Reframing Human Rights in Russia and China. How National Identity and National Interests Shape Relations with, and the Implementation of, International Law.

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Introduction

In 2016 Russia and China issued a *Joint Declaration on the Promotion of International Law* in an attempt to "systematise" their approach to international law.* By reaffirming long-held views, both countries sent a clear message to the entire international community: Russia's and China's "own political identity" needs to be integrated into the interpretation of every field of international law.1

The analysis carried out in this chapter on the role and understanding of human rights "as a matter of international law" in Russia and China stems, and cannot be read apart, from this important official stance, as well as from the position conferred by both countries to individuals in society.

In order to analyse the common aspects, as well as specific features, of the Russian and Chinese approaches in this field, our analysis will consider the dynamics emerging from the participation of both countries in the human rights systems set up at the regional and international level. In this respect, Russia and China are characterised by diverse levels of integration in these systems with important implications for the protection afforded in their domestic orders.

Starting with Russia, this country replaced in the 1990s the USSR in its universal international treaty obligations and joined the more sophisticated European human rights system.2 As a member state of the Council of Europe, in

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* The authors contributed equally to the introduction and the concluding remarks of this chapter. Section 2 was written by M. Balboni, while Section 3 was authored by C. Danisi.

1 See *Joint Declaration on Promotion and Principles of International Law*, 25 June 2016, available at www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698.

2 Russia is party to 11 out of 18 UN human rights treaties (see http://indicators.ohchr.org). See also the CoE's dedicated online section on Russia for key figures on its participation in the European system at www.coe.int/et/web/portal/russian-federation.

1998 Russia ratified the European Convention on Human Rights (ECHR), whose respect is supervised by the European Court of Human Rights (ECtHR).3 China, instead, acceded to its first international human rights treaty – the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women – in 1980, and today it has joined only "some" international human rights treaties and mechanisms, i.e. those that seem more in line with its strategic aims.4 Moreover, China does not belong to any regional framework of human rights protection. In fact, while Asia lacks a human rights mechanism that is comparable to the European, African or American ones, China is not even involved in the first attempt to establish a rather weak regional human rights institution based on so-called Asian values (Renshaw 2013; Neo 2017).5

Yet, for both countries, the interaction with the international arena has led to remarkable outcomes. As for Russia, dialogue with the ECHR's protection system is resulting in an attempt to defend a "national appreciation" of human rights, in opposition to the way these rights are protected and interpreted at international level. As for China, its more isolationist approach goes hand in hand with the elaboration of its own interpretation of human rights law, which pays greater attention to the Chinese model of economic and social development.

With this background in mind, the chapter is therefore organised as follows. Section 2 examines both countries' approaches to international law. This analysis sets the stage for addressing the Russian and Chinese positions towards human rights and for explaining why these countries cannot be easily

3 *Convention for the Protection of Human Rights and Fundamental Freedoms*, signed in Rome, 4 November 1950. The Council of Europe (CoE) unites 47 European States that are all bound by the Convention and are subject to the ECtHR as its supervising mechanism. As we explore below, the ECtHR plays a key role in the interpretation of the Convention as a "living instrument" to meet today's human rights challenges. See, for instance, ECtHR, 24 January 2017, *Khamtokhu and Aksenchik v. Russia*, Applications nos. 60367/08 and 961/11, para. 73. On Russia's compliance with the ECtHR's judgments, among others J. Lapitskaya, *echr, Russia, and Chechnya: Two is not Company and Three is Definitely a Crowd*, in *International Law and Politics*, Vol. 43, 2011, 479–547.

4 See data provided by the Office of High Commissioner on Human Rights (OHCHR) at http://indicators.ohchr.org. Interestingly, these commitments are related mostly to the rights of specific groups (women, children, and people with disabilities).

5 See the so-called ASEAN Intergovernmental Commission on Human Rights (AICHR), established in 2009 in accordance with Article 14 of the Association of Southeast Asian Nations (ASEAN)'s Charter, and the subsequent ASEAN Human Rights Declaration adopted on 18 November 2012, available at www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

described as human rights' opponents.6 Section 3 scrutinises, for each country, the kind of dialogue established with the human rights mechanisms to which they belong. The chapter ends with some conclusive remarks on the common aspects as well as distinctive features of Russia and China in the field of international human rights law.

