finland's Human Rights Report 2004). China's Action Plan highlights the numerous activities that China has engaged in on the international level, among them the reception of the first Universal Periodic Review (UPR) by the UN Human Rights Council in 2009. The Action Plan outlines that China has joined 25 international human rights conventions, including the CESCRC, that it is working actively to approve the CCPR, and enlists numerous reports that China has produced for different UN contexts, as well as bilateral dialogues and consultations it has held (China's Human Rights Report 2009). Over the past years China has become a more prominent presence in the multilateral human rights system: it currently enjoys, among others, its second membership period at the UN Human Rights Council (UN Human Rights Council 2011).

Riles has noted how participation of Pacific countries in the drafting of international human rights documents was understood to render the region 'visible' at the next level of negotiation, and this new found visibility was something the Pacific delegates spoke of with pride (1998: 388). This element holds importance both for the introduction of such documents as China's Action Plan and such events as China's entry into treaty body proceedings: they are steps in the long chain through which China has sought to establish itself as an active participant in the international human rights dialogue. Submission of state reports as well as activeness in this dialogue can be seen as 'bullet proofing' for the Chinese government which ideally shields it from repeated reproach of the international human rights community.

Ideally, this would increase the legitimacy of the Chinese government to represent its people in international contexts, which in turn would translate into a higher status of the material presented by it as factual information instead of propaganda. These goals will not, however, be achieved lightly. So far the effectiveness of virtually all human rights initiatives by the Chinese government have been challenged, and in 2009 for example the US Department of State found in its report on China that its actual human rights record 'remained poor and worsened in some areas' (US Department of State 2011). The relations of China and the US as well as the EU have remained inflamed as has been indicated by the recent cancellation of scheduled 'human rights dialogue' between them (Guardian 2010). Regular criticism on China's actions is continually forwarded by powerful international NGOs including the Human Rights Watch.

Problematic Chinese Desire: Historical Perspective to Implicit Knowledge

There is nothing new in the present tension between China and the international human rights community, as its origins have to the contrary a long legacy. Simpson argues how for the 'Great Powers' – Europe and the United States - up until the UN era, the conception of sovereign equality was deeply problematic as they instead sought to undermine it through numerous criteria such as Christianity, civilization or more recently, adherence to human rights (2004: 234). Simpson points out how late-Victorian practices shared a 'willingness to apply standards of political and legal practice universally as well as a readiness to deny admission to the international community to those states that fail to meet the required standards' (2004: 246). Civilization is the classic example of a quality that by no means all global populations possessed; as has been pointed out for example by Mbembe who notes (2002: 248): 'The black, especially, had to be converted to it. This conversion was the condition for his being perceived and recognized as a fellow human being and for his otherwise indefinable humanity to enter representation.' However, conversion did not lead to equality as instead, '(o)nce this condition was met, the project of assimilation could proceed' (2002: 248).

On a global scale the classificatory system resting on the 'civilized-savage'-divide was problematic. As Ruskola has pointed out: 'Europe's self-proclaimed mission civilisatrice worked at least reasonably well so long as Europeans were dealing with peoples that they could characterize to their own satisfaction as barbarians or savages (say, the inhabitants of the New World) or peoples whose political existence could be denied altogether (say, Australian Aborigines whose land was deemed simply terra nullius)' (2010: 1496). Yet, 'ancient Asian civilizations were more difficult to dismiss. Although their civilizations were evidently very different from Europe's, they

undeniably had the signal markers of a 'high' civilization, even as defined by Europeans themselves' (2010: 1496).

