

XIII. Additional Views of Commission Members

*Additional Views of Chairman Christopher H. Smith
(joined by Senator Marco Rubio, Senator Tom Cotton,
Representative Ryan K. Zinke, and Representative Brian Mast)*

The Congressional-Executive Commission on China (CECC) maintains bipartisan unity with regards to documenting human rights abuses by the People's Republic of China (PRC). Nonetheless, some views do diverge, reflective of larger divisions on social and political issues in the United States.

In the 2021 and 2022 reporting year, former Commissioner Senator James Lankford issued Additional Views, noting *inter alia* that the citation of non-binding recommendations of United Nations treaty monitoring bodies and independent experts divert attention away from the PRC's failure to meet its hard-law obligations contained in treaties duly ratified. Such concerns, which have not been addressed fully in this reporting year, are shared by those who join these Additional Views. Moreover, for avoidance of confusion, insofar as the report cites non-binding recommendations of the monitoring bodies for treaties ratified by the PRC but which the United States has declined to ratify, such recommendations are entirely without probative value with respect to discerning the United States' obligations under international law.

Furthermore, the report continues to elevate disproportionately issues important to certain domestic, partisan constituencies, to the detriment of those Chinese citizens who suffer from the grossest violations of human rights. With respect to reporting on those who identify as members of the LGBTQ community, it is important to note that such individuals continue to have recourse to the judicial system, which, although flawed, allows them to adjudicate grievances, something which is denied members of disadvantaged groups, such as predominantly-Muslim Central Asians, including Uyghurs, Kazakhs and Kirghiz, and practitioners of religions that are persecuted by the Chinese Communist Party, such as the Falun Gong. Consistent with the overall crackdown on civil society organizations, on which we report, the space for organizations that fall under the LGBTQ umbrella is constricting. Individuals, however, are not imprisoned on the basis of their perceived sexual orientation, and social spaces still exist and are not subject to restrictions akin to those borne by members of religions that are unregistered or designated "evil cults."

We also have concern that the reporting on this particular social issue, which remains controversial in the United States, will be used improperly to leverage certain positions in intra-American debates. We remain particularly concerned at the use of an elastic "non-discrimination" principle that can be used to undermine freedoms that have been deemed fundamental since the drafting of the U.S. Constitution, in particular freedom of religion and freedom of speech.

In terms of the next report, such imbalances must be addressed and resolved. In addition, there is a need to move away from a model which presumes that the PRC is moving towards adherence to a rules-based international order and instead provides a more

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clear-eyed assessment of its intentions as expressed through its actions.

Thus we vote in favor of this annual report, with the inclusion of this statement.

*Additional Views of Senator Jeff Merkley
and Representative Jim McGovern*

Throughout its 22-year history, the Congressional-Executive Commission on China (the Commission) has gained a reputation for producing accurate, thorough and well-sourced reporting on developments in human rights and rule of law in the People's Republic of China (PRC). The Commission's work products are cited by Members of Congress, executive branch policymakers, advocates and experts, and immigration lawyers supporting asylum claims of those fleeing persecution in China.

The Commission's reputation for quality and integrity is due to the dedication of the hard-working, non-partisan Commission staff who are experts in their field. As former chairs of the Commission, we have seen this dedication first-hand, and recognize that the positive contributions made by the Commission over the last two decades would not be possible without the staff's commitment to accuracy and faithful adherence to the Commission's mandate.

This mandate requires the Commission to "monitor the acts of the People's Republic of China which reflect compliance with or violation of human rights, in particular, those contained in the International Covenant on Civil and Political Rights [ICCPR] and in the Universal Declaration of Human Rights [UDHR]" and "monitor the development of the rule of law in the People's Republic of China."

Throughout the Commission's history, the staff, guided by this mandate, have employed international human rights standards as the benchmark against which to assess the PRC government's behavior. To this end, they have looked to the places where such standards are codified, debated and adjudicated: United Nations conventions, treaties and declarations; UN treaty bodies including the Human Rights Committee, charged with monitoring compliance with the ICCPR; and the UN Human Rights Council. They rely on the work of international human rights practitioners, including UN special procedures mandate-holders, major non-governmental organizations and academic and legal experts on international human rights law.

The respect that the Commission has commanded for the integrity of its work is due to its rigorous adherence to these standards - standards that are determined by international law independent of domestic political considerations.

We are concerned that there are efforts underway to constrict or redefine the standards by which the Commission assesses the PRC's behavior, represented, for example, by the additional views submitted by a former Commissioner in the previous two annual reports of the Commission.