A Traditional Approach to International Law

Russia and China share some common views on the role of international law in international relations, which, in turn, are at the heart of their renewed willingness to influence in a certain way its development. These common aspects shaped the above-mentioned 2016 *Declaration*.

Through this common position, Russia and China have stressed their adherence to the UN Charter, as well as the need for all members of the international community to pay attention to the most traditional principles of international law thereby affirmed – i.e. state sovereignty, states' equality and non-intervention in internal or external affairs.7

In light of the centrality of the principle of sovereign equality for the stability of international relations, Russia and China also made clear that all states have the right to participate "in the making of, interpreting and applying international law on an equal footing" (point 2), while stressing the need to take into account each state's political identity in this process. As international human rights law is a branch of international law, a country's identity should also have an impact in this field. In this respect, it is worth noting that the *Declaration* makes no mention whatsoever of human rights. This striking "silence", taken together with the need to "contextualise" the rules of international law,

6 The chapter does not address or analyse the "human rights' record" of these countries. In this respect, see the results of the last cycles of the Universal Periodic Review related to Russia and China in the framework of the Human Rights Council: respectively, *Report of the Working Group on the Universal Periodic Review – Russian Federation*, 12 June 2018, doc. A/HRC/39/13, and *Report of the Working Group on the Universal Periodic Review – China*, 26 December 2018, doc. A/HRC/40/6. Other non-institutional resources include Human Rights Watch's 2017 World Report on Human Rights for both countries, respectively at www.hrw.org/world-report/2017/country-chapters/russia and www.hrw.org/world-report/2017/country-chapters/china-and-tibet.

7 It is no coincidence that specific references are made to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, where all these principles are "codified", and to the "Five Principles of Peaceful Coexistence". See UN General Assembly's Resolution 24 October 1970, doc. A/RES/25/2625, and the Principles affirmed in the Panchsheel Treaty, signed on April 29, 1954.

shows a sort of criticism of the western "use" of international law to strengthen the protection of individual fundamental rights and freedoms (Wuerth 2016; Malskoo 2016).

Yet, this is not equal to saying that these countries oppose the respect of human rights as such. Rather, in the Russian and Chinese vision of international law, it is the western focus on human rights protection and fulfilment as a key value of the contemporary international community that can be problematic when it is not balanced with the above traditional core principles8 or when it jeopardises international and internal stability and/or a country's own identity. As a consequence, Russia and China may be defined as strong guardians and supporters of international law in its most traditional terms, as it is essentially aimed at ensuring peaceful coexistence between sovereign states.

Interestingly, this common position does not reflect an equal common constitutional framework in these countries. In fact, historical, social and cultural factors have shaped very differently the way Russia and China regulate the relationships between international law and their internal legal orders, with significant implications for human rights. This state of affairs certainly supports the view that international law is also a "political project" in which history and culture influence the way it is domestically understood and applied (Bianchi 2016). Let us therefore explore these two countries' internal frameworks separately.

Russia: A Consent-based Approach to International Law

After the USSR's disintegration, there was a widespread belief that Russia had no choice but to make western values its own (Baaz 2016: 264; Juviler 1992). The new Russian constitutional system set up during that time supported this view. In fact, the 1993 Constitution referred not only to sovereignty and territorial integrity and inviolability, which needed to be protected by Russian authorities (see Articles 1, 4, 10 of the Constitution). It also mentioned classical democratic principles, such as democracy, the rule of law and human rights, and set out a remarkable openness to international law.9 Hence, if the former Soviet Union was characterised by considerable closure to international law, as it had never

8 The reference to "The Russian Federation and the People's Republic of China fully support the principle of non-intervention in the internal or external affairs of states, and condemn as a violation of this principle any interference by states in the internal affairs of other states with the aim of forging change of legitimate governments" may be seen as a concrete example of this vision (see *Joint Declaration*, point 4).