Here the position of China was particularly problematic as it was 'perhaps the greatest of the unequal sovereigns at this time' (Simpson 2005: 245). Contributing to this tension were problems of trade, more specifically the problem of Chinese desire as Ruskola notes: 'While the West's appetite was insatiable when it came to Chinese tea, porcelain, and silk, the Chinese had little interest in the manufactured goods that Western merchants offered them. The vast Chinese economy was essentially self-sufficient' (2010: 1505-1506). This was accompanied by a political self-sufficiency which combined led to charges of isolation and arrogance, claims that by empirical observation were greatly exaggerated (Ruskola 2010: 1506). Although the sovereignty of China was never formally challenged, it was rendered close to meaningless, as the West gained jurisdictional control of and access to major cities, rivers and the main lines of communication and transportation: 'What was left was a shell of Chinese sovereignty, penetrated repeatedly from all sides so that its spatial representation looked increasingly like an elaborate latticework' (Ruskola 2010: 1526).

China on the 'Wrong Side of History'

China's status remained ambiguous within the international legal order up until the UN era, as is reflected by the organization's founding: although China eventually became one of the five permanent members of the Security Council, signalling acceptance into the group of contemporary 'Great Powers', its membership was in no manner self-evident. By contrast, at the conclusion of the Second World War, whereas the US, the USSR and the UK formed a natural alliance, China's (and later France's) membership quickly became a contested issue. Simpson notes how 'The British were against Chinese membership, believing the Chinese to be unworthy of this status, while the Soviets refused to even talk to the Chinese as equals.' In the end, the American interest in having the Chinese as '(junior) policing partners in the Pacific' prevailed and China was admitted in the Pacific Great Power grouping (2005: 173).

These historic developments signal how, instead of China having somehow recently ended on the 'wrong side' of international collaboration, its position has long remained ambiguous and the recognition of its full political and economic sovereignty has been problematic. Recent events, including the awarding of the 2010 Nobel Peace Prize to Liu Xiaobo, offer little evidence that this tension is disappearing. Rather a new era may be dawning in international power dynamics due to the recent economic triumph of China as a consequence of which it has become for example the biggest provider of foreign loan for the US; recent figures suggest that the current balance tops several hundred billion USD.²¹

The inter-dependency of the US and China has introduced novel nuances to international collaboration as China can no longer be unequivocally placed in the category of under-privileged nations. The new economic situation challenges the image of the US as a world leader in the bilateral meetings of the two countries. Perhaps, unsurprisingly, as the leaders of the two countries met in Washington in January 2011, headlines were full of discussions of Chinese human rights violations with President Obama pressing the Chinese President Hu Jintao about the issue whereas discussions on economic co-dependency were downplayed (see, for example, *The New York Times* 19.1.2011, HS 19.1.2011). President Obama further stated that China was at a 'different developmental level' in human rights issues; a sentiment that echoed familiar hierarchies within the international regime between civilizations in differing developmental stages (ibid.).

'Stubborn' Resistance over Representation

Simultaneously, there is little evidence that the Chinese government is yielding to international pressures. Although its leaders have begun making regular concessions by admitting that its internal societal situation needs improving – this was acknowledged by President Hu Jintao during his discussed visit to the US – they simultaneously remain firm in claiming that the approaches chosen by the Chinese government are the best guides in this progress. The empty chair at the Nobel Peace Prize²² can likewise be seen as firm defiance against international pressures for radical domestic reform.

Intense controversy accompanied also a more recent appearance of China in front of a UN treaty body as it presented its report to the Committee on the elimination of Racial Discrimination in the summer of 2009. The Chinese delegation was again large, consisting over 20 staff members from all ministries, and efforts behind the preparation of the report had been extensive. In the question period the Chinese delegation faced familiar allegations on its conduct, to which the Chinese representatives responded with vigour and determination. The discussion ended up on a heated note with stark disagreements on, on the one hand, the validity of the expert knowledge held by treaty body members on China, on the other, the legitimacy of the Chinese government to represent its population in UN contexts among others. This example reinforces the impression that the Chinese government is determined to establish its narrative as prevailing as well as gain the status as the legitimate representative of the Chinese population within the international human rights framework. It concretized how, although on the surface the dialogue described here may appear as an empty ceremony, beneath the layers of diplomatic niceties lurks an intense power struggle over representation and legitimacy.