One argument that has been made is that the Commission should focus on the most egregious human rights abuses by the PRC. But the Commission's mandate is framed by the UDHR which encompasses the full range of civil, political, economic, social and cultural rights recognized internationally. The mandate pro-

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vides no basis for the Commission to focus attention only on “egregious” abuses, the definition of which would inevitably be subject to debate and arbitrariness.

A second argument is that the Commission’s focus should be limited to the PRC’s so-called “hard law” obligations, with a related complaint that it is inappropriate to cite UN treaty monitoring bodies and other independent experts whose findings are generally not binding.

There are a number of problems with this argument and the related critiques, beginning with the fact that the UDHR is a declaration, not a treaty, and that the PRC has not ratified the ICCPR. If the Commission were limited to a “hard law” standard, it would thus put itself out of compliance with its own mandate and would be unable to assess China’s behavior with regard to the two instruments specifically cited therein.

Second, when a country ratifies a human rights treaty, its first obligation is to translate the treaty commitments into domestic law; that is how the commitments become justiciable. That the PRC often fails to do this is an obstacle to those commitments becoming “hard law” at the domestic level. It makes no sense to give the PRC a pass on compliance with its rights obligations because it actively chooses not to make those obligations justiciable.

Third, in the absence of strong domestic laws to enforce rights obligations, victims’ only recourse is to precisely those UN mechanisms - the treaty bodies and other independent experts - that some argue should not be cited at all. To adopt a “hard law” standard is to tell the people of China that they should not be able to seek remedy within the international human rights system when their own government denies them remedy under its own law.

Taken together, the effect of these views would put the Commission in the position of explicitly instructing the PRC as to which human rights standards it is free to ignore. We do not believe that most Commissioners, much less the advocates and survivors we work with, think the Commission should be in the business of letting the PRC off the hook.

A third argument is that the Commission’s annual report has become a platform for arbitrating social and political issues that are contentious in the U.S., which were it true, should presumably be avoided. We concur. This is why adherence to international human rights standards is so critically important.

This Commission has received expert testimony on the ways in which the Chinese government, under direction of the Communist Party, is attempting to change the definition of human rights to suit its own purposes and ideology. Just as the PRC must not be allowed to redefine human rights to its liking, neither should the United States.

A clear example of the latter was the 2020 report of the “Commission on Unalienable Rights” convened by the State Department under Secretary Mike Pompeo. That body, based on a particular and limited reading of U.S. history, posited a hierarchy of human rights that privileged property rights and religious liberty, a conception starkly different from the corpus of international human rights law developed through the UN system. The effect of the adoption of such a conception would be to posit that the discrimina-

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tion suffered by a religious believer is legitimate while discrimination suffered by an LGBTQ person is not. This is tantamount to viewing human rights through the lens of domestic politics rather than the lived experience of people in China and elsewhere.

It would be grave disservice, and a dereliction of duty, to people in China if the Commission were to take the position that the human rights that they should be able to enjoy are limited to those that some politicians in the United States say they are entitled to, rather than to the full range to which they are entitled to under international human rights law. Such a position would mimic the behavior of the Chinese Communist Party, and we reject it.

Additional Views of Senator Dan Sullivan

The Commission has produced a very valuable compendium highlighting abuses of universal human rights - as is its annual tradition. From Hong Kong to Xinjiang to religious liberty, the report establishes an excellent basis for congressional action. I will carefully consider the many recommendations for policy over the coming year.

I have two primary concerns with the report:

First, the Commission's statutory mandate singles out two United Nations documents against which to evaluate the state of human rights in China: the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. However, the report cites several additional UN conventions. These include the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights, none of which have been ratified by the U.S. Senate. All existed prior to the adoption of the Commission's creation in 2000, and Congress explicitly excluded them from consideration.

It makes little sense to cite Chinese compliance with documents over which there is no consensus in the United States itself. Citing them implies the Commission's consent to their contents, something the Senate has not provided.

Second, environment and climate change are not a part of the Commission's statutory mandate. This is for good reason, as they are not human rights issues. I appreciate the Commission's cooperation in modifying certain report language. However, there is no basis in the Commission's mandate to address emissions, the Global Methane Pledge, or any other environmental issue.

Expanding the Commission's focus to additional areas beyond its statutory mandate risks opening it to an ever-expanding set of issues in an increasingly adversarial U.S.-China relationship. In turn, this risks drawing focus away from its critical focus on human rights.

For these reasons, despite the fine work the Commission staff has put into this report and the vast majority of it with which I agree, I abstain from voting on this year's report.