9 See *Constitution of the Russian Federation*, adopted on 12 December 1993. An English version is available at www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICkB6BZ29/content/id/571508.

before been considered as something that might be invoked or enforced by its domestic courts (Danilenko 1998: 5), the new Russian constitutional framework included this openness to the international order within its fundamental principles (see Chapter 1 of the Russian Constitution).

More specifically, as provided by Art. 15.4 of the 1993 Constitution, universally recognised principles and norms of international law, as well as international agreements of the Russian Federation, are an integral part of its legal system. According to the same provision, if an international agreement of the Russian Federation establishes rules which differ from those stipulated by domestic law, then the rules of the international agreement shall be applied. As a result, the Russian Constitution marked the prevalence of international law over domestic law, although this prevalence is not related to the entire range of obligations binding Russia but is limited only to international treaties. At the same time, as affirmed in Art. 2 of the Constitution, human rights are assumed as the legal order's supreme values and, as such, need to be respected and protected by the state. Interestingly, in the Russian Federation these rights are recognised and guaranteed according to the universally recognised principles and norms of international law as well as to its Constitution (see Art. 17 and Chapter 2 of the Russian Constitution).10 Finally, while Art. 79 of the Constitution allowed the participation of Russia in international organisations, as well as the transfer of sovereign powers to them, this participation or transfer cannot entail restrictions on human rights and cannot conflict with the basic principles of the Russian constitutional order.

This generally open approach was later confirmed by Federal Law no. 101-FZ, adopted in 1995, on Russia's international treaties, which also granted the Constitutional Court the power to verify the preliminary compatibility of international treaties with the Russian Constitution when the former are not yet in force (see Art. 34). This openness to international law emerged also from the domestic case law. The Constitutional Court has frequently used international law to support a specific interpretation of national provisions (see *Collective Labour Disputes Case*, 1995; *Case Concerning Art. 42 of the Law of the Chuvash Republic on the Election of the Deputies of the State Assembly of the Chuvash Republic*, 1995; see also Danilenko 1998) or as an additional argument for achieving a particular conclusion (see, in relation to the death penalty, judgment 19 November 2009, or to political representation, judgment 21 December 2005). For its part, the Supreme Court also stated the direct applicability of

10 As we will see below, this reference to universally recognised principles has not remained ineffective, as it has been essential for subsequent developments in the interaction between Russia and the human rights systems to which it belongs.

international treaties in some cases, affirming that national citizens may derive rights and obligations from them (see Supreme Court decision no. 5/2003). However, this legal framework, which is indeed similar to many western countries, has been gradually interpreted and used in a way that ensures the superiority of the Constitution and the internal values defining the country's identity over Russia's international obligations (Malksoo 2015). This is especially true as far as the Constitution's "fundamentals" are concerned (Marochkin 2017; Marochkin & Popov 2011). Not surprisingly, this position has gone hand in hand with an increasing emphasis on the importance of international law as the guarantor of a state's sovereignty, meant as "indivisible" and "unlimited" (Malksoo 2015). Put this way, international law is primarily understood as connected with the protection of national security and territorial control. Rather than enhancing states' cooperation in "sensitive" fields such as human rights, the first aim of the international community is to ensure the conditions for peaceful coexistence among equal and sovereign states. In such a traditional view, states' consent is the fundamental basis for any relationship established at the international level and ruled by international law.11

This multifaceted approach has influenced the role assigned by Russia to international human rights law. International obligations in the field of human rights are embraced *when* they are consistent with the principle of non-intervention in internal affairs, as well as Russia's prevailing national values. It is no coincidence that, when the international understanding of human rights was perceived as interference in domestic affairs, Russia's participation in human rights systems of protection was questioned. The Russian Constitutional Court's case law is instructive in this respect, as we will analyse below.

China: A Critical Approach to International Law

The experience of China shows even more clearly that historical and ideological factors have played a great role in the definition of its approach to international law. Although China, along with Russia, seems progressively willing to play the role of "norms shaper" within the contemporary international community, it has always been sceptical of international law. This aspect has hugely influenced both its participation in the international community, as well as the openness of its internal order to international law. It seems that the Chinese leadership is still dominated by "an enduring mentality" according to which China has always been a victim of international law (Chan 2015: 16). The

11 It is no coincidence that the mentioned prevalence of international law, as established by Art. 15.4 of the Constitution, is affirmed only in relation to international treaties in light of the need to provide clear consent to be bound by such international obligations.

imposition of the so-called "unequal treaties" by western countries to take advantage of the Chinese market is at the heart of this position, which in turn radically conditioned the drafting of China's Constitution (Wang 1990: 237).

