

XIII. Additional Views of Commission Members

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

We commend the Commission's hard-working, non-partisan staff for producing another quality annual report on developments in human rights and rule of law in the People's Republic of China. Their commitment to accuracy and faithful adherence to the Commission's mandate has given the Commission a well-earned reputation for producing accurate, thorough and well-sourced material.

This annual report continues that tradition and we commend its reporting and recommendations to Members of Congress, executive branch policymakers, advocates and immigration lawyers defending asylum claims of those fleeing persecution.

The Overview in this annual report includes an analysis of the "broken promises" of the Chinese government in regard to its commitments under a select list of treaties and agreements. Assessing the government's compliance with its international obligations is not only informative, it represents the core mission of this Commission.

The PRC is party to six of the nine core international human rights treaties. The Overview includes analysis of only three of these: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention Against Torture (CAT). It excludes the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD), without explanation for the omission, and despite the fact that CRC and CEDAW are cited in the body of the report.

Each of these treaties are equally valid under international law. The obligations that the PRC Government incurs under one of these duly ratified treaties are no less or more than those under any other. Per the Commission's mandate and practice, it appears analytically inconsistent for the Overview to cover some treaties and not others.

The international human rights standards that the Commission is required to use are universal—not standards determined by government officials in China, in the United States, or in any other country. These standards include but are not limited to treaties ratified by the PRC, as the mandate's reference to the Universal Declaration of Human Rights provides.

This Commission has always sought to center its work on the lived experience of the people of China, their aspirations and their challenges. The same holds for its analysis. The people of China are entitled to expect their government to respect their rights under its legal obligations per the six core human rights treaties it has ratified and according to international standards.

It would be a disservice to the people of China if the Commission were to analyze the PRC's compliance against standards other than those the people of China are entitled to under international law. We sincerely hope that the selective exclusion of human rights treaties in the Overview does not suggest that a different or domes-

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tic standard is being applied. We look forward to working with our colleagues to ensure that the Commission's work continues through a universal lens.

Additional Views of Co-Chairman Christopher H. Smith and Commissioner Dale Strong

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

While we welcome the Annual Report's thematic accounting of treaties entered into and broken by the PRC, we nonetheless must reiterate, 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.

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 in China, it is important to note that such individuals continue to have recourse to the judicial system, which, although flawed, allows them to adjudicate grievances successfully—as chronicled in this year's annual report—something which is denied members of disadvantaged ethnic groups, including Uyghurs, Kazakhs and Kirghiz, and practitioners of the multitude of religions being persecuted by the Chinese Communist Party. Consistent with the overall crackdown on civil society organizations, on which we report, the space for organizations that fall under the LGBTQ umbrella has been 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”—including the most recent crackdown on evangelical Christian churches, which occurred after the close of this reporting period.

We continue to 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.

Notwithstanding these concerns, we vote in favor of this annual report, with the inclusion of this statement, and compliment the dedication of staff in producing a thorough and well-researched report.