Conclusion

This article has analysed the knowledge status invested in a specific document generated for an international human rights context, namely China's first state reports submitted to the UN Committee on Economic, Social and Cultural Rights. It has suggested that instead of approaching treaty body proceedings solely or predominantly as instances of information exchange and multi-sited learning, they are a part of the multi-faceted ceremony of dialogue, which is predominated by the implicit knowledge held by treaty body members on the human rights records of states presenting their reports. This alters the role of state reports: instead of paramount sources of factual information on a given state's compliance with a specific human rights treaty, their knowledge status becomes ambiguous and the accuracy of their data dependent on the assessment made by treaty body members of the state submitting the report.

In the case of China, contestation over the knowledge status of the state report reflects a more general tension over the international legitimacy of the Chinese government. This tension is visible for example in the relations of the EU or the US and China, as well as in the nuances accompanying the processing of the state report. In exploring the latter element, this article brought out details of treaty body proceedings, such as the tenor of comments made by treaty body members. In doing so, it has examined Foucault's and Derrida's insights on authorship, as well as Mbembe's description of postcolonial relations and Foucault's discussion of bio-power.

Power relations were opened up particularly through the comments disapproving of China's large delegation, which introduced an expectation of Chinese submission into the appropriately humble position of a recipient country within international collaboration. Foucault's reminder of the productive capacities of power revealed the full significance of the ceremony of dialogue described in this article: at its heart lies an intense struggle over which domain – the global human rights elite as embodied by UN treaty bodies or the Chinese government – holds, not the factual power over the everyday lives of the Chinese people, but the power to make legitimate representations on behalf of them in international contexts. This struggle is intensified by the ongoing transformation of the institution of state accompanied by the increased authority of the private knowledge of these trans-national elites. In UN treaty body proceedings this struggle acquires the form of seemingly neutral dialogue where documents of a distinct genre are handled through elaborate ceremonies in a seamless chain of exchanges. Yet, the undertones of this dialogue are loaded with contestation and strife.

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Notes

¹ His responses alternated between Chinese and English, which had not been the case during his earlier presentation, held consistently in English. This shifting created the image that it stemmed not from limitations in language skills, but from something else - namely efforts to distance answers from original questions, making replies only available through the words of interpreters. As was customary in UN meetings, the proceedings were being simultaneously translated into five languages: English, French, Russian, Spanish and Chinese, and most participants listened to presentations via headphones in the words of the translators.

² Neither the International Court of Justice nor the International Criminal Court is a human rights court despite of making occasional reference to human rights in their rulings. The European Court of Human Rights is often called an international human rights court, yet it has jurisdiction only in countries that have ratified the European Convention on Human Rights. The 'culture of impunity' (Akhavan 2001) has commonly been considered as the greatest Achilles's heel of the international human rights system. Proposals to establish an international human rights court with universal jurisdiction were forwarded already during the drafting of the Universal Declaration of Human Rights in 1946-1947, when they nevertheless failed to receive decisive support (United Nations 1947: 89, 91). Initiatives for an international court of human rights still persist (Scheinin 2005), yet there at present are no concrete plans for its founding.

³ One significant aspect of this controversy relates to the relationship of treaty bodies and courts: whereas many defend the legitimacy of treaty bodies precisely with their 'court-likeness', others argue that they were never intended to function as courts (Halme-Tuomisaari 2010a: 171-172; 187-188).

⁴ The first treaty body, the Human Rights Committee monitoring the compliance of the Covenant on Civil and Political Rights (CCPR), was founded in 1977 (Nowak 2006: 148; McGoldrick 1994). The other treaty bodies are the Committees

monitoring the Conventions on the Elimination of Racial Discrimination (CERD); the Rights of the Child (CRC); the Convention against Torture; and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. All bodies but one have been established according to provisions of the treaty they monitor; the Committee on Economic, Social and Cultural Rights monitoring the Convention on Economic, Social and Cultural Rights (CESCR) was established in 1985 by ECOSOC (Committee on Economic, Cultural and Social Rights 2011).