It is no coincidence that no references to international law were included in the 1982 Constitution12 and no significant changes were introduced by subsequent reforms, even during the period characterised by greater openness to the international community. Only the well-known five key general principles ruling relations with other states are made explicit in its Preamble. These include mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries. While it is true that these principles cannot rule the effects of international law in China's internal legal order (Rossi 2016: 431), they are nonetheless important as they show that China supports a traditional view of the role of international law in the life of the international community.

Nevertheless, it is worth recalling that Chinese legislation, such as the Law on the general principles of civil law (Art. 142), includes some references to international obligations undertaken by China and to their prevalence over conflicting internal norms. However, there is no agreement on the effects of such provisions. This is probably due to the lack in the Constitution of explicit references to the effects of international law within the domestic system, as well as to the general approach of domestic courts that do not seem disposed to apply international law, with some exceptions perhaps in the economic field (Sanzhuan 2009).

All these factors play an important role in defining the country's position on international human rights law. Despite its involvement in specific international human rights mechanisms, China is still characterised by a substantial "closure" to international law. By the same token, although a constitutional reform in 2004 included, for the first time, a new Article 33 providing that "the State respects and preserves human rights", this was not meant to allow the application of international human rights treaties at the domestic level (Ahl 2010: 379).

12 The only exception relates to the identification of national authorities called on to conclude and ratify international treaties. See Articles 67, 81 and 89 of the Constitution. All versions, starting from the first Constitution adopted in 1982, are available at www.npc.gov.cn/englishnpc/Constitution/node_2824.htm. Considering that no references are made even to customary international law, the Chinese Constitution has been identified as a *unicum* within contemporary national constitutions. See A. Cassese, *Modern Constitutions and International Law*, in *Recueil des cours*, vol. 192, 1985, at 437.

This comprehensive approach gives rise to the framework that permits China to "protect" its own view of human rights as well as its internal order from the prevailing understanding of human rights at the international level, as we will explore below.

Between Universalism, Regionalism and National Values

Despite their shared views on the role of international law, Russia and China show a different approach to the issue of human rights. If, as seen above, both countries tend to allow collective interests to prevail over individual rights, in contrast to the balance commonly shown in the West, each country takes a different approach to achieving that balance. While Russia pays great attention to the protection of the values on which its identity is framed, China recognises a primary weight to its strategic aims as a regional and global power. These distinctive features emerge clearly from the dialogue of both countries with the international systems of human rights protection to which they belong.

Russia: "National Identity First"

As a matter of principle, Russia shares the idea that individuals have rights that may be claimed directly before a judge. This explains why, after the fall of the Soviet Union, it was easy for Russia to join the international systems of human rights protection, including the ECHR and its enforcement mechanism set up in the Council of Europe's framework. This position is well expressed also in the Russian Constitution which, in Article 46, recognises even an individual right to submit a claim to an international mechanism for protecting one's rights, provided that all internal remedies have been exhausted.

Yet, Russia's involvement in these international frameworks has encountered some difficulties. Let us consider the example of death penalty. It is widely known that a preliminary condition to join the Council of Europe is the abolition of death penalty. While Russia promised to abolish this kind of punishment and to ratify the additional Protocol no. 6 to the ECHR elaborated for this purpose, after almost twenty years it was eventually able only to grant a *de facto* moratorium.13 According to some scholars, this demonstrates that Russia was not ready to undertake such international obligations (Malskoo 2012: 363).

13 See the Amnesty International, *Death Sentences and Executions*, 2017, p. 43. As it may be verified through the CoE Treaty Office's website, *Protocol no. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty*, opened for signature on 28 April 1983, was only signed by Russia in 1997.

Its membership in the European human rights protection system was therefore aimed primarily at causing a positive "Strasbourg effect", which still seems far from having been fully produced (if not even dwindling now: Malskoo & Benedek 2018: 4–6; 24; 399).

The ongoing dialogue between domestic judges, especially the Constitutional Court, and the ECtHR is instructive in this respect. While it is true that, since the ratification in 1998, Russia's internal order has been influenced positively by interaction with the ECtHR (Lapitskaya 2011; Caligiuri 2016; Malskoo & Benedek 2018),14 in the last years internal courts have begun to identify the ECtHR's activity as a sort of repetitive and illegitimate interference in their own conceptualisation of human rights and freedoms.

The first occasion in which such discontent emerged was the ECtHR's decision in the *Markin* case.15 The application, which dealt with an army employee claiming family benefits that were granted only to his female colleagues, called into question the Russian idea of family and gender roles. By deciding in favour of the applicant and his right to enjoy childcare leave without discrimination based on his sex, the ECtHR advanced its idea of equality between men and women and its anti-stereotyping vision of gender roles in family and society (Timmer 2011). Due to a more traditional understanding of the same concepts, Russian authorities opposed the ECtHR's interpretation of the relevant ECHR's provisions, as well as the execution of this judgement. Yet, called to take a position on the internal developments of the *Markin* case, the Russian Constitutional Court was able to reconcile the ECtHR's reading with Russian values by stressing that both systems are based on the same concept of human rights (Vaypan 2014).16

14 See also Russian Constitutional Court, judgment no. 4-P, 26 February 2010, and Supreme Court of the Russian Federation, order 10 October 2003, no. 21 *(On the Application by Courts of General Jurisdiction of the Convention on the Protection of Human Rights and Fundamental Freedoms from 4 November 1950 and the Protocols Thereto)*, on the obligation of domestic Tribunals to consider the interpretation given by the ECtHR when implementing the ECHR.

15 ECtHR, Grand Chamber, 22 March 2012, *Konstantin Markin v. Russia*, no. 30078/06. As noticed also by some scholars (Malskoo & Benedek 2018), at least two other cases have significantly marked the general relationship between Russia and the ECtHR: ECtHR, 21 October 2010, *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09; ECtHR, Grand Chamber, 19 October 2012, *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06.

16 See Russian Constitutional Court, judgment no. 27-P, 6 December 2013, related to the consequences of the *Markin* case.

In light of growing criticism of the ECtHR, which reached perhaps its highest peaks with the judgment in the *Yukos* case,17 the Constitutional Court eventually adopted a more defensive approach aimed at ensuring that Russia's idea of "human rights" would always prevail vis-à-vis its international law commitments (Filippini 2016: 386; Malskoo & Benedek 2018). Thus, in 2015, the Constitutional Court affirmed that Russian interaction with the ECHR's system of protection cannot be possible in conditions of "subordination"18 to the latter. Building on the principle of "sovereign equality of States", recalled as a *jus cogens* norm (Kleinlein 2017), the Constitutional Court fundamentally affirmed that Russia is entitled to avoid complying with its international duties when the ECtHR's own reading of the ECHR does not respect the Russian "national constitutional identity" or, alternatively, is not admissible in light of Russian values.19 While pushing for the introduction of an important legislative reform (Guazzarotti 2016: 383), with this decision the Constitutional Court essentially supported the idea that the "specificity" of Russian society should be protected against "external" interpretations of human rights, unless Russia ensures its express consent.

It is no coincidence that soon after, an internal institutional reform was adopted to ensure that the Russian Constitutional Court can prioritise Russian values over the obligations arising under the ECHR, including the execution of the ECtHR's judgments and how such judgments should be executed.20

Hence, in *Anchugov and Gladkov*, the first judgment adopted after this law entered into force, the Constitutional Court got the chance to clarify the above position in a case related to prisoners' right to vote, previously examined by the ECHtR. In the Russian authorities' view, the interpretation given by the ECtHR to the right to vote, protected under Art. 3, Protocol no. 1 to the ECHR, created

17 ECtHR, 31 July 2014, *Yukos v. Russia*, no. 14902/04, giving rise to one of the biggest amount of money to be paid to a victim (almost 2 billion of Euros) in the history of the ECHR.