⁵ There are today over 3100 NGOs enjoying this status which is granted on the basis of a special selection process (United Nations Department of Economic and Social Affairs 2011).

⁶ In addition, some treaty bodies consider individual complaints or communications from state party nationals as provided by treaty provisions.

⁷ For example the compilation of Finland's state report on the CCPR due to the Human Rights Committee was delayed by more than a year from its original deadline of end of 2009. Examination of Treaty Body websites offers further information of delays (Committee on Economic, Social and Cultural Rights 2008).

⁸ For example the year 2001 was named the UN Year of Dialogue Among Civilizations (UN 2001), and the UN website on treaty bodies mentions dialogue as a pivotal goal of treaty body proceedings (UN Treaty Bodies 2011).

⁹ Treaty body members are nationals of states that are parties to the relevant human rights convention, and they are nominated for candidacy for their four-year terms by their respective governments. They are selected by a vote of state parties. Each treaty body has its own guidelines for the selection process. The size of treaty bodies is commonly between 15 and 20 persons.

¹⁰ The website mentions that the Committee is composed of 18 individuals who are persons of 'high moral character and recognized competence in the field of human rights' (Committee on Economic, Social and Cultural Rights 2006).

¹¹ Particularly in the Human Rights Committee and the Committee on Economic, Social and Cultural Rights members have a background in law. 14 of the 17 members of the Committee on Economic, Social and Cultural Rights mention background in law in their treaty body member profiles; of the Human Rights Committee, 17 of 18 members (Committee on Economic, Social and Cultural Rights 2006; Human Rights Committee 2006). In other bodies such as the Committee on the Elimination on All Forms of Discrimination Against Women, legal emphasis is less common as expert backgrounds are more varied (Merry 2006). The scarcity of lawyers among Committee members forms a common source of complaint for the few lawyers, who feel that members without legal education lack skill to draft the Committee's 'legal' documents, leaving this task with them. They also frequently complain that members without legal education lack the kind of objectivity and distance that it provides, getting instead too emotionally involved in the issues discussed. Many thanks to Jan Klabbers for discussion on this point.

¹² In practice the number fluctuates due to occasional delays in state parties; consequently whereas in 2006 the Committee processed eleven reports and in 2003 nine reports, in 2005 and 2004 it processed only seven and six reports.

¹³ In recent years treaty bodies have actively sought to diminish this number, resulting in new UN guidelines for state reports limiting their length.

¹⁴ This quantity was intended as an illustration, not as a concrete amount of documents.

¹⁵ Such objections are not unique but instead frequently accompany reservations, particularly those made by non-Western states.

¹⁶ Simpson outlines how writings by the likes of Francis Fukuyama (1993) and Samuel Huntington (1998) have raised as their primary targets states viewed as ‘undemocratic’ or ‘constitutionally illiberal’: states that fail ‘to offer (their) citizens a typical range of civil and political rights (including market rights), lack a system of government in which authority is dispersed and do(es) not hold free periodic elections in which the government is elected by the citizens of that state’ (Simpson 2004: 282).

¹⁷ Whereas Simpson’s argumentation appears generally convincing, and it is also useful for illustrating the developments discussed here, his description of the early UN era as being characterized by a dramatic notion of equality appears exaggerated.

¹⁸ During lunch no indication was made that the present treaty body members had competence in Chinese; the biographies of treaty body members suggests the same. Subsequently such discussions would have required interpreters.

¹⁹ Other Nordic countries likewise holding a high status in the international human rights framework are considering adopting the same procedure. These insights stem from ongoing research with the Finnish Foreign Ministry to study how state reports are compiled.

²⁰ For a classic description of the ritual of Potlatch among the Kwakiutl Indians, see Boas (1897).

²¹ For discussion on the economic relationship of the two countries, see for example Michael Pettis (Pettis 2009); for an example of recent media discussion, see Suomen Kuvalehti 2011.

²² Liu Xiaobo was not allowed to participate in the Nobel proceedings, which generated enormous international criticism to

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