18 See Russian Constitutional Court, judgment no. 21-□, 2015.

19 See Venice Commission, Opinion 13 June 2016, no. 832/2015, para. 59–73.

20 See Law of the Russian Federation amending the Law on the Constitutional Court no. 1-FKZ of 21 July 1994, which entered into force on 15 December 2015. According to this Law, a federal executive authority, "which has competence for protecting the interests of the Russian Federation in litigations before an inter-state body on the protection of human rights and freedom", may ask the Constitutional Court to declare that an international judgment should not be executed if it is based on an interpretation of the international treaty which is deemed to be in contrast with the Constitution. As a result, substantially the Constitutional Court has been given the powers to declare an international decision "non-executable", to identify how to execute an international judgment, as well as to assess the constitutionality of an individual measure of execution, such as an order to pay just satisfaction.

a conflict between the European Convention and the Russian Constitution. In fact, the latter denies the right to elect and to be elected to citizens who are kept in places of imprisonment (see Art. 32 of the Russian Constitution). According to the Constitutional Court, when Russia ratified the ECHR such a divergence did not exist. It has been, instead, the result of the subsequent ECtHR's own reading of the European Convention. Although deemed "exceptional", in such a situation Russia can advance its own interpretation of human rights as embedded in its Constitution and refuse the execution of the ECtHR's judgments. Despite the Constitutional Court stressed its willingness to reach lawful compromises with the ECtHR in the future, in the subsequent *Yukos* case21 it again refused to execute the ECtHR's relevant judgment (Marochkin 2017).

In this process, it is notable that, in order to support its arguments on the relationship between the duty to enforce international human rights obligations and the protection of national values, the Russian Constitutional Court referred to the case law of the Italian and German Constitutional Courts. On some occasions, these Courts have indeed embraced different interpretations of human rights or have refused the execution of international obligations in order to let the protection of individual rights, as read at the domestic level, prevail.22 However, the two situations do not appear comparable. While the Italian and German Constitutional Courts privilege dialogue with the international judge in order to create better mutual understanding and achieve common results, in the Russian case dominant domestic social conceptions prevail for protecting supposed collective identity values.23 In doing so, the Russian Constitutional Court essentially stresses the need to comply with traditional principles of international law, such as sovereignty, non-intervention in internal affairs and equality of States, in line with the analysed approach to international law.

Hence, while it may be said that it substantially confirms its adherence to the ECHR system, the Constitutional Court's case law makes clear two points. First, it grants Russian authorities the "last word" on some specific "sensitive" issues for Russian society.24 In this way, a wide range of situations may be

21 See Russian Constitutional Court, judgment 19 January 2017.

22 See for instance Italian Constitutional Court, 22 October 2014, judgment no. 238, on which among many others R.P. Mazzeschi 2015; Cataldi 2015.

23 See also Venice Commission, Opinion 11 March 2016, which pointed out the flimsiness of the comparison made by the Constitutional Court of the Russian Federation with the German and Italian Constitutional Courts.

24 According to some, this might be justified in line with the principle of subsidiarity on which the entire international human rights system is based (Shelton 2013 and *High Level*

protected as expressions of Russia's national identity, such as the patriarchal idea of society or the heterosexual nature of the family. Second, it points out how Russia strikes a balance between conflicting interests. While it does not deny the protection of individual rights, Russia allows the prevalence of domestic collective and moral values that shape its national identity over such individual rights. However, in turn, this eventually leads to giving a different meaning to the same human rights, thus undermining the consolidation of their universal, and even regional, understanding.

China: "People First"

According to the Chinese approach, human rights are "aspirational goals" to be promoted progressively, instead of enforceable individual rights. This probably explains why if compared to Russia, China is characterised by a lower degree of integration in international human rights mechanisms. This is true even at the regional level, where a feeble human rights framework based on some shared values is promoted by ASEAn.25 At the same time, this has also prevented the acceptance of relevant international human rights treaty-bodies' competence in receiving applications from individuals subject to China's jurisdiction.

Yet, this limited participation in the universal human rights machinery, which started soon after the inauguration of its "open-door" economic reform policies at the end of 1978, has resulted in the definition of its own concept of human rights. In contrast with Russia's defensive approach, China has advanced a specific proposal in this field in order to avoid being at odds in the international arena as well as to promote its core interests: ensuring favourable international conditions for its economic growth, preserving political and social stability and defending its territorial integrity (Sceats & Breslin 2012). Put in the context of the history of China's international relations, this general approach seems to be based on the need to "regain" a central role in the international arena after the long period "of shame" (Onnis 2011).

Historical factors are important in this process. While China's initial adherence to international efforts to promote and respect human rights did not lead to any significant domestic changes, it put pressure on the country to express

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Conference on the Future of the European Court of Human Rights – Brighton Declaration, 19–20 April 2012, where this principle is particularly stressed) and does not differ from the approach supported by other States bound by the ECHR (Malskoo & Benedek 2018). However, this can only apply where the right, as protected at the European level, leaves room for a margin of appreciation by the Contracting States, which is a situation that is far from the Russian case law analysed here.

25 See *Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2016–2020)*, point 1.6.

its position in the field (Foot 2000). It is no coincidence that China's own vision of the matter was expressed only after the 1989 events in Tiananmen Square, through the publication of the first White Paper on Human Rights in 1991 and the subsequent adoption of a few National Human Rights Action Plans.26 Already on that occasion, some essential aspects emerged as distinctive features of the Chinese proposal in the field of human rights. Subsequently reaffirmed and further elaborated in international *fora*, these aspects may be here analysed.

Firstly, although Chinese authorities accept the idea of the universality of human rights, China supports a vision based on the idea that human rights are not subjective legal entitlements directly enforceable before a judge. Human rights are understood as "causes" to be promoted in line with each state's social and economic development (Xue 2012: 144). As such, in China's view, social, cultural and historical particularities are fundamental parameters for promoting some "universal" rights instead of others in order to grant the country's general wellbeing. That is why, in one of the last national Human Rights Action Plans, China affirmed the principle of "pursing practicality": this is meant as the need to develop the human rights "cause" on "a practical basis" in light of China's conditions as a country.27 In this respect, for instance, the death penalty is still considered necessary in light of its level of socio-economic development, but it may be superfluous in the future.28

Secondly, on all occasions in which human rights are discussed in international fora, Chinese authorities stress the collective dimension of this development paradigm (Subedi 2015: 439). It is no coincidence that human rights are not referred to as belonging to the individual human being but are promoted as "the rights of people". That is why, in China's view, individual rights should not prevail or be prioritised over the interests of the country and may be sacrificed in light of the common goals pursued by the society as a whole. Indeed, the rights of individuals and of minority groups may be restricted for ensuring the peaceful coexistence of the national (and international) community, as this is the preliminary condition for ensuring the country's development. Following this *rationale*, it is not uncommon for China to identify what is described externally in terms of human rights violations as tools for ensuring the

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26 For a detailed analysis of these policy instruments, see A. Pisanò, *Human Rights and Social Development in the Chinese White Papers on Human Rights*, in *Peace Human Rights Governance*, 2018, 301–330.

27 *National Human Rights Action Plan 2012–2015*, 2011.

28 See *Report of the Working Group on the Universal Periodic Review – China*, points 15; 22 ff. See also footnote 6.

country's social stability and security and, ultimately, for reaching higher standards of protection.29

A few consequences may be drawn from this general proposal. First, China usually supports collective rights, such as the right to self-determination or the right to development, while stressing individual duties. For example, in the 1991 White Paper on human rights, Chinese authorities made clear that the right to subsistence is the primary "cause" to be promoted "by the State", while in international *fora* they emphasise the reduction of poverty as China's main human rights achievement. Second, China prioritises socio-economic rights over civil and political rights, thus questioning the principle of the indivisibility of human rights as one of the core characteristics of the international human rights' framework. It is no coincidence that China has not yet ratified the International Covenant on Civil and Political Rights but only the International Covenant on Economic, Social and Cultural Rights.30 This limited move, however, has not ensured that socio-economic rights could become enforceable by individuals under Chinese jurisdiction. In fact, it seems that only on a few occasions have international human rights treaties ratified by China been applied by domestic courts.31

This "Chinese vision" of human rights also finds expression within the UN system. For instance, China seems to use the UN bodies to emphasise its goals when human rights are at stake. In this regard some scholars have underlined an "unordinary" activism within the General Assembly, which has been aimed, together with Russia, at promoting discussions on international security and human rights, including issues around the restriction of the use of internet for granting national social stability (Sceats & Breslin 2012: 37). By the same token,

29 For some scholars, this explains China's ambivalent attitude on the international level towards the events of the so-called Arab spring and the gross human rights violations in Syria (Sceats & Breslin 2012: 27 ff.). See also the records of the Human Rights Council's discussion during its 18th session in Geneva, when China delivered one of its few statements on the "duties of States to maintain public security, public order and social stability". The same approach was pointed out for Russia (Dannreuther 2015: 77 ff.).

30 China ratified the International Covenant on Economic and Social Rights in 2001. This treaty protects, among others, the right to self-determination and the right of everyone to an adequate standard of living and to the continuous improvement of living conditions, including the "fundamental" right of everyone to be free from hunger. See www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

31 More specifically, the national judge at stake used the international Convention on the Rights of the Child, ratified by China in 1993, to handle a dispute between two parents over their children's custody recalling the duty to protect involved children in line with their best interests. See Popular Court of Jing'an District, *F.D. v. Dong*, no. 1816/2012 and Popular Intermediate Second Court of Shanghai, *F.D. v. Dong*, no. 1661/2013. As affirmed elsewhere, these cases are identified as exceptional: see Rossi 2016: 441.

China has used the periodic review mechanism set up by the UN Human Rights Council, the so-called Universal Periodic Review (UPR), to stress its re-interpretation of human rights. In the documents related to the UPR of the country carried out in 2013, China stated its necessity to build "a moderately prosperous society"32 and to establish "a robust system of human rights safeguards" in the "framework of socialism with Chinese characteristics".33 The Chinese motto "putting people first" was thus emphasised in order to stress the idea that only a "fairer and more harmonious society" ensures the enjoyment of "a life of ever-greater dignity, freedom and well-being" for every citizen.34

Concluding Remarks

This chapter has shown that Russia and China have their own vision of international law, based on the respect of their most traditional principles such as the equality of states and non-interference in domestic affairs. This position was confirmed in the joint official 2016 *Declaration*, which both countries are trying to use to influence the development of international law. This position has equally influenced the degree of openness of Russia's and China's internal legal orders and, in turn, their understanding of international human rights law in terms of role and content as well as how they strike a balance with competing interests.

As analysed above, notwithstanding the common approach to the role of international law, these countries' participation in international human rights systems has enabled the emergence of some distinctive features. Despite the fact that both countries stress the collective dimension of human rights, Russia pays great attention to the protection of values that shape its national identity while China advances its own concept or, even better, its own reinterpretation of human rights for pursuing its national strategic aims.

More broadly, the approach of these two countries to international law sheds light on the difficulty of reaching a "universal" understanding of international

32 See *Report of the Working Group on the Universal Periodic Review – China*, 4 December 2013, doc. A/HRC/25/5 point 6. It also stressed the need to: strike a balance between reform, development and stability; place great emphasis on poverty reduction; work hard to improve well-being and promote inclusive development; and enhance environmental and ecological protection (point 83).

33 See also the report discussed by XI Jinping on 18 October 2017 at the XIX National Congress of the Chinese Communist Party.

34 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – China*, 5 August 2013, points 4 and 5, doc. A/HRC/WG.6/17/CHN/1.

norms and values. International law is often perceived as a Western/European projection that needs to be renegotiated to take into account other or different traditions. If this push to renegotiate international law is governed by a genuine interest in human dignity, it does not seem to be a problem in itself, in light of the potential positive long-term effects on the international community. In fact, the more international norms and values are shared, the easier their consolidation, respect and/or implementation.

To this end, considering the role of Russia and China, a stable and structured dialogue is certainly beneficial for the international community as a whole and should be further promoted to ensure fruitful "traffic in both directions" (Baaz 2016: 275).

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